

Protecting your Business with a Lasting Power of Attorney

If you run a business, whether as a sole trader or in partnership with others through a partnership, a company or a limited liability partnership, you will know that the continuity of your business is one of the key elements in your business plan.

Few people, however, realise that if you are unable to manage your own financial affairs, through a physical or mental incapacity, there is no-one with any legal authority to manage them for you, not even a close family member. So as a business owner, if you need wages to be paid; cheques to be signed or orders to be fulfilled, and you can't do it yourself, your business continuity is compromised.

If you lose capacity, and you do not have a Lasting Power of Attorney (LPA) then a Deputy will need to be appointed by the Court of Protection to enable your personal and business affairs to be managed. This can take many months to arrange and can also be a very costly and stressful exercise.

During this crucial time delay, at best, there is a risk that your business will continue without someone making key decisions and at worst, your business could have to simply cease trading. Should the Court appoint a Deputy to act on your behalf, you would not have control over who is appointed and they may have very different views to you as to how your business is run.

By having an LPA, however, you can avoid this situation and save time and stress for your business associates and your family.

What is an LPA?

An LPA is a legal document where one person gives another person or a number of persons (the attorney(s)) authority to make certain decisions on his or her behalf.

Types of LPAs

There are two types of LPAs:

- A property and financial affairs LPA, which allows your attorney authority to deal with your property and finances, as you specify, and can include your business affairs.
- A health and welfare LPA, which allows your attorney to make health and welfare care decisions on your behalf, only when you lack mental capacity

to do so yourself. This could also extend, if you wish, to giving or refusing consent to the continuation of life sustaining treatment.

If you run a business, you may wish to keep business matters separate from personal matters and make two property and financial LPAs – one dealing with your personal finances and one dealing with your business affairs. In this manner, you can also choose different people to deal with different aspects of your affairs, should you feel this is more appropriate for your circumstances.

Choosing Your Attorney

As with any power of attorney, it is an important document and you should take care whom you appoint, as they should be trustworthy and have the appropriate skills to make the proposed decisions. However, if you are appointing an attorney to look after your business affairs, they also need to be familiar with your business and be able to protect your interests and act in the best interests of the company. They will have considerable responsibility.

If you appoint more than one attorney, you can appoint them to always act together (jointly) or together and separately, if necessary (jointly and severally). You may even appoint them to act jointly for some things and jointly and severally for others, although this should only be done with advice, as it may cause problems when using the power.

You may also choose to appoint a successor to your attorney, in case they die or otherwise cannot act for you.

Choosing an Attorney for a Company Director

Depending on your company's Articles of Association, your attorney may also need to be acceptable to the other company directors. You may have to consider whether there are any restrictions imposed on you as to who could be appointed to act by your professional or regulatory body, as your chosen attorney may require the appropriate professional skills and qualifications to step into your role. For instance, an accountant would have to appoint another accountant to act on their behalf.

Does Your Company Trade Outside of the UK?

Many companies based outside the UK trading with UK companies are being advised by their legal advisors, as part of their due diligence process, that they should not enter into contracts with UK companies whose directors do not have valid LPAs in place. The non-UK company needs to be sure, when entering into contracts with UK companies, that those contracts are valid because the appropriate person has entered into those contracts.

As a Company Director, what else do I need to consider?

All directors should consider whether they wish to make an LPA to cover their business affairs if they lose capacity. It may be necessary to make changes to your company's Articles of Association to allow an individual director to delegate authority to another and allow an LPA to be put in place, so this will need to be agreed with your co-directors.

How We Can Help?

At Four Oaks Legal Services, we will guide you through the whole process from looking at your company Articles, to advise if they need to be changed, through to setting up an LPA for you to ensure you are protected, so that your business can keep working for you, no matter what happens.

For more information and advice, please contact Stuart McIntosh or Joanna Parkin on 0121 323 2070 or send an e-mail to joanna@fouroakslegalservices.com

