

6. RUNNING A BUSINESS

6.1 Business Organisations

A water chemist may be operating as an employee but could alternatively be operating in another capacity. Thus, a water chemist could operate as a sole trader (e.g. as a consultant), in a partnership (two or more chemists working together), in a private limited company (e.g. "Water Consultants Limited"), or as an employee of a public limited company (e.g. Thames Water plc). A few points concerning each should be noted.

6.1.1 Sole Trader

A sole trader is a single person who holds all the assets of a business and has the right to make all decisions affecting it. He or she also bears unlimited liability for the debts and obligations of the business. There are a number of tax advantages of being self employed. Tax can be claimed back for goods and services used or purchased for the business (e.g. office equipment, petrol or telephone charges) and special rules apply in the opening and closing years of the business. Individual tax returns must be submitted annually.

6.1.2 Partnership

In a partnership two or more persons together share the assets of the business and the right to make all decisions affecting it. They also share the responsibility for paying any debts or obligations of the business (although if one partner cannot pay then the other must pay the defaulter's share). Typically the partners will draw up a partnership agreement between themselves (in the absence of which the provisions of the Partnership Act 1890 apply), covering such things as salaries, shares in income and losses, withdrawing money from the business and the ownership of assets. Partners should be aware that a deal struck with a third party by one partner, whether for better or worse, is usually binding upon the partnership as a whole.

6.1.3 Private limited company

A business owned as a "private limited company" is one owned and operated by the company itself. The advantage of using a company structure is that it provides a shield for the entrepreneur. Thus, if the company becomes insolvent, the personal assets of the director or shareholder are protected.

The company will have a board of directors who are responsible for entering into contracts and the day to day running of the business. The shareholders are the owners of the company. They can alter the company's constitution (e.g. its name or the nature of the business it is authorised to conduct) or appoint and dismiss directors from the board by passing resolutions at shareholder's meetings. Often, in the case of a private limited company, the directors and shareholders will be one and the same people.

Generally, in the absence of misconduct, directors bear no liability for any debts they incur on the company's behalf. A director can, however, be voted out of office and be held personally liable for fraudulent or wrongful trading.

The individual water chemist could thus be a director, shareholder and employee all at the same time.

In order for a company to exist at law it must be properly registered with the Companies Registry. It is then given a registration number by the registrar. It must also comply with the requirements of the Companies Act 1985, including publicising

the fact that it is a company so that clients and suppliers know they are dealing with a company. An annual return has to be made to the Companies Registry.

Taxation on a private limited company falls into three categories: the company's profits will be subject to corporation tax, the directors' salaries to income tax, and the shareholders taxed on their dividends.

Some caution is required in relation to loans to small companies, as banks are aware of the nature of the "corporate veil" and will require a personal guarantee from the participants for a loan, e.g. that it is secured on the director's house.

6.1.4 Public limited company

A public company's constitution must state that it is so and the words 'public limited company' or 'plc' must appear after its name. Broadly this indicates that the company is allowed to have its shares listed on the Stock Exchange. Public companies, like private companies, are governed by the Companies Act although there are differences of detail. However, there are several important distinctions in practice which are outside the scope of this briefing.

6.1.5 Other bodies corporate

These include former governmental departments that have been privatised. They often take the form of QUANGOs (Quasi Autonomous Non-Governmental Organisations) which operate akin to private limited companies. They do not have shareholders.

There are also companies limited by guarantee (as opposed to shares) and those created by statute (eg the RSC).

6.2 Establishing a Business

When setting up a business a water chemist should be aware of the following requirements:

6.2.1 Recruitment

When recruiting, an employer has a statutory duty under the Sex Discrimination Act 1975 and the Race Relations Act 1976 not to discriminate on the grounds of sex, race or marital status. Thus, advertising for a Scottish nanny for your children, or offering a better car breakdown service to women could both be illegal. The Equal Pay Act 1970 places a further statutory duty on an employer to provide equal pay for men and women doing comparable work.

6.2.2 Statement of terms of employment

Within 13 weeks of commencement of employment, the employer must give the employee a written statement containing, among other things, the period of employment, pay, hours of work, holiday allowances, sickness benefits and pension schemes. This may, alternatively, take the form of a formal contract of employment.

6.2.3 PAYE/National Insurance

An employer is required to maintain a Pay As You Earn (PAYE) system by which tax is deducted from an employee's pay at source. A sole trader or a partner will pay Class 2 national insurance contributions which are a flat rate and may also pay Class 4 national insurance contributions which are calculated as a percentage of taxable profits. A limited company must also pay the employer's national insurance

contribution in relation to each of its employees and must collect and maintain the employee's own Class 1 national insurance contributions.

6.2.4 Health and Safety

An employer must ensure that the health and safety requirements discussed above are met.

6.2.5 Employer's liability insurance

An employer is required to carry insurance against his liability to an employee who is injured or who contracts a disease as a result of his work. The certificate of insurance must be displayed at the place of work.

6.2.6 Value Added Tax

If the annual turnover of the business is expected to exceed, currently, £49,000 the proprietor must register for VAT.