



Running a Restaurant – What Business Structure Can I Use?

BRIEFING

There are many different types of business structures available and the right one for you depends on many (and sometimes competing) factors. The different types include a sole trader, general partnership, limited liability partnership and a company.

Sole Trader

If you run a restaurant business as a sole trader, your business liabilities (such as compensation owed to an employee for an industrial accident or a customer who slips and falls at your premises) are not separated from your own personal wealth. As a sole trader, if your insurance does not pay out, your own personal wealth must be used to make up the difference (including your home if necessary).

The business will be taxed in your name and amalgamated with all of your other profits and losses.

It is unusual for a business of any substance or sophistication to be structured in this way. One advantage, however, is that the accounts of the business of a sole trader are not made public as are, for example, those of a company. In addition, an individual may benefit by obtaining more extensive tax relief in relation to expenses.

Partnership

A partnership needs at least two people working together with a view to making a profit. Ideally, you should have a formal partnership agreement to set out how you manage the business, split profits, pay expenses and even when the business should be sold. Like a sole trader, the liability and entitlements of the partnership are spread amongst all the partners, who are jointly and severally liable to the full extent of their wealth, as for a sole trader.

Limited Liability Partnership (“LLP”)

A limited liability partnership (known as a “LLP”) has the commercial benefits of having a separate legal identity from its proprietors, gives those proprietors limited liability from business creditors and claimants (unless there has been fraud or insolvent trading) yet it is taxed just like a partnership which means the profits (and losses) of the proprietors are still treated as the profits and losses of the individual proprietors rather than the LLP itself. This may give some tax advantages to certain types of proprietors and avoid double taxation which can occur when closely held traders use a company to run their business. There may also be certain National Insurance contribution concessions available for owner managers which do not apply to a company.



Ideally, a LLP will also have a LLP members agreement which is very flexible, confidential to the proprietors involved and sets out the same type of matters you would normally find in a partnership agreement.

A LLP also has its own legal identity which means that the lease of your premises, licences and planning applications can be made and prosecuted in the name of the LLP rather than those of the proprietor (although individual licensees must be named in certain circumstances).

As a LLP is similar to a partnership it must have at least two members. One member can be a "silent" member if necessary.

A LLP is required to file public accounting statements on a yearly basis.

Company

As with a LLP a company is a separate legal entity from its proprietors and gives those proprietors limited liability.

A company need only have one director and shareholder (who can be the same person) unlike a LLP which must have at least two members. A company must also file public accounting statements on a yearly basis and failure to do so can have serious consequences.

Taxation

The taxation of trading companies can be quite complex. Whether a LLP or a company is the most suitable vehicle from a tax point of view depends on the financial/tax status of the proprietors themselves and how much profit (or loss) the business is expected to make, particularly during its start-up years. Specific financial and taxation advice should be obtained before deciding what is the best structure for your new business. You will also need to consider VAT registration (which can take many months for a new application) so this needs to be started as soon as possible.

What are my obligations to employees?

When you first employ someone you must give them a statement of terms under the Employment Rights Act 1996 as amended.

Statement of Terms

Within two months of commencement of employment, you (or the relevant partnership, LLP or company employer) must, unless the employee's written contract deals with the matters give the employee a written statement explaining:

- Identity of the employer and employee
- Start date
- Work Place
- Job Title
- Pay and calculation
- Hours
- Holidays and holiday pay
- Sickness and sickness pay



- Pensions (if any)
- Notice period
- For temporary workers - the term and expiry date
- Particulars of any collective agreement(s)
- Disciplinary rules
- Grievance system
- Contract of Employment

It is almost always advisable to prepare for each employee a formal contract of employment which could itself satisfy the obligation to provide the compulsory statement as described above. Such a contract will also set out:

- The employee's duties
- Multiple premises
- Redundancy
- Non-compete
- Intellectual property
- Confidentiality
- Reputational issues and no slander
- Clothing and equipment
- Training right
- Return of equipment on termination
- Travel, taxis and other benefit

Other employment obligations

Finally, as an employer, you will also need to consider:

- Tax and National Insurance as you will be required to operate the PAYE system, by which you deduct the appropriate amount of income tax and national insurance and

account for these deductions to HM Revenue & Customs.

- Health and Safety as you have a common law and statutory duty to take reasonable care for the health and safety of your employees at work, including the provision of safe premises, safe plant and equipment, a safe system of work and the safety training of fellow employees.
- Insurance against your liability to an employee who is injured as a result of their work.
- Stakeholder Pensions if you employ 5 or more employees (although you are not required to contribute to the pension).
- Discrimination Law
- Statutory Sick Pay - an employer does not have to pay anything to an employee off sick for the first three days of their absence. However after three days employees earning more than £97 per week (before tax) will be entitled to statutory sick pay.
- EU Working Time Regulations stipulate a maximum 48 hour working week for employees. An employee can opt-out of the maximum working week using a form separate from their contract of employment. These regulations also cover the need for lunch breaks, rest breaks and medical examinations for employees working nights.



- Statutory Holiday Pay - all employees regardless of length of service are entitled to 28 days (including any public or bank holidays) paid annual leave each year (for an employee working 5 full days per week.)
- Statutory Maternity & Paternity Pay will apply for pregnant employees and fathers who have worked for you continuously for at least 26 weeks into the 15th week before the week the baby is due.
- Eye Tests each year must be given to employees who use computer screens.
- Asylum & Immigration Act requirements must be adhered to by checking that all employees have the right to start and legally work in the UK. Failure to do so is a criminal offence.

For further information – please contact:

Richard Tinham

DT 020 7593 5165
rtinham@wslaw.co.uk

James Oxley

DT 020 7593 5045
joxley@wslaw.co.uk