

The Well Managed Business

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Legal and Social Compliance for Co-operatives and Social Enterprises

Introduction

When you start a business there are various legal and social aspects of that business which must be considered and with which the business must comply. These vary depending on the nature of the business or organisation, its legal status and the activities that it is carrying out. This guide addresses the main requirements that should be considered by those setting up in business and is intended to help you and those involved through some of the compliance issues.

The Centre guides referred to in this document can be accessed by contacting the Centre at the address on the front page or back cover of this guide. Cobra factsheets are also available from the Wales Co-operative Centre

1. Thinking of Setting Up?

The Business Idea

It is important for anyone setting up in business to have a sound business idea. It is often difficult to determine whether an idea is a good one whether it will work in practice before actually trying it out. To minimise risk, most good business ideas should be backed up with sound market research. This can either be undertaken through desk based research or through seeking primary research data from prospective customers. Thorough market research is often overlooked by people setting up in business but its importance cannot be underestimated.

Even with sound market research, many other aspects of the business must be considered such as its name, details of the product or service, where the business will operate, costs etc. The most reliable and effective method of ensuring all the aspects of the business are covered is the production of the business plan.

The Business Plan

The business plan is an essential planning tool for anyone setting up in business. Often unnecessarily overcomplicated or far too long and unfocused, many

business plans are ineffective. It is important that a clear structure of the plan is adopted, sound market research backs up the marketing sections of the plan and that clear financial forecasts are produced. Many business plans can be written in 10-15 pages and should follow a logical structure. The Wales Co-operative Centre has produced “Making it Happen – A Guide to Business Planning” to assist this process.

The Business Name

An integral part of any business and its marketing strategy, the business name should be considered carefully. When setting up a business as a limited company or society, it is important to check the name being considered is not already being used by someone else. Even when not incorporating, a business name can be registered and therefore protected as a trade name.

Legal Issues

When setting a business entity there exist numerous structures that could be adopted. Either a business operates as a sole trader, a partnership, an unincorporated association, a limited company or a society. The Wales Co-operative Centre publishes “Adopting a Structure – A Legal Guide” to assist in choosing the most suitable structure.

The remainder of this guide is targeted at businesses that have incorporated as a company or a society but its contents often apply to any form of business structure.

Further Information:

COBRA Fact Sheet:

BIF025 – A Guide to Business Planning

BIF167 – A Guide to Setting up a Business as a Private Limited Company.

Wales Co-operative Centre Guides:

Making it Happen – A Guide to Business Planning

Adopting a Structure – A Legal Guide

Useful Contacts:

Companies House

Web Site: www.companieshouse.gov.uk Tel: 0870 3333 636

UK Patent Office

Web Site: www.patent.gov.uk Tel: 0845 9 500 505

2. Legal Responsibilities Following Incorporation

Directors' Duties

Directors are normally responsible for setting the business strategy and for monitoring and evaluating its performance. In addition legislation through the Companies Acts sets out four primary legal duties for directors:

- A fiduciary duty to the company to act honestly, in good faith and in the best interests of the company as a whole.
- A duty to exercise the level of skill and care in carrying out their duties that could reasonably be expected from someone of their ability and experience.
- A duty to carry out the statutory obligations imposed by the Companies Acts and other legislation.
- A duty not to allow the company to trade wrongfully or fraudulently.

Company directors are legally responsible for ensuring that the company meets all its obligations though it may be the company secretary who actually does the work. These responsibilities include holding members' meetings at the required intervals, preparing financial statements, maintaining statutory books and registers, making annual returns and keeping accounting records.

Annual Returns

Once a year every company must supply basic information to Companies House known as the 'annual return'. An annual return is a snapshot of general information about a company's directors, secretary, registered office address, shareholders and share capital.

Accounts

Directors of limited companies have a duty to prepare, maintain and submit accounts to Companies House on an annual basis. This includes a profit and loss account and a balance sheet but the level of detail and whether or not they need to be audited will depend on the financial size of the business.

Your first set of accounts must be submitted to Companies House within 7 months of the end of the first financial year. There are automatic fines for accounts that are filed late. These accounts will be available to anyone who wishes to inspect them.

General Information to Companies House

After incorporation the business must inform Companies House about the appointment of any new directors, the resignation of any directors, changes to directors' names and addresses or other details originally registered on the Form 10 at registration. There are strict time limits for the filing of such information often as little as 14 days.

Further Information:

COBRA Fact Sheet:

BIF025 – A Guide to the Duties of a Director

BIF167 – A Guide to Setting up a Business as a Private Limited Company.

Wales Co-operative Centre Guides:

Making it Happen – A Guide to Business Planning

Adopting a Structure – A Legal Guide

Useful Contacts:

Companies House

Web Site: www.companieshouse.gov.uk Tel: 0870 3333 636

3. Tax

Tax issues apply to all organisations even if you are a registered charity

Corporation Tax

Companies are generally required to pay corporation tax on profits. For Small companies (profits up to £300,000) the rate of corporation tax is 19%. The main rate of corporation tax is 30% although there is a marginal rate of 32.75% for companies with profits between £300,000 and £1.5m. You should contact HM Revenue and Customs (HMRC - www.hmrc.gov.uk) for information about the rates that you will have to pay and seek professional advice on your individual situation.

Companies are required to carry out self-assessment for corporation tax calculating the amount of tax payable themselves. Corporation tax must be paid within nine months and one day from the end of the financial year. HMRC will send you reminders about this.

Income Tax and National Insurance

Paid directors of a company are treated as employees and must pay income tax on their earnings as well as Class 1 National Insurance contributions (NICs). The company must also pay employers' NICs for each of its employees. Employees must pay PAYE (Pay As You Earn) which is deducted by the employer from their wages.

VAT

If the company's annual turnover reaches a certain level (£61,000 for 2006/7) it will also be required to register for VAT. However, a business can register voluntarily if turnover is lower than this threshold. This can have advantages, such as allowing your company to claim back VAT on purchases.

Business Rates

If you use any part of a building for business purposes you will probably have to pay business rates. Certain businesses may be able to get a reduction or

complete exemption from business rates although this mainly applies to charities, rural businesses and non-profit organisations.

Stamp Duty & Stamp Duty Land Tax for businesses

If you enter into any leases for premises which is greater than £150,000 over the period of the lease you will probably have to pay stamp duty and stamp duty land tax. You should contact HM Revenue and Customs (HMRC - www.hmrc.gov.uk) for information about the rates that you will have to pay and seek professional advice on your individual situation.

You will be required to complete a return with payment within 30 days after you have signed any lease agreements failure to do so will result in automatic fines.

Further Information:

COBRA Fact Sheets:

BIF015 – An Introduction to Tax, National Insurance and VAT

BIF234 – An Introduction to Value Added Tax (VAT)

BIF045- A Guide to Completing a VAT Return

BIF061 - A Guide to Understanding Business Rates

Useful Contacts:

HM Revenue & Customs

Web Site: www.hmrc.gov.uk Tel: 0845 010 9000

Welsh Local Government Association

Web Site www.wlga.gov.uk Tel: 029 2046 8600

4. Insurance

Compulsory Insurance

All organisations are legally obliged to have the following insurance if they have employees or vehicles:

- Employers' liability insurance
- Motor insurance

Recommended Insurance

It is recommended that all organisations consider whether they should have the following insurance:

- Building insurance - if they own their premises or are responsible for its upkeep
- Contents insurance - the contents of the premises
- Business equipment - specialist equipment not covered by the above
- Business interruption - unforeseen circumstances that could lose business
- Employees liability - if employing staff
- Public liability - where the public could be at risk of accident
- Professional indemnity - where a business gives advice to customers and could be sued if the wrong advice is given
- Product liability - potential problems with the businesses products

Other Insurance

Organisations should also consider whether they need:

- Legal insurance
- Personal liability
- Key man insurance
- Credit insurance
- Employee litigation insurance

Further Information:

COBRA Fact Sheets:

BIF006 - An Introduction to Insurance Cover for Business

BIF 375- A Guide to Employers' Liability Insurance

Useful Contacts:

Web Site: www.cis.co.uk Tel: 0845 746 4646

5. Financial Control

Bookkeeping

A well managed business will ensure it knows where all of its income has come from and where all of its expenditure has gone. The business must keep effective and efficient books of account and ensure someone has the responsibility for ensuring this task is completed. In line with the need to inform Companies House, the financial books should allow for the production of a profit and loss account, a balance sheet and good practice suggests a viable cash flow forecast. These will also provide you the information to complete your tax returns. Maintaining proper and efficient accounts will ensure financial control of the business helping to make proper and viable decisions.

The Wales Co-operative Centre has produced “Set up and Maintain your books – A Guide to Book Keeping” to assist this process.

Business Bank Accounts

It is important to keep business accounts separate from personal accounts and to ensure proper financial standing orders are in place to protect the business bank account. This will normally take the form of agreeing two signatories on cheques, arranging standing orders and direct debits. You must ensure that you keep copies of your bank statements and regularly reconcile them with your cash book. Further information on this can be found in the Wales Co-operative Centre guide “Set up and Maintain your Books – A Guide to Book Keeping”

Further Information:

COBRA Fact Sheets:

Wales Co-operative Centre Guides:

Set up and Maintain your Books – A Guide to Book Keeping

The Well Managed Business – Legal and Social Compliance

Useful Contacts:

Web Site: www.coopbank.co.uk Tel: 08457 213213/08457 215215

Web site: www.bizhot.co.uk

Web Site: www.coopbank.co.uk Tel:

6. Employment

There is a considerable amount of legislation relating to recruiting and employing staff. If your organisation is employing staff it is recommended that you seek further advice from your business advisor and read the recommended factsheets listed at the end of this section. As a brief checklist it is the duty of the directors to ensure that your organisation complies with employment legislation including all staff:

- Have a written contract of employment
- Are paid at least minimum wage
- Are guaranteed a minimum notice period
- Are not asked to work over 48 hours per week and given suitable breaks
- Are given at least statutory minimum holiday per year
- Have the right to join a trade union

It is also essential to have:

- Equal Opportunities Policy
- Health & Safety Policy
- Discipline & Grievance Procedure
- Environmental Policy

Further Information:

COBRA Fact Sheet:

BIF136 An Introduction to Employment Regulations

Wales Co-operative Centre Guides:

Guide to Employing People

Useful Contacts:

Website: www.acas.co.uk

Tel: 029 2076 2636

7. Health & Safety

Health and Safety Requirements

One of the first things a business will need to do when starting - even if you work from home - is to assess the health and safety risks in your workplace. All businesses are required by the Management of Health and Safety at Work Regulations 1999 to assess the risks to the health and safety of anyone who may be affected by their work activities.

The Health and Safety at Work Act 1974 states that employers must:

- Have a written statement of general policy (if they have five or more employees) with respect to health and safety at work.
- Identify risks at work and possible precautions through risk assessment.
- Provide a means of carrying out the policy and a procedure for reporting accidents.
- Identify the person responsible for carrying out the precautions.
- Identify relevant legal standards that apply in each part of the workplace

Businesses employing five or more people must have a written health and safety policy.

Fire

Fire Authorities are responsible for ensuring the safety of buildings for the people both working in and using them. All employers with two or more employees must have in place:

- A completed fire risk assessment of premises.
- Provision of fire safety equipment with full records for the testing and maintenance of equipment.

- A fire management plan.
- Adequate and well documented means of escape should a fire break out.
- Arrangements for staff training in fire safety.

Food Hygiene

New food businesses must register with their local authority before they start trading.

Food hygiene regulations apply to anybody who handles food on a commercial basis. This can affect a range of businesses including food processors, manufacturers and packagers to retailers, caterers and suppliers. The Regulations also cover mobile and temporary premises such as marquees, market stalls, mobile caterers, private dwellings used temporarily for food preparation and vending machines.

It is the responsibility of the business to see that you and your employees comply with the Regulations.

- Contact the local authority for specific details on how the Food Safety (General Food Hygiene) Regulations will affect the business.
- Visit the Food Standards Agency website (www.food.gov.uk) for detailed information on how to comply with all food safety legislation.

Further Information:

COBRA Fact Sheets:

BIF039 - Health and Safety Compliance Checklist

BIF 122 - A Guide to Fire Safety Measures

BIF193 - Food Safety (General Food Hygiene) Regulations 1995

Useful Contacts:

Website: www.hse.gov.uk

Tel: 0845 345 0055

8. Keeping Records

Compulsory Records to Keep

While good record-keeping practice is important for keeping up to date with your income and expenses there are also legal requirements to store certain documents for a minimum period of time. The records that you need to keep vary according to the status (sole trader, partnership or limited company), size, and nature of the business and include financial and accounting records, personnel records, and corporate documents.

Tax documents

You will need to keep any information and documents needed to help you fill in your tax return. Once you have filed a tax return, you must keep all documentation and records for at least the next five years.

VAT documents

If you are registered for VAT you must keep records of all the supplies you make and receive and a summary of VAT for each accounting period covered by your VAT returns.

Records retained for VAT purposes must be kept for six years after the current year.

Wages and National Insurance

If you employ staff you must keep all wages and National Insurance records for six years.

Personnel

Every permanent employee should have a personnel file. These files are confidential and should be kept in a secure place. Personnel files should be retained for seven years after employment ends for legal and reference purposes.

Accounting

For all businesses, regardless of status (sole trader, partnership, company, etc) records that have been used to compile annual accounts should be retained, usually for two to three years. Documents that need to be kept include most of the documents retained for tax and VAT purposes. Annual accounts, once audited, should be kept permanently.

Health and Safety

You will also need to keep health and safety records to demonstrate compliance with health and safety legislation relevant to your business, for example risk assessment reports and accident books. These will need to be kept for at least 12 years in case of personal injury claims against the business. Employers' liability insurance certificates need to be kept for 40 years.

Further Information:

COBRA Fact Sheet

BIF272 – A Guide to Documents That You Must Keep

9. Data Protection

The Data Protection Act 1998 sets rules for anyone keeping or processing personal information on individuals. If you want to hold personal information on individuals your business needs to comply with the rules set out in the Act (known as the data protection principles), and you may need to notify the Information Commissioner if you hold certain information.

Further Information

COBRA Fact Sheet:

BIF003 - A Guide to Documents That You Must Keep

10. Planning & Licenses

Planning Permission

Local planning authorities are responsible for regulating the development of land and buildings. Planning permission may be required before a business can begin operating and will definitely be needed if you change the primary use of a building or develop a new site.

Licenses

Some businesses must register with the local authority for health and safety reasons particularly if they employ staff. Once registered the authority will check business premises to make sure they are suitable for the type of business you operate and that you are complying with relevant health and safety legislation.

The types of premises which must be registered include:

- Offices
- Shops
- Wholesale warehouses
- Hotels
- Residential homes
- Garden centres

Certain activities may also require you to be registered, for example:

- Catering.
- Cosmetic/beautician services.
- Acupuncture.
- Leisure services.
- Pre-school childcare.

11. Social Responsibility

Social Accounts

Social Auditing

SUMMARY

This list is not an exhaustive list of all legislation with which every business or organisations must comply. There is specific legislation for specific activities and it is the directors' responsibility to ensure that they are aware of this legislation and that they ensure organisation complies with it. Further information on legal requirements for specific business activities can be obtained from The Wales Co-operative Centre. The Centre also provides training, free of charge, on many of the issues discussed within this guide.

12. Further Information

The Centre publishes a range of Guides providing some further information. In addition, if there are questions you would like answered or you wish to speak to someone directly, please feel free to contact the Centre at the address below or one of the addresses or telephone numbers given on the back page of this Guide. You can also visit our website at www.walescoop.com.

The following Wales Co-operative Centre Guides are available:

- A Guide to the Wales Co-operative Centre
- Adopting a Structure – a Legal Guide
- Making it Happen - A Guide to Business Planning
- A Guide to Employing People
- Set up and Maintain the Books
- Co-operative Development Toolkit

Communities First Guidance Notes:

- Management, Organisational and Legal Structures for Communities First Groups

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