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Myerson **Business**

Start-up Businesses: Our Top Tips

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Welcome

We understand the complexities of modern life and the importance of taking care of your business interests. So it's a deep source of satisfaction that so many businesses choose Myerson as their trusted adviser, from assisting with day to day commercial issues, to advising on growth strategies and investment.

Why Myerson?

At Myerson, we are experts in drafting commercial contracts. Putting our clients and their business at the heart of everything we do means we establish long term relationships and act as trusted advisers.

We are proud to be ranked as 'Top Tier' in the prestigious international directory The Legal 500, and commended by The Times 'Best Law Firms 2019'. Therefore, you can be reassured you will receive a high quality and truly bespoke service.

Our commercial clients include those with local, national and international business interests across a range of sectors including; technology, creative and media, private healthcare, education, charities, manufacturing, retail and leisure, fashion and textiles, agriculture and professional services.



Our Top Tips for Start-up Businesses

Setting up your own business can be exciting and daunting all at the same time.

With so many initial considerations, it can all seem a little overwhelming, and that's before you get to the legal documentation. We've set out our top tips, getting to the heart of the legal issues new start-ups should consider, allowing your business to be built on solid foundations.

How will your business be structured?

Will you, set up a limited company, go into partnership with other people (and, will that be a limited liability partnership (LLP) or unincorporated partnership), or trade as a sole trader?

By setting up a limited company or limited liability partnership, you are limiting your financial risk and exposure. Your liability would be limited to the value you paid for your shares or amount of capital invested in the LLP. This is not the case if you operate as a sole trader or unincorporated partnership.

Other factors to consider include:

- how will you extract income from the business - by taking a salary or dividends or both?
- how will you exit the business?
- your business assets, estate and tax planning.

If you choose to set up a company, or, a limited liability partnership, we can help with registering your company at Companies House and provide you with all necessary documentation (including shareholders' or partnership agreements).



Do I need a shareholders' agreement?

Unless you are setting up in business on your own, putting an agreement in place with your business partners is a must!

A **shareholders' agreement** regulates how you will conduct yourselves and operate the business. Crucially, a shareholders' agreement will deal with what happens if something goes wrong, such as a dispute between business partners or one business partner misbehaving – without an agreement in place the business partners can find that the only way of dealing with such a dispute is through costly litigation or, ultimately, could involve winding up the business.

The terms of this document may include:

- the exit strategy of the business owners – how and when will an exit take place and who gets to decide?
- key protections for business owners to ensure that the business does not take certain key actions without their consent (for example large purchases, hiring or dismissing key staff members, agreeing to loan facilities etc);
- rights of first refusal on new shares being issued or if an individual wishes to sell their shares in the business;
- how director appointments and dismissals will be made.

A shareholders' agreement will often go hand in hand with a company's articles of association, which are the rules that govern the operation of each company.

What about my website?

All websites require terms and conditions which:

- explain to users how they are permitted to access and use the content of the site (terms of use);
- protect intellectual property rights in the site and to prevent the site from being abused;
- explain how personal data will be used (a privacy notice); and
- if the website uses cookies, explain how these are set, their purpose and how to manage them (a cookies policy).



If you sell goods or services through your website, then you will also need to have a separate set of terms and conditions to deal with this.

Terms & conditions

For most businesses, any products, or services that they offer should be provided based on their own terms and conditions. Your terms and conditions need to suit your business model, to mirror the way you will trade day to day.

The terms and conditions generally cover issues such as:

- payment terms;
- supply obligations;
- retention of title (where appropriate);
- warranties;
- termination and
- limitation of liability.

By having appropriately drafted terms and conditions you will ensure that you can manage your cashflow and will not be unduly exposed to risk and liability.

Other commercial contracts

In addition to your own terms and conditions, you will need to enter into variety of contracts during the normal course of your business operations.

Ensuring all contracts are properly and clearly drafted is essential to have certainty that key arrangements will continue (securing cashflow and key suppliers) and to manage risk in your business (for example by having appropriate liability caps and limitations).

Intellectual property

If your business will receive or create intellectual property (IP), for example:

- copyright;
- patents; or



- trademarks;

there will be an inherent value to this which you should ensure is properly protected as this may be where much of your business' value will be.

Ensuring that you own or have a right to use all relevant IP can be key, for example, in relation to funding or on the ultimate sale of your business. IP can relate to the name or brand of your business and the technology your business develops or relies on.

Issues can arise in relation to IP if it is created by third parties (such as consultants/contractors) who were not correctly engaged by the business. This can lead to IP being owned by the third parties, as IP ownership will not automatically transfer to the business that paid for its development. This can cause big issues when it comes to seeking investment in the business, selling/licensing the IP or selling the business. At this point in time the IP can be very valuable, and a business could find itself being "held to ransom" by the third party.

Wills & estate planning

When starting a new business, the last thing individuals think about is succession planning and what should happen on their death. In reality, a business may be worth very little at the beginning, but most build up to become successful and valuable and will make up the majority of the estate itself.

What individuals do not consider is the tax saving opportunity. Businesses may qualify for 100% Inheritance Tax relief on death. By doing proper planning at the outset, you could save your family a lot of money and ensure that your business can and will continue if that is your intention.

Whichever business structure you adopt you will be required to account to HMRC for tax, including:

- VAT (on the goods/services you supply);
- corporation tax (payable by limited companies and LLP's); or
- income tax if you are a sole trader.

Discussing this with an accountant and taking tax advice before you decide on a structure and start to trade is key.



Insurance

Business insurance may be legally required for your start-up before you can trade. You will need to research the types of insurances you need and speak with an insurance broker.

Some examples to consider include:

- Employer's liability, if you have any employees, workers or contractors;
- Public liability, if you deal or interact with members of the public;
- Buildings insurance and motor insurances;
- Product liability insurances, which offer protection in the event of claims from customers in relation to goods or services supplied to them; and
- Professional indemnity insurance, if you will be providing professional services.

Leases

Most businesses will need premises to trade from and this could mean you need to take a lease of property. It is important to get the lease right, to ensure that you:

- have the rights you need to benefit from the property:
- are not subject to onerous obligations
- have a break clause (if needed)
- have "security of tenure" (the right to a new lease when the current lease expires).

Our team of commercial property solicitors can help you to understand the terms of the lease and negotiate appropriate provisions with the landlord.

Employing people

One of the first steps you may need to consider is employing other people in your business.

Taking on employees can be essential for your business to grow. However, employment law is complex and getting it wrong can be costly. For example, employees must be given written terms in relation to their employment (which must contain certain key information) and must be managed in the correct way.



We can help you with getting it right in terms of taking on and managing your employees.

Licences & consents

If you need any form of operating licence for your business, you should put this in place before starting to trade. This could include alcohol licensing, local authority approval and operating licences. If you intend to operate a regulated business, for example surveying, engineering, architecture, accountancy, financial services, law etc. each is subject to its own regulatory body and may require consents and licences to trade.



You're in safe hands!

If you would like further information about how we can help you with your **new business venture**, or if you have any questions, please don't hesitate to contact a member of our **Corporate Team** today.

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