

## **Introduction**

I am planning to open an Italian restaurant which will be located in Ilford. The business will be owned and operated by me. My goals are to combine my skills in developing an up market, price competitive restaurant catering for 18 – 35 year old males and females. The restaurant will be focused on meeting customer's needs, which will ensure steady repeat and referral of the business.

In my first year of business, I will work on a rented building. There are many reasons why I am opening my own business. Starting with the fundamentals, I have a strong belief that to be in business you need to have a passion and interest, which can be translated into commitment and dedication to the success of the business.

My primary reasons for starting my own business are:

- To be my own boss and take full responsibilities for my decisions
- To support my lifestyle financially
- To be challenged in the work place and build a successful business I can take pride in
- To provide a quality service to my existing and new clientele in a relaxing environment

## **Sole Trader**

Sole trader is a person who sets up a business by themselves. As a Sole trader the owner himself is responsible for every action made and also keeps all of the profit. This could be a newsagent's shop, for example. Individuals, who provide a specialist service like hairdressers, plumbers or photographers, are also sole traders. Sole traders do not have a separate legal existence. As a result, the owners are personally liable for the firm's debts, and may have to pay them out of their own pocket.

### ***Advantages of Sole Trader***

- ❖ The business is to be set up. Apart from any necessary licenses or planning permission, there are very few legal formalities.
- ❖ Although accounts are seen by the Inland Revenue, they do not have to be made public.
- ❖ The business is usually small, and the owner is in charge of the management. Decisions can be made quickly
- ❖ The owner gets all of the profit from the business
- ❖ Being a small business can provide attention to the customers

### ***Disadvantages of Sole Trader***

- ❖ Sole traders have to work very long hours particularly when setting up a business.
- ❖ Difficult for the business to expand
- ❖ No continuity, if the owner is ill etc there is no one else to run the business.

## **Partnership**

Partnerships are businesses owned by two or more partners. A contract called a deed of partnership is normally drawn up. This states the type of partnership it is, how much capital each has contributed, and how profits and losses will be shared.

Doctors, dentists and solicitors are typical examples of professionals who may go into partnership together. They can benefit from shared expertise, but like the sole trader, have unlimited liability.

### ***Advantages of Partnership***

- Additional Skills- a new partner may have abilities, which the sole trader does not possess. These can help to strengthen the business, perhaps allowing new products or services to be offered, or improving the quality of existing provision.
- More capital- a number of people together can inject more finance into the business than one person alone.
- Expansion- with the new skills, increased labour and greater capital a partner brings the business will have an increased potential for future growth.

### ***Disadvantages of Partnership***

- Sharing profit- the financial benefits derived from running the business the partners according to the partnership agreement made on formation. This can easily lead to disagreements about 'fair' distribution of work- load and profits.
- Loss of control-multiple ownership means that no individual can force an action on the business; decision making must be shared.
- Unlimited liability- it is one thing to be unlimitedly liable for your own mistakes (a sole trader); far more worrying, surely, to have unlimited liability for the mistakes of your partners. This problem hit many investors in the Lloyds insurance market in the 1990s. Certain partnership (called syndicates) lost millions of pounds from huge insurance claims. Some investors lost their life savings.

## **Private limited company**

A private limited company require minimum of seven promoters and must file a memorandum of association, convene a statutory meeting, register the company, and obtain a company income tax identity card. They must also follow accounting procedures specified in the Civil and Commercial code, the Revenue Code and the Accounts Act. A balance sheet must be prepared once a year and filed with the Department of Revenue and Commercial Registration. In addition, companies are required to withhold income tax from the salary of all regular employees. Two examples of Ltd Company are Reebok and Levi's. Both of these companies are Clothes Company.

Reebok has variety of clothing from tops to trainers and shoes whereas Levi's only have tops to jeans. Reebok has advantage over Levi's due to them having more variety of clothing and sports equipment.

## **Public limited company**

Public limited company has one main goal that the organisation focus's on. The goal is to help their clients find their way through the laws that our society governs and focusing on helping the public and providing the public service. Two examples for public limited company are Asda and Wood Rogers & Hazlegrove. Both of these companies provide a service for the public. Asda provide the public with variety of services including selling goods at a low price and offering other services which the public require in everyday life, whereas Woods, Rogers offering legal expertise, building an organisation of skilled, dedicated employees helping the society.

## **Charitable Organisation**

This is where the people work and some employees may get paid, whereas they may be doing this for voluntary. Here the organisation goal is to raise money for charity and don't make profit. Two examples of this are Oxfam and Children in Need. Either of these may be voluntary or paid work but help people who need it most. Oxfam focus's on all the age group whereas the Children in Need only focus on children.

## **Franchise**

Businesses that buys the right to sell another company's goods and or services exclusively in a certain area and carries that business' name. Some benefits are; you will obtain a known name, and in some cases they main franchiser will offer training. Some constraints are obtaining a franchise can be costly, you may not be able to make certain decisions, and you have to pay an amount on your profits to the franchiser.

### ***Advantages***

- Possibly easier to finance
- Access to quality training and ongoing support
- Established concept with reduced risk of failure
- Access to extensive advertising
- Access to lower cost and possibly centralised buying
- Few start-up problems
- Use of well-known trademark or trade name

## **Disadvantages**

- Onerous reporting requirements
- Costs of supplies or materials may be more expensive
- Possible exaggeration of franchisor advantages
- Franchisor may saturate your territory
- Cost of franchise and other fees may reduce your profit margins
- Inflexibility due to restrictions imposed by franchisor
- Termination policies of franchisors may allow little security

*I have looked all the business ownership and I have recommended a sole trader. I need to look at all the legal implications when starting up a sole trader business.*

*A sole trader is a business owned by one person. Legally the person and the business are one and the same. All financial risks are taken by that person and all that persons assets are included in that risk.*

A sole trader is legally responsible for:

- Tax - as all profit from a sole trader business is treated as personal income, it is crucial for a sole trader to complete an annual self-assessment tax return.
- National Insurance - sole traders are required to pay Class 2 and Class 4 National Insurance contributions at the current rates.
- Accounts - these do not have to be audited, but a proper accounting system should be set up and records, including a profit and loss account and balance sheet, produced to submit with the self-assessment tax form.

## ***Do I need to register for VAT?***

The level of your business turnover determines whether you need to pay VAT. If your turnover is greater than £55,000, you will have to register for VAT. If your turnover is less than £600,000, you are required to submit one VAT return annually. For turnover greater than £600,000 a VAT return must be submitted on a quarterly basis. Even if you are below the threshold for compulsory VAT registration, it may be worth considering registering voluntarily so that you can claim back VAT on any business purchases.

To make sure that I am on the right side of the law refer to the relevant Acts of Parliament:

- Trade Descriptions Act 1972: makes it a criminal offence to knowingly make false or misleading claims - verbal or written - about goods or services you offer. This means such factors as ingredients, place of manufacture and customer testimonials as well as associating yourself with a brand without being entitled to.
- Sale of Goods Act 1979: dictates that goods you sell must be of satisfactory quality, match your promises of performance and be as you describe them.
- Supply of Goods and Services Act 1982: commits you to undertake services you offer with reasonable care, skill, time and cost.
- Data Protection Act 1984: directs you to register the source, nature and purpose of any personal data you keep about individuals except data used for internal administration like payroll. Registration forms are available at post offices.
- Consumer Protection Act 1987: holds you liable if you supply a faulty product causing damage or injury unless you can show that not enough was known about its dangers at the time of supply. And to protect yourself under this Act offer an estimate first and a written quote only when you have properly assessed costs.
- Price Marking Order 1991: makes it compulsory to put the price of goods offered for sale in writing.

## **Laws that are applicable for my business**

### **FLOOR**

Floor surfaces in all areas must be smooth, durable, non-absorbent and easily cleanable.

### **WALLS AND CEILINGS**

The walls and ceilings of all rooms must be of a durable, smooth, non-absorbent, washable and light colored surface

### **EQUIPMENT INSTALLATION**

All utensils, display cases, windows, counters, shelves, tables, refrigeration units, sinks, dishwashing machines and other equipment used in the preparation, of food must be made of non-toxic, no corrosive materials.

All display cases, counters, shelves, refrigeration units and other equipment must be properly constructed so as to be durable, smooth, non-absorbent and washable. Equipment must be placed on the floor in one of the following manners: on six inch high round, sanitary legs or casters or on a four inch high curb to enable the installation of four inch high continuous cove base flooring.

Sneeze guard protection must be provided where unwrapped food is displayed or customer self-service of foods is proposed. Detailed elevations for sneeze guards and the related equipment must be submitted.

### **WASHING FACILITIES**

Three sections sink with dual integral, sloped metal drain boards, sound metal legs and metal backsplash for washing kitchen utensils and/or multi-use customer utensils, is required. The sink must conform to NSF standards and **drain to a floor sink**. The size of the compartments and drain boards of sinks must be large enough to accommodate the largest utensil used.

Facilities utilizing a sink for food preparation, such as washing vegetables, must have a separate sink (separate from all other sinks) for this activity that drains to a floor sink.

### **HAND WASHING FACILITIES**

Provide an approved, separate, hand wash sink at a readily accessible location within the food preparation areas. Provide permanently installed, single-service hand towel or hot air blower dispensers at all hand wash sink. In addition, permanently installed toilet tissue dispensers must be installed at each toilet. Single-service detergent or soap must also be provided.

### **PLUMBING AND WATER SUPPLY**

All sinks must be equipped with hot and cold water distribute. All exposed plumbing and gas lines must be mounted or enclosed so as to facilitate cleaning. An effort should be made to enclose all plumbing lines within walls unless otherwise approved.

### **VENTILATION**

Ventilation exhaust hood must be installed at or above all food heat processing equipment. Mechanical exhaust ventilation is required at or above all cooking equipment such as ranges, griddles, ovens, deep fryers, barbecues and rotisseries to effectively remove cooking smell, smoke, steam and grease.

Hoods and mechanical ventilation must comply with all requirements set forth in the current edition of the Uniform Mechanical Code as adopted by the local building department.

### **RESTROOM FACILITIES**

In each food establishment toilet facilities for use by employees must be provided. Toilet facilities which are provided for use by patrons must be so situated that patrons do not pass through food preparation, food storage or washing areas.

Two separate restrooms must be provided when there are five or more employees of different sex. The restroom doors must be tight fitting and equipped with self-closing devices.

All restrooms must be provided with ventilation to the outside. If adequate ventilation cannot be provided by screened window opening or air shaft, mechanical ventilation is then required to be interconnected with the light switch.

### **CLOTHING CHANGE/STORAGE ENCLOSURES**

Clothing change/storage enclosure must be convenient. Enclosure must be separated from toilet, food storage, food preparation and utensil wash areas.

### **DRY FOOD STORAGE**

An adequately sized room or area for dry food storage must be provided. Floor space should be equal to 25% of food preparation area, or a minimum 100 square feet - which ever is greater.

## **Registering Your Business**

It is a legal requirement under the Food Premises (Registration) Regulations 1991 to register your business 28 days before the business opens. The premises must comply with the requirements of The Food Safety (General Food Hygiene) Regulations 1995. Under the above Regulations, every food business which distributes, sells stores or prepares food, drinks and confectionery, is required to register with their Local Authority. Failure to register is an offence carrying a fine of up to £1000 on conviction.



## Recruiting and Training Staff

Reliable and responsible staffs are important for any business. If possible, it is a good idea to recruit staff with some catering experience and/or training. It is a legal requirement to ensure that any member of staff who handles food has adequate supervision, instruction and/or training in food hygiene for the work they do.

Before starting work you should make sure they understand the main food hygiene issues. Staff involved in the preparation and handling of high risk foods should attend a food hygiene course within 3 months of starting work ideally. It is a good idea to keep a record of any training you or your staffs have done, because then you will be able to show this to the environmental health officers when they visit your premises.

## Food Hygiene

Good food hygiene is essential to make sure that the food you serve/sell is safe to eat and it makes good business sense because good hygiene helps prevent food poisoning and protects your reputation with customers.

When you are setting up a catering business, it is a good opportunity to introduce ways of working that will help you ensure good hygiene right from the start.

A key element of The Food Safety (General Food Hygiene) Regulations 1995, which came into force in September 1995, is that proprietors of food businesses must identify potential food hazards, decide which of these hazards need to be controlled to ensure food safety and then put into place effective control and monitoring procedures to prevent such hazards causing harm to consumers.

## Food Safety Systems

### *What is a food safety system?*

A food safety system is a method of control which you, as the proprietor of a food business, can use to help satisfy yourself that your products are safe. This system may also be known as "Hazard Analysis" or "Risk Assessment".

The approach enables you to identify **hazards**, (things that can go wrong) and put into place **controls** (measures to prevent the hazard occurring) **before** they cause problems.

### ***Why have a food safety system?***

The **Food Safety (General Food Hygiene) Regulations 1995** require proprietors of food businesses to identify potential food hazards, decide which of these hazards need to be controlled to ensure food safety and then put into place effective control and monitoring procedures to prevent the hazards causing harm to consumers. A well thought out food safety system will satisfy this legal requirement.

A food safety system will serve to satisfy you that food hazards are being controlled, ensuring a safe product for your customers.

### ***Do I need to keep records?***

Although there is no legal requirement to have a **documented system**, there are a number of important benefits in doing so, for example:

- It makes it very much easier for you to see that you have considered all the important points.
- It is an offence to sell food which is unfit, sub-standard or which may cause harm to the person consuming it. The principal defence available to someone accused of selling such food is one of **due diligence**. This requires them to prove they "**took all reasonable precautions and exercised all due diligence to avoid committing the offence**". Should anything go wrong, for example some food you have sold is connected with a food poisoning incident, documentation would be an extremely important element in establishing "a due diligence" defence.

### ***Training***

1. Mistakes when handling food can cause food poisoning. This may result in severe illness or in extreme cases the death of the person who has eaten infected food.
2. Ignorance of hygiene rules can cost money. It can lead to civil claims for compensation from dissatisfied customers, unnecessary wastage of food due to spoilage and fines resulting from legal action where hygiene laws are broken or sub-standard food has been sold. In some cases it can even lead to the closure of food businesses.
3. The **Food Safety (General Food Hygiene) Regulations 1995** require proprietors of food businesses to ensure food handlers are supervised and instructed and/or trained in food hygiene matters commensurate with their work activities.

There are a number of reasons why taking temperature readings are important

1. They show food is being stored at temperatures which limit the growth of bacteria capable of causing food spoilage and/or food poisoning.
2. They provide a check that refrigerated equipment is working correctly.
3. The **Food Safety (Temperature Control) Regulations 1995** require that certain foods are kept at or below 8° C. It is recommended that they operate at between 2°C and 5°C. In order for you to know whether you are complying with this requirement checks must be made. There are no defined temperatures for freezers although we would recommend they operate at -18° C or below.

## Contract Law

A contract may be defined as a legally binding agreement. The agreement will create rights and obligations that may be enforced in the courts. The normal method of enforcement is an action for damages for breach of contract, though in some cases the court may order performance by the party in default.

Promises are what contracts are all about. A contract is made up of a promise of one person to do a certain thing in exchange for a promise from another person to do another thing. Contract law exists to make sure that people keep their promises and that if they do not, the law will enforce it upon them.

Small businesses want and need legally enforceable contracts, both informal and formal, for a variety of reasons. Because small businesses cannot always afford to hire attorneys to provide guidance regarding contract law, contract law should consist of clear and definite principles that would enable small businesses to obtain sufficient guidance in order that courts would enforce their agreements in the manner intended by the small businesses. Such reform will balance the need for certainty in contracts and better effectuate the parties' intentions.

Once you have agreed the contract, it cannot be changed without the two parties agreeing. There are dire consequences for employers who arbitrarily change, say, the hours of work of the employee without their agreement. Such actions can lead to unfair dismissal, claims for damages and Employment Tribunals - all of which will take a lot of time and effort. Changing terms and conditions generally requires consent. If you expect this to be a formality, all well and good but if consent is not likely to be forthcoming then you ought to get advice from an HR professional or a lawyer.

## **Consumer Law**

### ***Office of fair trading***

When there is competition and consumers understand what they are buying and are not misled by deceptive or unfair practices, they have the genuine power of choice.

As an independent organisation, the Office of Fair Trading (OFT) plays a leading role in helping consumers understand their rights and protecting consumer interests throughout the UK, while ensuring that business practices are fair and competitive. The tools to carry out this work are the powers granted to the OFT under consumer and competition legislation. There is more detail about the legislation under which we have powers throughout this guide. It is partly in response to changing legislation that the OFT has recently undergone major change. The change is not for change's sake but because we believe that by becoming a more focused, dynamic and accountable organisation, we can better support markets, consumers and business.

They offer advice, support and guidance to businesses seeking clarity about aspects of competition and consumer legislation. We promote good practice in business by granting "approved status" to Consumer Codes of Practice that meet and carry out set criteria; we help organisations achieve this. However, any business that exploits consumers and prevents a market from working well – for example, by rigging prices or using unfair terms – will be pursued by the OFT.

### ***Enforcing***

They enforce competition laws and consumer protection laws. Here the aim is to:

- Root out and deter all forms of anti-competitive behaviour, including cartels and the abuse of market power
- Refer to the Competition Commission mergers that substantially lessen competition
- Refer to the Competition Commission markets in which competition appears not to be working well
- Disqualify directors who engage in serious breaches of competition law
- Enforce certain consumer legislation by means of court orders against businesses breaching those pieces of legislation
- Co-ordinate enforcement activity with trading standards departments sectoral regulators and other enforcement partners

- Raise trading standards through approval, or withdrawal of approval, of codes of practice
- Work closely with international partners to ensure effective cross-border enforcement.

### ***Analysing***

OFT examine whether the markets are working well for consumers. The aim is to:

- advise on the effects of existing and proposed legislation on markets
- ensure that a competitive environment is maintained

### ***Communicating***

It is essential that we communicate well with consumers and business and with government and others with influence on markets. They aim to:

- show how competitive markets that work well are important for consumers, fair-dealing businesses and overall economic performance
- explain our decisions openly and accessibly
- promote a culture of compliance by explaining to business what the law is and how the OFT will apply it
- help raise consumer awareness and confidence
- co-ordinate activities with our enforcement partners locally, nationally and internationally
- provide advice to government on the creation of a climate that favours both consumers and competition.

In addition, to advise on the impact of prospective legislation on competition.

## **Employment Law**

### ***Discrimination***

Discrimination against any employees on any grounds other than their ability to do the job is a bad idea and could also be illegal.

If an employee or potential employee brings a discrimination case against your business, you could be tied up in costly, time-consuming and unproductive legalities for months. If they win, you could be liable for unlimited damages.

### ***Employing overseas workers***

Due to an ongoing skills shortage in the UK, a growing number of small and medium sized businesses (SMEs) are recruiting overseas workers in order to fill key positions. However, while nationals from within the European Economic Area (EEA) can work freely in the UK, there are certain restrictions when it comes to employing workers from outside of this region. Unfortunately, some employers are unaware of these restrictions and may be unwittingly breaking the law. With further changes in legislation coming into effect over the next few months, it's more important than ever those employers know how to protect themselves when recruiting staff from outside of the EEA.

### ***Employment contracts***

A contract of employment exists as soon as an applicant accepts your offer of employment. A clear, reasonable contract helps you to ensure that the employee understands what is expected, and to minimize the risk of disputes. At the same time, you need to understand what your contractual obligations are, and what terms you can (and cannot) enforce.

### ***The basics of employment contracts***

A job applicant has a contract of employment as soon as **your offer** of employment is accepted.

A contract exists, regardless of whether anything is in writing.

- The written statement provides evidence of the contractual terms.
- The contract will also include other terms
- The contract can be conditional upon an employee providing you with evidence of suitability, such as adequate references or passing a medical examination. If the conditions are not met, the contract does not take effect.

You are legally obliged to provide every employee (full or part-time) with a **written statement**, covering a number of specified terms and conditions.

- You must issue the statement within the first two months of employment.
- An employee whose employment terminates within two months must be issued with the written statement before termination, unless the employment continued for less than one month.
- An employee may complain to an employment tribunal if you fail to issue the statement on time (or if the statement is incomplete). The employment tribunal may impose terms and conditions into the contract, which you will have to accept.
- Dismissing or punishing an employee for complaining to an employment tribunal can lead to heavy penalties.

### ***Written statement***

The **principal statement** must contain:

- The names of the employer and employee.
- The date when the employment began.
- The date on which the employee's period of continuous employment began. This may include previous employment with a related employer.
- The employee's scale or rate of pay (or how it is calculated) and the intervals at which wages or salary will be paid.
- Information about working hours (starting and finishing times, system of shifts, night work, meal breaks, rest days, overtime and overtime payments, etc).
- Entitlement to annual holidays (including bank and public holidays) and holiday pay. This must provide enough information to work out the employee's entitlement to accrued holidays and holiday pay on the termination of employment.

- The employee's job title (or a brief description of the work for which the person was employed).
- The employee's place of work. If the employee is either required or permitted to work in various places, the statement should include an indication to that effect and a note of the employer's address.

### ***Employment law changes in 2003***

There are a number of changes to employment legislation due to come into force this year which will have a significant impact on employers.

The majority of changes are contained within The Employment Act 2002 (EA) and result in a number of family friendly provisions including new parental rights, and disciplinary and grievance procedures.

The main thrust of these changes will be implemented in April 2003 with the remaining changes taking force in the second half of the year. All employers are advised to update their policies, procedures and contracts of employment where required.

### ***Employment tribunals***

Although employees and employers can now choose to follow an alternative dispute resolution procedure, most employee complaints are still heard at an employment tribunal. You need to take tribunals seriously. If you have well-thought-out procedures, and follow them, you can prepare good evidence, making it easy to defend your actions. The interpretation of employment law is moving in favour of the employee, and awards are increasing, so it is important to understand the system and the way tribunals operate.

### ***Holidays and statutory leave***

Your staffs have a legal right to a minimum amount of paid annual leave. And working parents can often take different types of time off for the birth and care of their children. This briefing sets out your employees' rights and your duties towards them. It covers:

- Holidays
- Maternity leave
- Other 'family-friendly' leave entitlements
- Time off for dependants



### ***Maternity issues and SMP***

Given the number of changes to maternity rights in recent years, employers could be forgiven for not knowing where they stand when one of their employees is pregnant. But with employment tribunals making large awards against employers who ignore the rules, you simply cannot afford to stick your head in the sand.

You need to be clear about the rights of the employee and your responsibilities as an employer if you are going to minimize disruption to your business and prevent disputes arising when women leave to have children.

This covers:

- Ordinary maternity leave and additional maternity leave
- Statutory maternity pay
- How to avoid the legal pitfalls

### ***New employee rights to flexible working***

From 6th April 2003, working parents of young or disabled children have the legal right to apply to their employer for more flexible working arrangements concerning their working hours, working time and place of work.

### ***New employment laws on religion or belief***

On the 2nd December 2003, it became illegal for employers to discriminate against workers because of their religion or belief. The Employment Equality (Religion or Belief) Regulations 2003 also outlaws the harassment of workers on religious or belief grounds.

### ***New employment laws on sexual orientation***

On the 2nd December 2003 it became illegal for employers to discriminate against workers because of their sexual orientation or perceived sexual orientation. The Employment Equality (Sexual Orientation) Regulations also outlaws the harassment of workers on sexual orientation grounds.

### ***Redundancy***

Redundancies are a fact of life in the smaller business, where carrying surplus staff is a short cut to disaster. A shift in the economic or business climate, a merger or a move to a new location can all make redundancies inevitable. Redundancy is a complex issue, full of pitfalls. To avoid falling foul of employment tribunals, it is essential to follow demonstrably fair procedures.

### ***Sickness issues and SSP***

Businesses lose a lot of money through sickness absence, not all of it medically justified. While many of the issues can be handled on the basis of give and take, there are times when clear policies and decisive action are needed to resolve difficult situations.

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The great majority of new businesses set up each year in the UK choose to do so as sole traders. This arrangement has the advantage of being reasonably free of formalities and restrictions, unless you intend to register for VAT, there are no rules about the records you have to keep. Other than you do have to keep records.

As a Sole Trader you take complete responsibility for the running of the business. Your business is one of your assets just like your house or car. An important consequence of this is that if your business fails, your creditors have a claim not only on the assets of the business, but also on your personal assets, subject only to the Bankruptcy Act.

Note that being a Sole Trader does not imply that the business only employs one person, If your business grows you may employ extra staff however you will still be a Sole Trader, because it will be your business and your liability.