

## *Legal Aspects of Setting up in Business*

### **Legal Aspects to Setting up in Business**

When setting up in business one of the decisions you will have to make is whether to go it alone, as a "Sole Trader", or to link in with one or more people as a "Partnership" or as a "Limited Company".

In order to make your dream of running your own business a reality, the implication of these forms of trading should be understood. The goals or objectives of your business should borne in mind whether to create an 'empire' or to create a small but viable business under your own control.

#### **Sole Trader**

The main implication of this form of trading is that you alone are legally liable for the business. All your assets, including your home, your boat and your bicycle can be used to satisfy your creditors. You can create an image by giving your business a name and a logo. Your title, for legal purposes will then be "Joe Bloggs" t/a (trading as) Bloggs Boats, but your business name will be Bloggs Boats.

A sole trader must keep books of accounts and be aware of his obligations to file VAT returns and Income Tax Returns. Failure to file Income Tax Returns can lead to a very substantial fine, a matter that is pursued rigorously by the Revenue Commissioners in the District Court.

You will find yourself making all the decisions and bearing responsibility for everything. This may suit many people but others prefer to have company.

#### **Partnership**

Entering into partnership with someone has the advantage of sharing knowledge and skills, pooling resources and providing each other with much needed support in setting up in business. Each partner will have joint and several liability i.e. each partner is liable for all the losses of the company.

A partnership should be chosen with care, as too often a lifelong friend can become a lifelong enemy as a result of a partnership going wrong.

It is often said that when drawing up a deed of partnership, deed of dissolution of partnership should be drawn up at the same time. This can specify who is liable for what and who owns what when going your separate ways. A deed of partnership should be drawn up carefully on receipt of legal advice, so that every partner is clear as to his role, responsibilities and rights.

#### **Limited Liability Company**

If, however, one wishes to limit one's liability to the extent of the value of the assets and goodwill of your business, then a limited liability company may be set up.

A company can be set up within 10 days and the important thing is to ensure that the company is able to do all the things it wants to i.e. trade, buy and sell property etc. These powers are set out in a document call the Memorandum and Articles of Association. If it's not in this document you can't do it! A company is a separate legal entity and only property owned by it can be used by the creditors, unless personal guarantees have been given.

Shares are allocated to the members of the company and two directors and a company secretary are appointed. The company secretary keeps track of all business carried on and ensures that annual returns are made to the Companies Office. These are onerous duties on a company secretary, and failure to submit returns can eventually lead to the company being struck off.

This type of structure can be built into a large organisation, capable of being launched as a Public Limited Company or PLC. This is the path to follow if one is intent on empire building.

#### **Getting Off the Ground**

Whichever path you choose, you should access all avenues of support, financial or moral, and take on board the advice you find to be sound. South Dublin County Enterprise Board will lend the required encouragement and you may even be eligible for a grant either for capital costs or in respect of employees.

Research your market and do your sums. It could be the best decision you will ever make!