

## SETTING UP IN BUSINESS

### INTRODUCTION:

Businesses are set up to make a profit.

A business generates income by selling products and/or services.

To be able to sell products/services, the business must **incur expenses**. If the income exceeds the costs of the business, the business makes profit.

Companies House = the Registrar of Companies in the UK.

Considerations that determine the most suitable business media:

- Cost considerations:**
  - A proportion of the company's profit must be **given** to the business owners. The rest is **retained** by that business for growth.
  - The company will need to raise finance to pay for set-up costs, develop and expand.
  - Businesses raise finance in four ways:
    - Investment by the company's owners
    - Investment by outside investors
    - Borrowing money – e.g. **trading off a loan**
    - Retaining a proportion of the profits (instead of distributing it to investors/owners (dividend))
- Mitigating or minimising risk:**  
Does the owner have personal liabilities for all debt?
- Structural considerations:**  
Business media should provide a clear organisational structure.

### CHOICE OF BUSINESS MEDIA:

#### Sole trader:

An individual running a business on their own as an entrepreneur.

PROS	CONS
<ul style="list-style-type: none"> <li>Sole trader has <b>complete control</b> over how the business is run.</li> <li>No formalities when setting up and <b>no setting up costs</b> for ongoing expenses.</li> <li>No publicity requirements, <b>may be maintain privacy</b>.</li> </ul>	<ul style="list-style-type: none"> <li><b>Unlimited personal liability</b></li> <li><b>No quick finance options.</b> Sole trader can get a bank loan but cannot create floating charges nor raise finance by share issue.</li> <li><b>Owner pays tax as an individual</b> (income and CGT) – may pay higher rates</li> </ul>

#### Partnerships:

Two or more people running a business for profit together without incorporating a company. – **s.1(1) Partnership Act, 1890**

PROS	CONS
<ul style="list-style-type: none"> <li>Partners may sell out, <b>how the partnership is run is the Partnership Agreement</b>, if no PA, the default provisions in the <b>PA 2000</b> step in.</li> <li><b>No setting up costs</b>, nor ongoing expenses, however it is advisable to have a <b>PA</b> signed.</li> <li>Easy to maintain privacy.</li> </ul>	<ul style="list-style-type: none"> <li><b>Unlimited personal liability.</b> No separate legal identity. Partners own property and enter into contracts jointly.</li> <li><b>No quick finance options.</b> Partners can borrow but cannot create floating charges nor issue shares.</li> <li>Partners <b>pay tax as an individual</b> (income and CGT) – may pay higher rates</li> </ul>

#### Limited Liability Partnerships (LLPs):

Two or more people running a business with the benefit of **limited liability** but without becoming a company.

PROS	CONS
<ul style="list-style-type: none"> <li><b>Limited liability.</b> Different types of partners – General partners (unlimited liability) and Limited partners.</li> <li>Partners may sell out, <b>how LLP is run is the Partnership Agreement</b>, if no PA, the <b>LLPA 2000</b> default provisions step in.</li> <li><b>Low setting up costs</b>, however it is advisable to have a <b>PA</b> signed but must <b>incorporate the business</b> at Companies House.</li> <li><b>Good finance options.</b> Partners can borrow and create floating charges but cannot issue shares.</li> </ul>	<ul style="list-style-type: none"> <li><b>Ongoing expenses</b> as accounts must be prepared and a Confirmation Statement must be filed.</li> <li>Partners <b>pay tax as an individual</b> (income and CGT) – may pay higher rates</li> <li>Privacy is lost when the LLP is registered due to the disclosure requirements.</li> <li><b>If a firm is underwritten</b> by a member's personal guarantee, <b>limited liability is removed</b>.</li> </ul>

#### Private companies limited by shares:

One or more people running a business under the **separate legal personality** of a company with the benefit of limited liability.

PROS	CONS
<ul style="list-style-type: none"> <li><b>Limited liability.</b> <b>Separate legal personality</b> – The company may own property and enter into contracts in its own name.</li> <li>The company can sell out <b>its own procedures</b> (specified in the articles).</li> <li><b>Cheap to register online.</b></li> <li><b>Good finance options.</b> Companies can borrow, create floating charges and issue shares.</li> <li>The company <b>pays corporation tax</b> – may pay lower rates.</li> </ul>	<ul style="list-style-type: none"> <li><b>Higher ongoing expenses</b> due to the filing requirements and other regulations.</li> <li>The company must follow the <b>CA 2006 disclosure-making procedures</b>.</li> <li>Privacy is lost when the LLP is registered due to the disclosure requirements.</li> <li>Cannot offer its shares to the public so <b>harder to find investors</b>.</li> </ul>

#### Public companies:

A company that is able to offer its shares to the public and must comply with higher reporting requirements as a result.

**s.755 CA 2006** Only public companies can offer shares to the public.

**s.38(2)** The name of public companies must end in 'Public Limited Company' or 'plc'.

Public companies must have:

- At least **1 Annual General Meeting** each year. – **s.336**
- At least **1 shareholder** – **ss.75(1) and s.86(1)**
- At least **2 directors** – **s.354(2)**
- At least **1 company secretary** – **s.321**
- s.375(2)** The company secretary must have the requisite knowledge and experience and hold a relevant qualification.
- Share capital with a **nominal value of at least £50,000**. – **s.77(2)**
- s.76(1)(2)** Public companies cannot commence business until a **trading certificate** is issued by Registrar showing that the company allotted share capital is not less than the minimum.

#### Listed companies:

The company's **shares** will be **listed on the London Stock Exchange** to market the shares. The company may raise large amounts in funds this way. The company must be a **plc** before listing, so private companies must be converted. All the **listings regulations** must be complied with before making an application.

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**Jessica J Manson**



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