
SOLE, PARTNERSHIP OR LIMITED

Choosing a legal form for your business

What are the options?

Here on St Helena there are five legal forms in which you can operate a business:

- Sole trader
- Partnership
- Private Company Limited by shares
- Private Company Limited by Guarantee
- Public Company

Of these options only the first 3 are likely to be suitable for a new business so this document does not discuss the others further.

You do not need to have a company to be in business; in fact most small businesses start life as a sole trader or partnership, and may develop later into a limited company. There are often advantages in operating as a sole trader or partnership in the early years.

The key differences between a company and a Sole Trader are the risk involved and the way you are assessed for bank loans and tax (though as the tax legislation is currently under review the latter may change in the near future).

The Sole Trader

This option is only available if you will be the only owner of the business. In this model you are the business. Your start up costs will be reduced as there are no legal fees for drawing up documents to record your legal form. As long as you have any relevant licences and the equipment you need, you can just start to trade. You make all the decisions and keep all the profits.

You do not need to produce audited accounts and many of your expenses can be claimed against your business. However creditors can pursue their claim against you to the point where you are declared personally bankrupt. As your personal assets are not separate from the business they could be seized to offset your debts.

Partnership

This is similar to the above but there is more than one person. You share the costs, share the risks, share the decisions and share the work. How you do this should be agreed before the partnership is set up and should be written into a legal partnership agreement.

A partnership will end if a partner leaves or dies and as such the business will cease to exist.

Like a sole trader the partners in a partnership can be pursued to personal bankruptcy if the debts of the business are not paid.

Limited Company

With a company there are two things to bear in mind

1. A company is a legal body that is quite separate from the individuals who own or manage it. It exists in its own right.
2. Companies incorporated (created) on St Helena or Ascension Island will have limited liability for their members.

A company, like a person can own property, employ people, enter into contracts and start legal proceedings. It can also have legal proceedings taken against it.

A company can live forever, contracts can continue and the business can be passed on or sold on.

The company is owned by its members. If the company has shares, the members are referred to as shareholders. The members appoint directors to run the company for them.

When you invest in a company, or put money in to start one, you agree to provide that money to enable it to finance its activities. In return, if the company is profitable you can expect it to pay you a dividend. The investors have limited liability, which means that if the company should fail they will lose nothing other than the money they invested.

The table below shows the pluses and minuses of each legal entity and may help you decide which you think will be the best choice for your business.

Sole Trader /Partnership

THE POSITIVES	THE NEGATIVES
Easy to set up.	All partners are liable for debts, both individually and collectively
No legal requirement for audit of accounts	Your estate can be liable for business debts if you die
Business losses can be easily offset against other income	Automatically dissolve on death, retirement or bankruptcy
Relatively easy to transfer to a limited company later	It is easier to transfer the ownership of a limited company
	You have to trust and respect each other; potential for friction between partners
	Partners have equal votes; decision-making process can be slow

Limited Company-by Shares

THE POSITIVES	THE NEGATIVES
Limited shareholder liability	Set up costs can be higher
Formalised management structure for clarity	You must adhere to the Companies Ordinance
Can be easier to raise external finance	Directors are held personally responsible if your company trades while insolvent
Easy to introduce new co-owners	
Death and bankruptcy do not affect its existence	
Can be perceived as more professional	

