

 CILEX



A8 – Business and Employment Law

Advanced Stage

2021

A8: Business and Employment Law

The overall aim of this module is to give you, the trainee, the essential knowledge and understanding of common business structures, including how they are formed and operate within relevant legal frameworks. It will also ensure awareness of associated internal procedures, liability issues for owners and managers and how such businesses may come to an end through insolvency. The module will additionally provide an outline of the key issues on employer/employee relationships and taxation, including of profits and capital gains arising in the business (building on the knowledge of business accounts from the Advanced Stage Skills module).

The module covers:

1. The types of business structure
2. Starting a business; formation of the different types of business structure
3. Running and growing a business
4. Company procedures
5. Dissolution, insolvency and winding up
6. Taxation
7. Introduction to Employment Law

Learning Outcomes

By the end of this module you will be able to:

1. Identify and advise upon the most appropriate form of business structure for a client, based on their instructions
2. Explain to a client how to set up their chosen form of business structure and identify the advantages and disadvantages of each business medium
3. Understand the liability arising from the main forms of business ownership and how to bring a business entity to an end
4. Draft the key documents relating to company procedures
5. Understand in outline the key taxes that will be encountered when running a business and common employment issues that will arise

Linked online assessment: A8

Candidates will be provided with up to tax rates and allowances:

- Income tax
- Capital gains tax
- Incorporation tax
- VAT
- VAT registration threshold

| | |
|---|--|
| 1. The types of business structure | <p>Knowledge and understanding of the core characteristics of main types of business structure are essential to the work of a trainee in the business department. Therefore, you will need to know the distinguishing features of the following:</p> <ul style="list-style-type: none">a) Business structures<ul style="list-style-type: none">• Sole traders• Partnerships• Limited liability partnerships (LLPs)• Companies limited by shares (both private and public)• Companies limited by guaranteeb) The legislation relevant to these structures, including:<ul style="list-style-type: none">• The Companies Act 2006 (CA 2006)• The Partnership Act 1890 (PA 1890)• The Limited Liability Partnerships Act 2000 (LLPA 2000)• The Insolvency Act 1986 (IA 1986) |
| 2. Starting a business; Formation of the different types of business structure | <p>The different types of business structure are formed in different ways. You must be aware of the varying formalities in order to advise the client adequately and be able to carry out the necessary formalities, including drafting appropriate documents. Therefore, you will need to know the following:</p> <ul style="list-style-type: none">a) Sole trader<ul style="list-style-type: none">• No prescribed formation procedure• Regulation of choice of business name under 1192 CA 2006b) Partnerships<ul style="list-style-type: none">• No prescribed formation procedure• Definition of a partnership under s1 to 2 PA 1890• Relevant case law• Partnership agreements: no requirement but advisable• Key content of a partnership agreementc) Limited liability partnerships |

| | |
|---|--|
| | <ul style="list-style-type: none"> • Governed by the LLPA 2000 • Legal requirements of an LLPA • Registration process under the LLPA: prescribed documentation and fee • Agreements: no requirement but advisable • Regulation of choice of business name under CA 2006 <p>d) Companies limited by shares</p> <ul style="list-style-type: none"> • Incorporation governed by the CA 2006 • Registration process with Companies House, including relevant documentation and fee • Required company constitution <ul style="list-style-type: none"> ○ Memorandum and articles of association ○ Model articles • Use of 'off the shelf' companies • Regulation of choice of company and business name under CA 2006 • Public companies: minimum authorised capital requirement; s763 CA 2006 • Brief comparison with other forms of company <p>e) Promoters and pre-incorporation contracts</p> <ul style="list-style-type: none"> • Nature of promoter • s51 CA 2006 • Potential personal liability • Protection from liability |
| <p>3. Running and growing a business</p> | <p>A trainee in the business department must understand and be able to advise on the nature of ownership and consequent liability issues, and how the businesses may be managed and run. You must be able to distinguish between unlimited and limited liability, and outline the possible management structures, day to day running issues and associated regulation. Therefore, you will need to know the following:</p> <p>a) Sole trader</p> <ul style="list-style-type: none"> • Business owner • Self-finances: cash or a loan; personal guarantees • Potential personal liability for business debts • Freedom to manage • Business transfer procedure <p>b) Partnerships</p> <ul style="list-style-type: none"> • Each partner owns part of the business • Jointly and severally liable • Partners are agents (s5 PA 1890); differences between actual (express or implied) and apparent authority |

- Fiduciary duties in outline
- Freedom to manage
- Partnership agreements: govern management structure; limits on authority to incur debts/liabilities
- PA 1890 implies in absence of express agreement
- Liability of partnership for acts of individual partner: ss 6 to 8, 14 and 17 PA 1890
- Partnership property: ss20 and 21 PA 1890
- Exit routes under PA 1890 in absence of express agreement
- Consequences of breach of partnership agreement
- Expulsion of a partner

c) Companies limited by shares

- Separate legal personality
- The entity can sue and be sued and enter into contracts
 - Entering into contracts and execution of documents: ss 43 and 44 CA 2006
- Owners are shareholders
- Shareholders; limited liability
- Corporate veil; separation between the shareholders and the company; Salomon v Salomon [1897]
- Lifting of corporate veil
 - Overview of elements of 'test'
- Nature and purpose of the company's constitution:
 - s33 CA 2006
- Management of company: directors; CA 2006; company constitution
- Limits on capacity and directors' authority; ss 39 and 40 CA 2006
- Transfers
 - Procedure for transfer of shares
 - Stock transfer forms
 - Register of members
 - Restrictions in articles

d) Company directors and secretary

- Appointment; s154 CA 2006 and Model Article 17; members' or directors' resolution - including minimum number
- De facto and shadow directors
- Executive, non-executive and alternate directors
- Duties under ss 170 to 177 CA 2006
- Regulation by the articles of association; Model Articles for Private Companies Limited by Shares
- Removal and CDDA
- Service contracts: company secretary: required for a public company; not required for private companies

e) Day to day running of the business

| | |
|-------------------------------------|--|
| | <ul style="list-style-type: none"> • Hiring and firing <ul style="list-style-type: none"> ○ Sole trader ○ Partnerships ○ Companies • Data control - broad principles |
| <p>4. Company procedures</p> | <p>A company is regulated by the CA 2006, which lays down a number of requirements for company decision-making and proceedings. There are also numerous disclosure requirements. You must be able to advise clients appropriately, including completing relevant forms, drafting generic text in documents and commenting critically on documents including board minutes. Therefore, you will need to know the following:</p> <ul style="list-style-type: none"> a) Directors' proceedings <ul style="list-style-type: none"> • Governed by articles of association • Form - board meetings and other forms including written directors' resolutions • Notice • Quorum and voting <ul style="list-style-type: none"> ○ Remote voting procedures • Resolutions • Declarations of interest s177 CA 2006; conflict of interest MA 14 b) Shareholder proceedings <ul style="list-style-type: none"> • CA 2006 provisions • Ordinary and special resolutions • General meetings • Annual general meeting requirements • Notice • Quorum • Voting • Written resolutions • Proxies and poll votes • Examples: change of company name; change of articles of association c) Company administration and disclosure requirements <ul style="list-style-type: none"> • Filing requirements such as resolutions, and forms following: <ul style="list-style-type: none"> ○ Change of registered office ○ Change of name ○ Appointment and departure of director ○ Change of articles • Accounts • Penalties for non-compliance • Company searches • Statutory records |

| | |
|---|--|
| | <ul style="list-style-type: none"> ○ Company books, such as register of members and directors ○ PSC register |
| <p>5. Dissolution, insolvency and winding up</p> | <p>Bringing a business entity to an end is largely procedural and is governed by the Insolvency Act 1986. You must be able to advise clients appropriately, including drafting relevant forms and documents. Therefore, you will need to know the following:</p> <ul style="list-style-type: none"> a) Definition of insolvency <ul style="list-style-type: none"> • Statutory test for corporate insolvency: s123 IA 1986 • Initiation of winding up or bankruptcy proceedings • Statutory demands b) Personal bankruptcy <ul style="list-style-type: none"> • Outline of procedure • Implications for sole trader, partner, company director c) Dissolution of a partnership <ul style="list-style-type: none"> • Service of notice; automatic termination; PA 1890 provisions, ss 32, 33, 35, 44 • Partnership agreement d) Outlines of company winding up procedures <ul style="list-style-type: none"> • Members' voluntary winding up • Creditors' voluntary winding up • Compulsory winding up • Appointment of liquidator • Powers of liquidator • Winding up process • Order of priority and distribution of assets • Implications for company directors |

6. Taxation

A trainee in the business department must have an outline understanding of the key taxation issues that may encountered by their clients in the context of running a business. Therefore, you will need to know the following:

- a) Income tax
 - What is income tax
 - Rates and tax year
 - Allowances and reliefs
 - Taxable income: elements for simple calculation
 - Income tax on employment related shares

- b) Capital gains tax (CGT)
 - What is CGT
 - Rates and tax year
 - What is a disposal
 - When is CGT not payable?
 - Chargeable gain: elements for simple calculation
 - Outline nature of allowances and reliefs:
 - Annual allowance
 - Holdover relief
 - Roll-over on replacement of qualifying business assets
 - Roll-over on incorporation
 - Business asset disposal relief

- c) Corporation tax
 - What is corporation tax
 - Rates and tax year
 - Trading losses, in outline
 - Research and development expenditure
 - Goodwill and intellectual property
 - Distributions
 - Tax avoidance: General Anti-Abuse Rule
 - Taxable income and gains: elements for simple calculation

- d) VAT
 - What is VAT
 - Scope
 - Inputs and outputs
 - Registration
 - Rates
 - Exempt supplies
 - VAT records
 - VAT returns
 - Flat rate scheme
 - Making tax digital

- e) Stamp duty on transfer of shares:
 - Rate

| | |
|---|---|
| | <ul style="list-style-type: none"> • Certificate where consideration £1,000 or less <p>f) Employment related taxes/obligations</p> <ul style="list-style-type: none"> • PAYE • National Insurance |
| <p>7. Introduction to Employment Law</p> | <p>To provide effective advice to clients running a business, trainees must understand common employment law rights, the implications of engaging and dismissing employees, and should be able to identify potential issues with an employer's proposed course of action. You should also recognise TUPE and its impact on certain commercial transactions. Therefore, you will need to know the following:</p> <p>a) Employment status</p> <ul style="list-style-type: none"> • Status determines the level of rights/protections in law • Self Employed Contractor <ul style="list-style-type: none"> ○ Supervision ○ Invoices ○ Tax status ○ Substitution ○ Providing equipment • Worker <ul style="list-style-type: none"> ○ Zero hours contracts ○ Limited rights to subcontract ○ No obligation to accept hours when offered but once accepted must attend work • Employee <ul style="list-style-type: none"> ○ Mutuality of obligations ○ Degree of control and supervision <p>b) Recruitment</p> <ul style="list-style-type: none"> • Sourcing employees and advertising • Discrimination in recruitment <ul style="list-style-type: none"> ○ The protected characteristics under the Equality Act 2010 • Pre employment checks <ul style="list-style-type: none"> ○ Obtaining references ○ DBS checks ○ Right to work checks ○ Qualification checks • Appointment <ul style="list-style-type: none"> ○ s.1 Employment Rights Act 1996 statement of terms ○ The contract of employment ○ Automatic enrolment pension obligations <p>c) Employment Rights</p> <ul style="list-style-type: none"> • Protection from discrimination |

- Minimum Wage
- Statutory sick pay
 - Eligibility and when it's paid
 - Contractual sick pay
- Working Time Regulations 1998
- Maternity/family friendly rights
- Protection from unfair dismissal (s.94 ERA 1996)
- Protection from unlawful deduction from wages (s.13 ERA 1996/breach of contract considerations)

d) Terminating Employment

- Definition of termination s.95 ERA 1996
- Wrongful dismissal
 - Statutory notice and contractual notice
- Unfair dismissal
 - s.94 and the potentially fair reasons for dismissal in outline
- Automatic Unfair Dismissal and key AUD grounds:
 - Pregnancy/maternity
 - Asserting a statutory right
 - Whistleblowing
 - Trade union activity
 - Health and safety
- Redundancy
 - Definition
 - Statutory redundancy payment
 - Offer of alternative employment
 - Possibility of claim for unfair dismissal
- Discrimination on termination of employment
 - Situations where termination is because of, or linked to, a protected characteristic

e) Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE)

- Outline of when TUPE applies and its significance