



Jersey Business Venture

Setting Up Your Business

Once you have developed your business plan, (and are satisfied that your proposal is viable), it is time to take care of the fundamental structure on which your commercial activities will be based.

Setting up your business in the right way will reduce your costs and avoid the damage which can be caused by a business relationship turning sour.

The physical restrictions of an Island, together with the political determination to encourage commercial activities in harmony with the Islands natural qualities have necessitated the creation of a number of statutory obligations of which those persons setting up a new venture, or managing an existing one, must comply with.

Business Licence

Regardless of the type of trading entity ultimately determined as being most suitable for your business activity a 'business' licence is required.

Where an undertaking is proposed, and where it is not classified as an 'offshore' venture, the proposer is required to apply for a licence under Part II of the Regulation of Undertakings and Development (Jersey) Law, 1973. The law is administered by the Population Office at Economic Development (3rd Floor, Jubilee Wharf, St Helier).

Application for a licence is made on form EDM(A1) Revised, generally known as 'the pink form'. The form is available from Jubilee Wharf or from Jersey Business Venture. At the present time there is no fee charged.

The policy relating to the application of the law has, in previous years, been set out in the Strategic Policy Review document issued by the Policy and Resources Committee.

In summary the current policy states that:

'A licence to commence a new undertaking can be expected to be granted without difficulty where application is made by a person(s) with residential qualifications or where the applicant has been ordinarily resident in the Island for at least five consecutive years immediately preceding the date of application'.



Jersey Business Venture

Where the licence relates to the provision of financial services the applicant will also be required to demonstrate, to the satisfaction of the Committee, their qualifications and/or experience.

Part II of the law also sets out certain requirements for the engagement of additional or replacement staff. In particular, this relates to the engagement of persons who are not residentially qualified or who have not been continuously resident in the Island for five years or more prior to the date of engagement. Where a business intends to engage persons they are advised to seek clarification of their obligations under the law from the relevant department.

Types of Trading Entity

There are three main choices for the legal form of your business:

- **Sole trader** - you are self employed and may trade in your own name or may register a business name.
- **Partnership** - two or more self-employed people work together as partners, sharing the profit. The partners may use their own names or register a business name.
- **Limited company** - this is a separate legal entity, distinct from its shareholders, directors and employees. Unlike a sole trader or partnership, a limited company is not the same as the individuals who own or manage it. For example, a company can sue or be sued in its own name.

There are other legal forms which can be used in specific circumstances. For example, a co-operative is owned by the employees and run along democratic lines.

Whatever form the business takes, it only affects the owners. You can have employees regardless of whether you are a sole trader, partnership or limited company.

It is possible to commence a business as a sole trader and to establish a limited company at a later time when the business has had a chance to develop. However, there may be good reasons why your business should be set up in one form in preference to another.

The advantages and disadvantages of each legal form are explained in brief below. You should seek professional advice in respect of the most suitable choice for your specific proposals.



Jersey Business Venture

Sole Trader

Most small businesses find setting up as a sole trader the best option.

Advantages

- Setting up is cheap and simple.
- You can produce simple accounts.
- You can form a limited company later as your business grows and transfer the business to it.

Disadvantages

- You are personally liable for all your business debts.
- Your options for raising money are limited.

To establish a business as a sole trader the proposer need only make an application to for a licence under the Regulation of Undertakings law. You will also need to inform the tax and social security departments of your actions.

Partnership

A partnership has almost the same advantages and disadvantages as a sole trader. However, in addition:

- A partnership is liable for all the business debts of the partnership, even if another partner caused them.
- You may be able to raise money by introducing new partners. A 'sleeping partner' will contribute capital and share in the profits, but will not be part of the management of the business.

If a business has more than one owner, the owners must determine their working relationship. The importance of discussing the terms of your relationship and setting up a partnership agreement can not be over emphasised. Work out as much detail as you can with your partner and seek the services of a solicitor to draw up the final agreement.

A partnership agreement should include:

- The **names** of the partners and the name of the business, and what it does.
- The **date** the partnership starts and perhaps how long it will last.
- The **capital** each partner is to contribute.



Jersey Business Venture

- How **profits** (and losses) are to be shared and how much money each partner can draw from the business.
- How the **business** is to be run. (For example, how much time each partner is to put into the business and a limit on the value of cheques which require only one partner's signature).
- **Holiday** entitlements.
- What to do if a partner **dies**, becomes incapacitated, or wants to retire or reduce his involvement.
- What the arrangements will be for introducing **new partners**.

Discussing these issues at the outset helps to minimise the risk of participants feeling that they are putting in more than their 'fair share' of time and effort for too small a share of the rewards.

To set up a partnership, make your joint application for a licence under the Regulation of Undertakings law, establish the terms of your partnership agreement and inform the tax and social security departments.

Limited Company

Advantages

- A limited company gives your business more creditability.
- Your liability is limited to the amount you agree to invest in the company by buying its shares. However, if you give a personal guarantee (e.g. as security for the company's overdraft) you can still lose your assets. Also, if the company trades 'wrongfully' or 'fraudulently' you may be personally liable as a director.

Disadvantages

- Forming a limited company will cost many hundreds of pounds.
- Maintaining the business structure is more formal and costly, e.g. you will be required to complete an 'annual return' to the Financial Services department with an annual fee which is currently £150. If the annual return is not completed and returned by the end of February, the price rises to £250 and if not in by the end of April, rises to £350.



Jersey Business Venture

- It can be easier to raise large sums of money, or to sell part of the business.
- It is easier to pass on shares to a member of your family, or another successor, when you retire or for the executor of your will to do, when you die.
- There can be tax advantages for high earners through keeping money in the business or making a larger pension contribution.
- Annual accounts are more formal. Accordingly, they are likely to cost more.
- If you decide to cease trading, it can be difficult and expensive to wind up the company

The incorporation of a limited company in Jersey requires the completion of a form relating to the control of borrowings. Jersey Business Venture recommend that the documentation relating to the formation of a limited company is dealt with by your professional adviser such as a Chartered or Certified Accountant, or a solicitor of the Royal Court of Jersey.

However, if your proposals involve other persons you should ensure that a partnership agreement exists, see above, and that the following key issues and 'what if' scenarios are also included.

- **Investing** money - who contributes how much, for what reward? What if the business needs more capital next year? How much will the company need to borrow and on what terms?
- **Withdrawing** money - what dividends, directors fees and salaries will be paid? What if one person needs to take out extra money?
- **Responsibilities** - who makes what decisions? Who is responsible for which areas of the business? How will the business be monitored?
- **Growth** - do you want to expand? How quickly? Into which areas of business?
- **Break up** - can you buy each other out? Can you split the company? How?



Jersey Business Venture

Business Name

The use of a 'trading name' currently requires the approval and registration of the name with the Financial Services Department which is located at 14-18 Castle Street, St Helier. The form to be used will depend on whether the application is being made by an individual, a partnership or firm, or by a limited company. Forms are available from the department as well as from JBV. An administration charge, currently £30, applies.

Consideration for the approval of a trading name is required under the Registration of Business Names (Jersey) Law, 1956. Key factors affecting the registration include the duplication of, or similarity to, an existing name; the morality of the name; and the potential implications that could be derived from the use of the name. For example, it is unlikely that a sole trader setting up a small retail store would be granted registration of the name 'International Retail Stores'. The use of the word 'International' is restricted to those operations that can substantiate such a claim. There can also be a financial cost for the use of such words in the name of a limited company through the requirement of a minimum authorised share capital.

The Financial Services department can provide guidance on the use of certain words and guide you in the 'likely' acceptability of an application. However, you must **not** use a proposed name until a certificate has been issued. Likewise, the commissioning of stationery should also wait until confirmation of approval has been received.

Social Security

Where a person is not employed by an employer (or where that income results from employment of less than eight hours per week), then that person - subject to a number of exemptions - will be assessed for Class 2 contributions under the Social Security (Jersey) Law 1974.

The present system requires those persons who are liable for Class 2 assessment to make contributions at the rate of 12.5% of a pre-set limit, that limit being slightly more than £44,232 p.a. in 2011. This limit is, ordinarily, increased each year. Business proprietors will need to maintain a watchful eye on the situation in order to understand their obligations under the law, and to act upon the commercial implications.

A Class 2 person with lower earnings may - like any employed person - be entitled to pay a smaller contribution and have it supplemented up to the amount of the Class 2 contribution provided that his income in the 'Relevant Income Tax Year' is between prescribed limits.



Jersey Business Venture

The Relevant Income Tax Year refers to the last year to which, at the commencement of the current year, all persons will have received an income tax assessment form. Effectively this will be two years prior to the current year. e.g. the relevant income tax year for 2011 will be 2009.

The Social Security Department produces a series of booklets which provide a clear explanation of the various aspects of the system. You are strongly encouraged to read the relevant literature and/or to discuss your specific circumstances with them.

--oo0oo--