
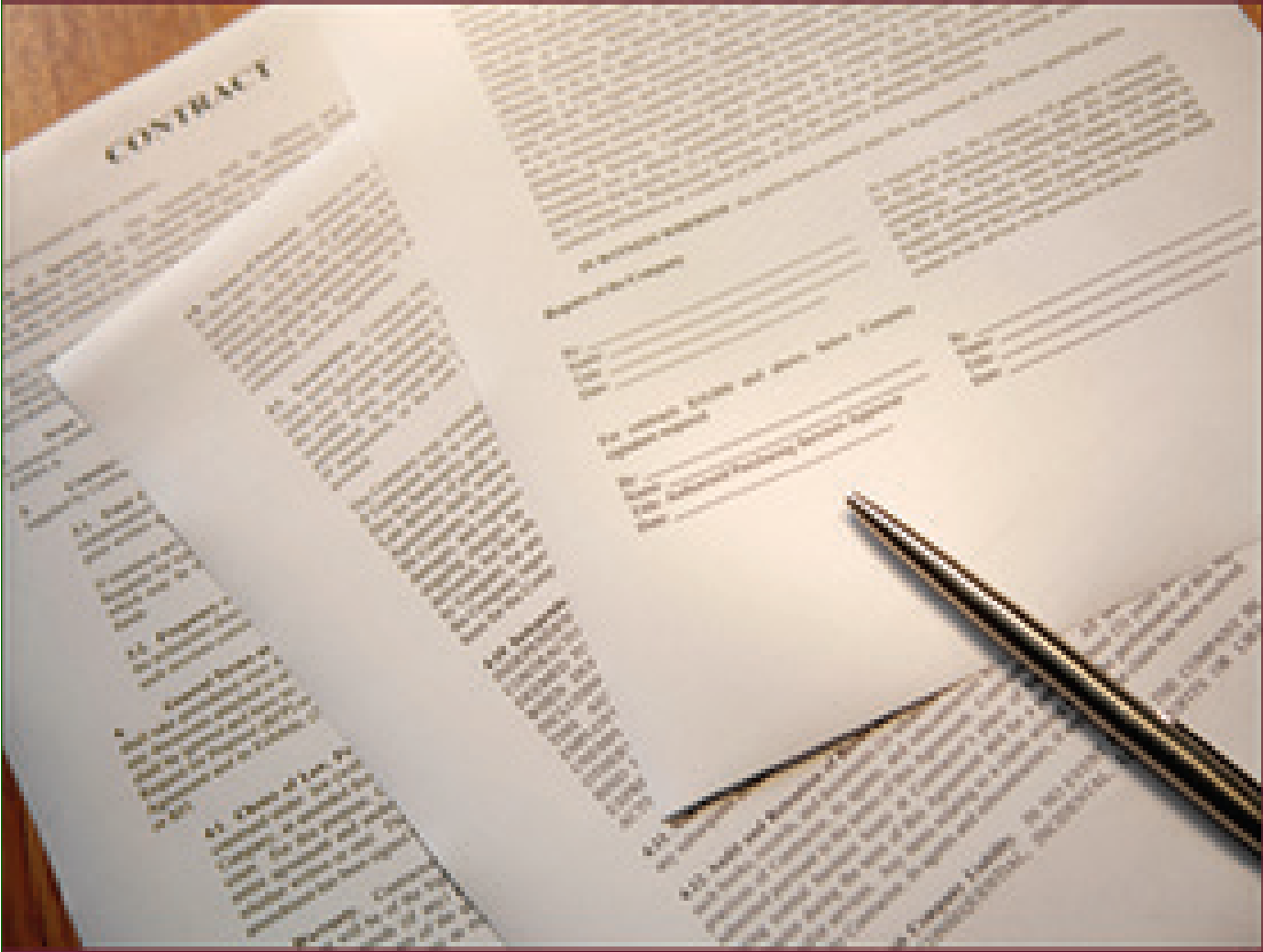




OXFORD Business English

English for Legal Professionals

Andrew Frost

EXPRESS SERIES



OXFORD

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1

Setting up a business

STARTER

Lawyers often have to use these terms when talking about business law. How many of them are you familiar with? Can you explain any of them?

- articles of association • sole trader • equity / company capital • tangible assets • register of companies • unlimited liability

For further help, look at the terms in the text below.



- 1 Deborah Evans, a solicitor in the law firm Garfield Brown, is writing a brochure for the firm’s clients about the different business structures in the United Kingdom. Fill the gaps with the words supplied below.

GARFIELD BROWN

INFORMATION FOR INVESTORS AND ENTREPRENEURS FROM ABROAD

Legal structures in the United Kingdom

- agreement • cash • debts • on your own • owners • personally liable • profits • publicly • separate • shareholding

Working for yourself

If you work for yourself, you are self-employed and are described as a sole trader. You do not have to register your business in order to set it up: you simply start trading and manage the business _____.¹ However, once your business makes a certain amount of money every year, you must register with the tax authority. As a sole trader, there is no limit to the amount of capital you can take out of the business, but on the other hand, you have unlimited liability for your _____.²

Partnerships

There are two main types of partnership in the U.K. The oldest is the general partnership. This business vehicle does not have a separate legal identity from the people who form it. This means that the partners are _____³ without limit for the debts of the firm. A written partnership _____⁴ is recommended but is not required by law. A general partnership can keep its partnership agreement and its financial information private. Partners do not have to provide a minimum amount of equity by law but they usually agree to pay capital into the firm when they join the partnership. The second type of partnership in the U.K. is the limited liability partnership (LLP). Unlike a general partnership, the partners are called *members*. They are still the _____⁵ of the business, but their liability for the debts of the firm is limited. However, every LLP must publish regular financial information about itself.

Limited companies

These business structures must be registered on the Register of Companies and have a _____⁶ legal identity. This means the members are only liable to pay for their _____⁷ in the company. It is the company that is liable to its creditors. When a company is formed, its owners will normally put capital into it. However, this company capital does not have to consist entirely of _____⁸ – tangible assets e.g. machinery can also be contributed. Limited companies must also have a written agreement – called the *articles of association*. The two main types of limited company are the private company (which has *Limited* or *Ltd* in its name) and the public company, or *plc*. A plc is often – but not always – a company whose shares are traded _____⁹ i.e. anyone is allowed to buy them. For these companies there is a minimum amount of capital and there are different requirements regarding directors and accounting procedures.

DID YOU KNOW?

The British and American English terms for business structures vary. The established structures in the United Kingdom are sole traders, general partnerships, and limited companies. Sole traders and partnerships are often (but not always) small businesses. Limited companies are used by businesses of all sizes, from the very small to the very large. The smaller ones are often private companies and have *Ltd* or *Limited* in their name. Larger limited companies often choose to be public companies and have *plc* in their name. Since 2001 in the U.K., a fourth business structure, the limited liability partnership or LLP, has existed.

In the U.S., the abbreviations *Inc* and *Corp* are very common, but they are just the abbreviations acceptable in all U.S. states for a company that has registered itself as a separate legal identity. The U.S. limited liability company or *LLC* is a different type of company which combines the tax flexibility of a partnership with the personal liability protection of a corporation.

Be sure to check and use the correct term in the right jurisdiction: exercise 1 on pages 5–6 will help you do this.

2 Here are some points of view about different legal aspects of the company types presented above. What do you think?



A limited liability partnership is a really good idea nowadays. You can't expect law firms, architects, tax advisers and so on to accept unlimited liability in traditional partnerships. If a big contract goes wrong, it can cost tens of millions.



It's very important for a public company to have minimum equity. How can anyone have confidence in a company of this sort if it doesn't have any capital of its own?



I can't see why the law in the U.K. requires a company to register itself before it starts trading, but doesn't require a sole trader or a partnership to register at that point. They're all businesses, aren't they?



I feel very sorry for entrepreneurs who form a limited company. The idea behind this type of company is that your personal assets shouldn't be at risk. However, as soon as the owners go to the bank for start-up capital, the bank secures any loans it makes against the owners' personal assets – usually their home.



3 Deborah Flynn has a meeting with her client Miya Osborne, a Japanese woman living in the U.K.

Part 1: Listen to the first part of the meeting and answer the questions.



- 1 When did she form her company?

- 2 What is the nature of Miya Osborne's business?

- 3 What area of business does she now want to move into and why?

- 4 What plans does she have for one or two of her colleagues?

- 5 What other reason does she have for seeking advice from Deborah?

8 | UNIT 1 Setting up a business

AUDIO



Part 2: Listen and complete Deborah Flynn's written notes from the meeting.

- Miya Osborne is currently running her import business as a sole trader and has 2 employees.
- She has found a possible new property to use as a shop and wants to make an offer to buy it immediately. Risk! We don't know whether she will be allowed to change its use from an _____^a building to a shop. Need to find out more.
- She's financed the business up to now using the _____^b of the business and some savings. She has 3 reasons for forming a company now:
1. to reward the loyalty of her 2 staff by giving them a _____^c in the business
 2. also to reward them some time in the future by making them _____^d of the company
 3. the business needs to expand and there is a possible new _____^e who wants shares in the business
- She doesn't want to borrow money from the bank because the bank will ask her to _____^f the loan personally and that will put her home at risk as the loan will be secured on her house.

4 In principle, Miya Osborne has a potentially good idea, but there are a lot of issues to consider. Work in small groups and discuss these questions.

- Should Miya Osborne give shares in the new company to her two loyal employees? What are the risks for her? Are there any other ways of rewarding loyalty that are less risky?
- What other structures are available for Miya's business? Why do you think Deborah did not suggest them?
- If you were advising Miya in your own country, would your advice be the same or different from Deborah's? Why?

Look at Deborah's list of issues. What should Miya do and why? Use the following phrases:

I would (wouldn't) advise her to ...
I (don't) think she should ...

She (really) ought to ...
She could always ...

5 A day later Deborah Flynn sends Miya Osborne the following letter. Put the six paragraphs into the correct order.

Dear Mrs Osborne

New business proposals

a)

Accordingly, I must stress that a bank will usually ask you to guarantee the loan personally, which it might make to your company and take your house as security. This would mean that, if the company defaulted on the loan, the bank would require you to repay it. If you could not afford to do so, the bank would take legal proceedings to sell your house and recover its money.

b)

I look forward to meeting you again next week as arranged. Meanwhile if you have any questions about the matters I have raised in this letter, please do not hesitate to contact me on my direct line, which is set out at the top of the page.

c)

Following our meeting this morning, I write to summarize my advice and set out the steps which you should take now.

d)

As you explained, your business has now reached a point where it needs to expand and requires external funding to do this. Your choices are between debt (that is, a bank loan) and equity (that is, financing through shares bought by an investor). Bank loans are available to you as a sole trader and would also be available if you were to form a company. You explained initially that you were interested in obtaining a bank loan to pay for some of the expansion, but that you were worried about the effect that this might have on your personal assets, particularly your house.

e)

If you decide to incorporate the business as just described, then you will be under more legal obligations than you were as a sole trader. These obligations relate to the ways in which you can take money out of the company, and the ways in which you make valid decisions on behalf of the company. I enclose a copy of our firm's booklet *Running your new company* which gives some examples of these obligations and explains a little about the constitution of the company.

f)

Turning to financing through shares , this option is not available to sole traders or partnerships and is only possible if you form a company. Since an external investor is already interested in investing in your business, I would advise the formation of a private company as the most practical option. The assets of the business would be transferred from you as their owner to the company and shares would be issued to you and the other shareholders.

Yours sincerely

Deborah Flynn

Solicitor

Answers: 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐ 6 ☐

6 Work in small groups and discuss these questions.

- 1 How does this advice compare with the advice you gave in exercise 4?
- 2 What phrase does Deborah use to mean a *bank loan*? What advantages and disadvantages does Deborah mention in relation to this type of finance? Can you add any more from your experience?
- 3 What phrase does Deborah use to mean *money raised by selling shares in a company*? What advantages and disadvantages does Deborah mention in relation to this type of finance? Can you add any more?
- 4 Deborah's letter warns that running a company is more complicated than being a sole trader. From your experience, can you suggest why she says this?

DID YOU KNOW?

In the U.K., the constitution of a company consists of its **memorandum of association**, which gives information about the location of the company and its objects or legal purposes, and its **articles of association**, which contain internal rules about how the company is organized. Both the memorandum and the articles can be read by the public at Companies House, the central register of companies.

In the U.S., the **articles of incorporation** is the document that has to be filed with the relevant state. This document is required of incorporated and non-incorporated firms alike.

7 In her letter Deborah Flynn uses some verb + noun pairs, e.g. *to set out details*. The following verb + noun pairs are common when getting started in business. Try to make pairs.

VERB	NOUN
1 register / run	a restrictions
2 raise / contribute	b debts / costs
3 submit / reject	c the register of companies
4 draw up	d business
5 impose	e capital
6 incur	f shares
7 view / inspect	g a company
8 obtain	h a certificate of incorporation
9 issue / hold	i an application (for entry in a register)
10 conduct	j a contract / a partnership agreement

8 Fill in the gaps using the verb + noun pairs above. You may have to modify the verb.

- 1 In the U.K. any member of the public is allowed to _____ at Companies House to get information about a particular company.
- 2 A plc can extend its equity base by _____.
- 3 Under normal circumstances a company should not commence trading until it has _____.
- 4 A sole trader does not need to register his or her activities in order to _____.

- 5 The Companies House can _____ for registration if the proposed name of the company is too similar to a name that already exists.
- 6 The law does not require partners in a general partnership to _____, but most solicitors would recommend this.
- 7 When a company tries to _____, the bank often insists on securing any loan against the personal assets of the company's owners.
- 8 In a general partnership, the partners bear personal liability for any _____ which the partnership might _____.

GIVING ADVICE AND MAKING RECOMMENDATIONS

Some expressions for giving advice and making recommendations require a gerund and some an infinitive.
NB: Some phrases are appropriate when spoken but are not appropriate in a formal written context.

Gerund (-ing)

*I (would / wouldn't) suggest / recommend **making** an offer at this stage.*
*How / What about **talking** to a property expert about this? (spoken)*

Infinitive

*I think you should **tell** me a bit more about the business.*
*I (strongly) advise you to **talk** to a property expert about this.*
*You could always **make** an offer when you know a bit more. (spoken)*
*You ought to **make** an offer when you know a bit more. (spoken)*
*Why don't you **make** an offer when you know a bit more? (spoken)*

NB: All the above phrases can be used when you are advising someone directly. If you are discussing what *he / she / they* should do, use the phrases listed in exercise 4.

If you would like to use *recommend* and *suggest* for a third party, the structure is as follows:

I recommend / suggest that he / she should + infinitive

9 Look at an extract from a letter from a client whose partnership has got into difficulty, to their lawyer.

Dear ...

... I formed an accountancy partnership with David B. five years ago, specializing in accountancy services and tax advice for small businesses. My partner has now informed me he wishes to leave our firm in order to accept a partnership with a large firm specializing in accountancy for large corporations. My problem is that I do not think I can afford to buy him out right now. What is more, the new firm is not very far away. I mention this because our partnership agreement states that if a partner leaves, he should not do business within a 5-mile radius of his old firm. I am, of course, worried that David B. might take some of our existing clients with him to his new firm. ...

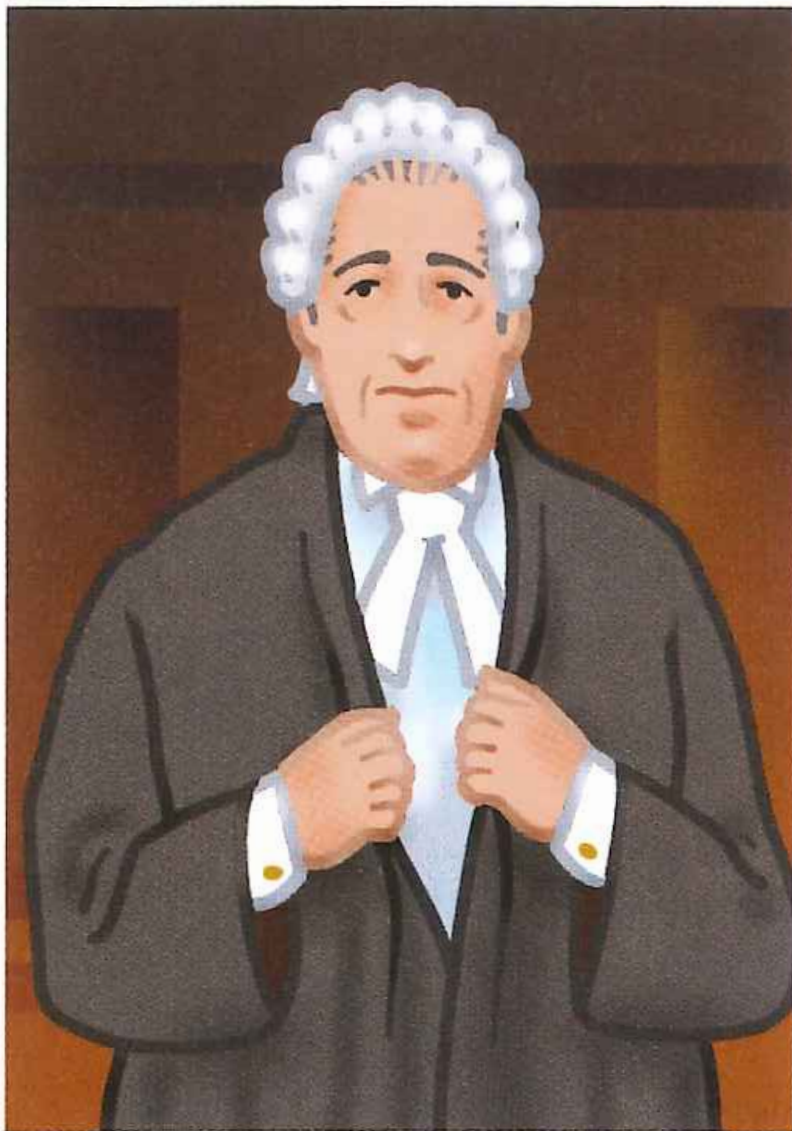
Match the beginnings in A with the endings in B to rebuild the lawyer’s suggestions below:

- A**

 - 1 You could always ...
 - 2 I suggest ...
 - 3 You really ought ...
 - 4 I wouldn’t advise you ...
 - 5 I don’t think you should ...
 - 6 I don’t recommend ...
- B**

 - a ... worry about the cost of buying your partner out yet. Your partnership agreement states that this payment would only be due at the end of the next financial year.
 - b ... ascertain the precise value of the firm. Then you will know how much it will cost to buy your partner out.
 - c ... trying to come to a binding agreement about existing clients. You will lose some clients, but don’t want to lose too many.
 - d ... to terminate the existing partnership with immediate effect. David B. is not going to act in your firm’s interests any more.
 - e ... bringing in a new partner straight away. Wait and see how much business you have before you rush into such an important decision.
 - f ... to invoke the five-mile radius clause. It’s probably not enforceable anyway.

Is there any advice you don’t agree with? Do you have any other advice for the client?



VOCABULARY ASSISTANT

ascertain *find out*
binding (adj) *which must be obeyed because it is accepted in law*
buy s.o. out *to pay s.o. for their share in a business, usually in order to get control of the business yourself*
due *owed, payable*
enforceable (adj) *a clause which is enforceable is one which can form the basis of a court action, if the promise contained in the clause is broken with immediate effect at once, immediately*

DID YOU KNOW?

Lawyer is a general term which we use to refer to someone who has learnt the law and has a licence to practise. In the U.S., lawyers are often called **attorneys** or **attorneys-at-law**. In England and Wales, the legal profession is not unified, so a distinction is drawn between **solicitors**, who have rights of audience in only some courts, and **barristers**, who specialize in advocacy (i.e. the art of presenting cases in court) and who have a right of audience in all courts. Generally, a solicitor will consult with his or her client and prepare a brief. This brief is then passed on to a barrister who will present the case in court. Successful and distinguished barristers are often invited to become a Queen’s Counsel. Such barristers always use QC after their name.

10 A client consults a lawyer about forming a company. Before you begin your consultations, agree the country of jurisdiction with your partner.

PARTNER FILES Partner A File 01, p. 70
Partner B File 01, p. 75

Use language for making recommendations and giving advice in your consultation. After you have finished the activity, tell the class what you agreed to do.

GIVING REASONS AND EXPLANATIONS

It is often important to give reasons and explain things step by step.
Note: Words like **firstly** and **first of all** aren't used in the same way.

Enumerating reasons	Explaining the steps involved in a procedure
<i>Firstly, the company is investing with minimum risk ...</i>	<i>First of all, we need to discuss the business relationship between ...</i>
<i>Secondly, the investor receives 75 % of any rent above the minimum.</i>	<i>Next, I would suggest depositing ...</i>
<i>Thirdly, ...</i>	<i>Following that, it would be your job to persuade</i>
<i>Finally, ...</i>	<i>Last of all, we would notify the tax office ...</i>

NB. Be careful with **at first**. We use this to express the fact that we thought something initially and then changed our minds.

Example: *At first it seemed a good idea to form a company. Later we realized that this would be too expensive and too complicated.*

11 Read the extracts from a presentation about business formats in the U.K. Complete the gaps with expressions for ordering an explanation from the language box above.

‘ _____¹ I'd like to provide you with a bit of background on business formats in this country and the rationale behind these different formats. _____², I'd like to go on to look in more detail at the plc or to give it its more formal name, the public company. _____³, I'd like to look at the time scale for converting a private company into a public company. _____⁴, I'd like to discuss with you some examples of *listed* plcs: ones which can sell their shares on global stock exchanges.

[....]

I'd like to move on now to talk about the plc in more detail.
_____⁵, you might think that there aren't many advantages to becoming a plc. But when you read company legislation and the rules of the London Stock Exchange, there are three clear reasons for doing so. _____⁶ it's illegal to offer shares to the public if you are not a plc. _____⁷, the Alternative Investment Market (where shares in young companies are traded) is only open to plcs. _____⁸, for more established companies, the Main Market of the London Stock Exchange is also only open to plc shares. And _____⁹, some might say that becoming a plc is good for marketing.'



12 The speaker says in her presentation that there are three reasons for becoming a plc in the U.K., but it is not a suitable format for every business. How similar is this situation to the jurisdiction in your country?

13 Here is a comparison table showing the four forms of business structure in the U.K. Complete a–f in the table using the notes below.

- Two
- Small business
- Bank loans or profits of business
- Registration fee. Registration formalities.
Constitutional documents required and must be open to public.
- Yes
- Unlimited

Business structure	Sole trader	Limited company (Ltd or plc)	LLP	General partnership
Raising money	Bank loans or profits of business	Bank loans, profits of business or selling shares in the company NB: only plcs can sell their shares on a large scale	a _____	Bank loans or profits of business
Suitable for	b _____	Any size business (larger businesses choose plcs)	Any size	Any size
Minimum number of people	One	One	Two	c _____
Minimum capital requirement?	No	d _____	Yes	No
Set up costs and formalities	No registration fee. No formalities to set up. No constitutional documents required.	Registration fees; administrative costs greater for plcs. Registration formalities. Constitutional documents required and must be open to public.	e _____	No registration fee. No registration formalities. Constitutional document not required but if one is used, there is no obligation to make it open to public.
Liability	f _____	Limited to capital contribution	Limited to capital contribution	Unlimited

Complete the advantages and disadvantages of each business structure.

- 1 _____ and _____ have few formalities but are liable to the debts of the business without limit.
- 2 _____ and _____ have limited liability and bank loans may be easier to obtain but there are more formalities.

14 A lawyer gives a client information on forming a company. Work with a partner.

PARTNER FILES

Partner A File 02, p. 70
Partner B File 02, p. 75

OUTPUT

Read these readers' letters to the editor of the law supplement of *The Times* newspaper. What advice would you give them?

Letter 1

Dear Sir

After I was made redundant from a job in a luxury hotel three years ago, I started doing some work with an ex-colleague. We agreed to work part-time for the business because both of us were already working separately on other projects. We invested several thousand pounds each in our new business and agreed to divide the responsibilities between us. I dealt face-to-face with customers and he worked mostly with our suppliers and did the paperwork.

Things went smoothly at first, but when my colleague's other projects started to do better, he just stopped doing any work for our business and handed everything back to me. I took over his responsibilities, but it was too much for one person to manage. As a result I lost two major customers and had to wind the business up, losing all of my capital investment.

Can you advise?

Yours faithfully
Simon Braithwaite

Letter 2

Dear Sir

My husband and I were partners in a small manufacturing business until our retirement. The business is still going strong in the hands of the remaining two partners, but we have not had any involvement in it, financially or managerially, for over a year. We have now found out that a claim is being made against the firm in relation to a debt incurred just after the date of our retirement. We have been named in the claim along with the other two partners, because our names were not taken off the firm's letter head until two months after we retired, even though we repeatedly asked for this to be done earlier.

What do you advise?

Yours faithfully
Ann Richardson

OVER TO YOU

Now go to page 96 and read at the bottom the replies to these letters that were written by experts.

- Do you think the law is being fair to the two people who wrote the letters?
- Are there any differences between the legal position as explained in the two replies and the legal position in your own jurisdiction?