

Legal Checklist

The list below outlines some of the legal issues to consider when starting out in business. Not all will apply to every firm and each will also have a unique set of issues to ponder. You are advised to contact a solicitor or accountant to help you through some of the issues outlined and remember to take advantage of free legal consultations before you commit yourself.

Company Structure

The structure of your business will be vital to its success as you start up and expand. Partnership, limited company or limited liability partnership or sole trader? There are different financial implications with each.

What if you decide on a partnership and a partner decides to leave and starts up in competition? Legally you may want to cover yourself with a partnership agreement that covers such eventualities.

If you choose to be a limited company you cannot (there are a few exceptions) make loans to directors, but if you choose a partnership this option would be available. Limited companies can consider giving share dividends which may be more tax efficient than individual bonuses.

Limited companies may also need to review company memorandum and articles of association and if they want to change the articles of association there needs to be a special resolution which can be blocked by over 25% of shareholders.

The structure of the business will have tax implications, but there is much more also at stake. The structure of the business will determine how easily you can sell the business (or your stake), or transfer to others. Partnership or limited company formation needs to reflect what you want from the business, not only now but also in the future.

Business Premises

Before you choose a property, talk to your solicitor and check with the local council. There are environmental health rules, which govern how premises can be used for trade. For example, if you are planning to start a food business, you must register the premises you intend to use at least 28 days before you open - and even if you are trading from home you need to take these rules into account.

Look closely at business leases. Remember, they are not as easy to get out of as they are to get into, so consult a professional. Generally new businesses either lease premises or work from home - not many can afford to buy premises outright. If you decide to lease there are risks you need to consider before signing anything. Some are outlined below but there will be others depending on the terms of the lease and your own individual requirements, so you may want to consult a solicitor to have it checked.

Short term leases provide greater flexibility and if the lease is under five years you should negotiate or delete a "full repairing" obligation so you are not responsible for every repair. You might want to consider a property survey to prevent costs to you later. Check whether the landlord increases the rent and if so, by how much? And how often? Are there service charges? Will they increase and if so by how much?

Consider also that if you are not VAT registered (and therefore not able to claim back VAT), the lease will allow the landlord to charge VAT at any time - unless you get them to agree not to impose VAT during your term. What happens if you want to end the lease early - you won't be able to unless you have a 'break clause'.

Check the business rates personally -do not rely on what the landlord tells you -and check planning permission for intended use (this is your responsibility not the landlord's).

If you are running your business from home you must check whether there are any restrictions, for example from your landlord or mortgage or insurance company. If so what are they? Who do you need to inform, are you acting legally?

Finance

As the credit crunch bites, finance may be far harder to come by. What sources of finance are available and what are the legal implications? For example, if you mortgage your home for business purposes what will happen if the company does badly? Lending criteria is certainly tightening up, but that doesn't mean you have to accept unfair terms. Banks still have to be competitive so it is worth shopping around.

You might want to consider asset based financing such as leasing or factoring, which can often have fewer long term implications for your business. Take extreme care if you are considering getting help from a venture capitalist. And remember, limited liability protects you and minimises risk (but the bank will still want personal guarantees), sole traders and partnerships do not have limited liability and you could be putting all your personal assets at risk.

Remember that if you want to sell less than 25% of your shares any shareholder can act against the company if they object to its management. If you sell less than 50% you will retain control but anyone with at least 25% can still block certain decisions. Always make sure you get a shareholders' agreement.

Insurance

There are risks relating to premises, employees, assets and visitors. What if your products or workers injure someone, for example? What if someone is injured while working for you? What if you are legally responsible for an employee who misuses the internet?

Most employers must have employers' liability compulsory insurance. This protects against claims from employees for accidents or sickness they may suffer as a result of working for you.

If your company uses motor vehicles on the road, you must purchase at least third-party motor insurance to cover your business' liability for personal injury to someone else or damage to property. You may also want to purchase comprehensive insurance to cover damage to or theft of your own vehicles. If employees use their own vehicles in their job -make sure that insurance for all such vehicles has been extended to include business use.

Certain professions - such as the law, accountancy and financial services - are also legally required to take out professional indemnity insurance to protect against legal liability for losses suffered by customers as a result of negligence.

Apart from the legal requirements above you will probably need buildings and contents insurance, but what about health insurance for your staff? Do you want protection against equipment, goods lost or damaged etc.?

Cash flow

Cash flow is the lifeblood of any business. Recovering late payment can be a thorny issue. When is a payment late and when can you charge interest? Protect yourself against bad debts by making sure you use the right terms of trading. Late payment of bills can be frustrating and can cause serious cash flow problems for businesses of any size.

The law allows businesses to charge each other interest on overdue invoices under the Late Payment of Commercial Debts (Interest) Act 1998.

Unless your terms and conditions state otherwise, an invoice becomes due after 30 days. If it is not paid within this time you are entitled to charge interest. Most businesses don't for fear of alienating customers, but it can be calculated at the Bank of England base rate plus eight per cent. You can also claim compensation. Use an online interest calculator to check. www.payontime.co.uk

Going to court

If you want to recover a debt, enforce a judgment or attend a tribunal you will need legal advice. What happens if you have to contest a case? How do you go through the small claims court (before you get to this stage there is much non court action you can take)? Sometimes a correctly worded solicitor's letter can solve the problem. **Error! Hyperlink reference not valid.**

Goods and Services

The Sale of Goods Act and the Supply of Goods and Services Act make it a legal requirement for every business to ensure that the products or services it sells meet minimum standards.

All goods you sell must:

- correspond with any description given - verbally, in writing or in an illustration
- be of satisfactory quality
- be fit for their purpose.

All services you supply must:

- be carried out with reasonable care and skill
- be carried out within a reasonable time and for a reasonable charge, unless these matters have previously been agreed with the customer.

Customers have a range of rights if they're unhappy with goods - compensation, asking for repairs or replacement of the goods.

If any services you provide don't meet the requirements specified above you will be in breach of contract and customers may well be entitled to compensation. Responsibility to customers can last for up to six years, dependent on the nature of the goods or services (five in Scotland).

If anyone incurs damage to their private property, is injured or killed as a result of using goods you have supplied you can be sued under product liability law.

If you are selling you must have a written contract or terms of business (it is your only protection against bad customers or clients) and always confirm telephone orders in writing to cover yourself (this can include method and timing of payment or setting disputes). Make sure you know who you are dealing with and always record the registered number of the purchasing company. Insist on checking out business references. But there are also many laws to protect customers from being treated unfairly. If you breach them, the penalties can be high and can even result in you losing your business.

Some of these laws, such as the Trade Descriptions Act, apply generally. Others are specific to particular trades. Trading Standards, which enforces many of these regulations, can help you stay within the law.

Many of these existing laws (including most of the Trade Descriptions Act) are due to be replaced from 26 May 2008 by the Consumer Protection from Unfair Trading Regulations 2008, subject to parliamentary approval.

Protecting your ideas

Protect your designs from competitors who may want to steal your ideas, whether it's copying your trading name and logo or the products themselves. Copyright and patent laws protect your ideas from being exploited by a rival business and prevent someone stealing your intellectual property.

Data Protection

Businesses should only hold on to information they actually need and information that is no longer required should be deleted or destroyed as soon as possible.

The information must be accurate and up to date and held securely.

Franchising

The small print in the sale agreement can be a legal minefield - there are many common problems associated

with franchising. What if the franchise doesn't come up to expectations? Can you get your money back? The franchise agreement is crucial. Don't sign any agreement, or pay any fees or deposit, until you have taken legal advice from a solicitor. Get a specimen contract for them to review.

Generally you will have to consider the term of the franchise, what areas it covers, fees, support and restrictions. For more advice visit www.whichfranchise.com

Trading Laws

Many of the existing laws mentioned below are due to be replaced in May 2008 by the Consumer Protection from Unfair Trading Regulations 2008, subject to parliamentary approval. If you breach them, the penalties can be high and can even result in you losing your business.

Consumer Protection Act 1987

Trade Descriptions Acts 1968 and 1972

Sale and Supply of Goods Act 1994

Sale and Supply of Goods to Consumers Regulations 2002

Consumer Protection (Distance Selling) Regulations 2000

Health and Safety at Work Act 1974

The new regulations will ban traders in all sectors engaging in unfair commercial (mainly marketing and selling) practices against consumers. The regulations also set out how commercial practices can be unfair by being misleading (by action or omission) or aggressive, and list 31 specific practices which are banned. The Business Protection from Misleading Marketing Regulations 2008 will replace the Trade Descriptions Act insofar as that Act protects businesses.

Whatever your business, as far as consumers are concerned, there are 3 trading standards which are almost bound to affect you:

1 - If goods are faulty, customers can have a full refund or part of a refund. Or you can agree to repair or replace the goods. A notice that says 'No Refunds' is not legal. In some cases, displaying such a notice can be a criminal offence.

2 - Goods must always live up to the claims you make for them.

3 - Goods must meet certain safety standards.

Distance Selling Laws

If you don't sell to customers face to face (as opposed to other traders) there are additional distance-selling rules that you must stick to.

When communicating with your customers, you must clearly inform them about:

- your business name
- its place of registration, registered number and registered office address
- your postal address (when advance payment is required)
- the goods or services (including a description)
- prices (including taxes)
- payment arrangements
- arrangements for delivery for goods or performance in the case of services
- the right to cancel during the "cooling-off" period
- who is responsible for postage/delivery of returned goods
- how long prices are valid
- minimum duration of contracts

Once an order has been placed you must send confirmation to the customer by post, email or fax. You must also make it clear if you intend to substitute unavailable goods with similar items.

You must provide key information, such as pricing and the right to cancel, before the order is placed. You must also confirm all the required information in writing, at the latest when the goods are delivered or before the service you are providing comes to an end.

The customer can cancel the agreement up to seven days after the goods are delivered or the service contract is agreed. Special rules apply if the written information has not been provided, or if the customer agrees to the service starting before this cooling-off period is over.

Delivery of the goods or the beginning of the performance of a service must be within 30 days of the order, unless otherwise agreed. The customer must be informed if you are unable to meet this deadline - they are not obliged to agree to a revised date and can cancel the contract. Any money paid must be refunded within 30 days.

Customers who enter contracts lasting more than a year must be given details of how the agreement can be terminated.

E-Trading

There are additional issues to consider when trading online. If you sell goods to consumers online - via the internet, email, digital TV or mobile phone text messages - you must comply with the distance selling regulations. Similar requirements apply if you sell goods online to businesses - but business customers do not have an automatic right to cancel.

You must provide customers (and businesses) with additional information, including:

- your VAT number (if applicable)
- details of membership of any professional organisations
- an opportunity to correct orders before they are completed
- information on how to place an order, and how to correct errors made whilst placing it, must be provided before the order is made. You must also acknowledge orders promptly.

Licences

Certain businesses need a licence to trade. For example auction sale rooms, betting offices, billiard halls, bingo halls, cafes, restaurants, caravan sites, children's nurseries, cinemas, theatres, employment agencies, food manufacturers, fruit machine owners, hairdressers (not always), ice-cream sellers, market stall owners, mobile food shops, nursing agencies, nursing homes, pawnbrokers, pet shops, kennels, businesses that sell petrol, riding schools, businesses that sell fireworks, businesses that sell alcohol, businesses that sell tobacco, scrap metal dealers and theatrical employers.

Employment

Employment law is a complicated area and is constantly changing - there are eight new laws in 2008 alone. Most employment disagreements are caused by badly drafted service contracts or dismissal procedures that don't meet legal requirements.

Every employee, whose employment continues for one month or more, has the right to receive a written statement setting out certain details of their employment (provided no later than two months after their employment starts).

Generally, when recruiting an employee, it is illegal to discriminate on the grounds of race, sex, disability or marital status, however there are certain exceptions. The anti-discrimination laws continue to apply to all other parts of an employee's job, including wages and holiday after the recruitment process. As an individual you could be personally liable for discriminatory actions.

If you need to dismiss an employee, you must have a valid reason, act reasonably and follow procedures. Failure to do so could lead to an unfair dismissal claim. Unless the dismissal is for gross misconduct you must give the employee notice of dismissal as set out in their contract. Failure to give proper notice may lead to a wrongful dismissal claim.

Health and Safety

You must make sure that, as far as is reasonably possible, the health, safety and welfare of your employees is not at risk whilst they are at work. There are different requirements for shops, factories, offices etc. and you must register. By law you must display a current Employers Liability Insurance certificate and be aware of your duties of care to others (including visitors).

Importing and Exporting

If you import items into the UK, you have a number of legal responsibilities. Legally are you allowed to import and do you need a licence? You need to find out about any laws that may be applicable in the items' country of origin and make sure these are adhered to. You may need to prove origin using documents supplied by the seller.

In addition you must notify HM Revenue & Customs (HMRC) by making an import entry if you're importing from outside the European Community (EC). If you're buying from within the EC you might need to complete an intrastat declaration if the value of the goods exceeds a certain threshold per annum.

You will need to pay any duty and VAT that apply under UK and EC law - before the goods can be released to you.

Unforeseen Circumstances

What if you fall out with a partner or fellow shareholder? Can you be forced out? How do you make sure that responsibilities and profits are divided fairly? What will happen to your business if you fall sick or die? Will your husband, wife, partner or home be properly protected? Although it is difficult to contemplate some of these issues it is important to consider what a change of circumstances would do and make provisions accordingly.

The above list is not exhaustive, but aims to give an idea of some of the legal issues you may wish to consult a solicitor about. It is imperative to get impartial advice from a well qualified professional.