

Client Reference Number: **[Confidential]**

16 December 2021

Privileged & Confidential

By email to: **[Confidential]**

Dear **[Confidential]**,

Re: Your appointment with qLegal on 24 November 2021.

How we work

Thank you for attending your appointment with us and for using the services of qLegal at Queen Mary University of London. Although we cannot provide you with representation in any proceedings and do not hold ourselves out to be a firm of solicitors or patent attorneys, our advice is free and we aim to provide the same high standard of service expected in the practice of law. Please note that the legal advice provided is in relation to the laws of England and Wales only. If you require advice outside of this jurisdiction, please contact us.

Summary of the facts and documents you have provided

- **[Confidential]** (the 'Business') was established a year ago by you to provide **[Confidential]** courses to students. The mission of the Business is to help people find **[Confidential]**. The classes are currently held online on MS Teams and you wish to continue the same. The payment for the courses is done through PayPal business account or bank transfer. The Business does not have any intellectual property currently.
- You developed one course at the beginning and are currently teaching. You are also working as a **[Confidential]** and manage the Business along with it.
- Students are asking for more courses and classes leading to the need for the Business to expand. Your mother, who has been a teacher for 30 years, has been teaching some classes. About 35% to 40% of the proceeds from the classes taken by your mother are paid to her. Your wife also helps in doing some administrative work.
- The aim in the upcoming year is to appoint two more teachers and expand the activities of the Business. The expansion for a couple of years is limited to providing part time jobs of four to six hours to teachers. You intend to increase the marketing of the courses to secure more students in London.
- Your aim is to have a simple business structure, where you have full control over activities. You want minimum backend work. You have availability of four to five hours a week to do the backend work. You

are also comfortable in adopting one business structure at present and then potentially adopting another business structure in future.

- With reference to employees, you intend to pay them as per the sessions they take. You have also considered in the future paying instructors a percentage of profit if they are highly experienced.

Scope of our advice

Our advice details recommendations on what business structure should be adopted, as well as the reasons for each recommendation. The advice provided also includes the incorporation process.

Summary of advice

Having understood the Business' commercial needs, intentions and future goals we advise a private limited company structure to be adopted. This structure is the most advantageous to you and the Business as:

- It ensures limited liability for your personal finances and assets which should be protected if an issue were to arise with the Business' finances.
- Both would also benefit from a lower tax rate, meaning overall income provided by the Business could be greater.

However, you mentioned that you wish to pursue a straightforward process at the moment. We have thus outlined the pros and cons of maintaining a sole trader corporate structure. This structure is less time consuming, but it offers no personal protection and creates additional responsibilities for you.

Explanation

I. What is a sole trader corporate structure?

From our conversation, we have gathered that you are currently operating the Business as a sole trader. We have detailed the reasons for this and have included extra tasks you will need to carry out if you decide this structure is best suited to you.

Reasons why the Business currently operates as a sole trader:

- The individual is the business:* A sole trader business is owned by a single person, and this individual is in full control of every aspect of the business. During the interview, you mentioned you retain sole control and decision-making power over the direction of the Business. You also mentioned these were important factors you wished to maintain. Adopting this structure ensures you will have full decision-making authority, as you are essentially regarded as self-employed. Thus, you can run the Business as you wish. Additionally, this would ensure financial and business privacy for you and the Business.
- No registration requirement:* In running the Business, a sole trader corporate structure is established regardless of whether HMRC has been notified. Therefore, classifying the Business as a sole trader would be as simple as stating it is (*this is only true for certain businesses, please read on for a more detailed explanation*). However, there are certain considerations and several added responsibilities

you are required to carry out if you decide on the sole trader structure; as this structure is only beneficial to smaller business with smaller profits. The following details these considerations and tasks, the first part discusses the considerations and the next details the extra tasks.

Extra considerations you will need to be mindful of when establishing as a sole trader:

- iii. *The owner retains all the business' profits but remains personally liable for any loss suffered:* Therefore, the owner is directly responsible for any debt incurred by the business. Adopting this structure, you will have unlimited personal liability and although you will be entitled to all business profits, you will also be directly responsible for all business losses, business debt and relevant tax obligations.
- iv. *The Business' income is added to your consulting income for tax purposes:* Incorporating a sole trader business structure, you will be taxed on a combination of both income streams (the Business and your consultation work). You will also be required to make a National Insurance Contribution. Thus, as mentioned previously, you will be personally liable for any loss suffered; this includes tax liability on your entire income i.e. the profits of your Business, income from your consultant job as well as a National Insurance Contribution. As the Business is still small, the current tax structure is fine. However, as your Business grows you may find it useful to adopt a corporate structure which has a more efficient tax structure; such as the private limited company, where the two entities are taxed separately and with different rates.

More information can be found at: <https://www.gov.uk/income-tax-rates>, <https://www.gov.uk/self-employed-national-insurance-rates> and <https://www.gov.uk/self-assessment-ready-reckoner>.

- v. *The owner has flexibility to employ staff as they deem necessary:* You discussed your desire to employ more teachers in the future. This corporate structure enables you to do so only after you have registered as an employer with HMRC (more information at <https://www.gov.uk/register-employer>). However, as stated above, should any issues arise with that employee, you would be personally liable for any losses.

Extra tasks you will need to carry out when establishing as a sole trader:

- vi. It was previously stated that registering as a sole trader was not a requirement, this is true unless your profits from self-employment exceed £1,000. If the Business grows, as we hope it inevitably will, your profits will increase too. You will therefore need to begin the process of registering with the HMRC and thus register for self-assessment. All the steps required to register as a sole trader are set out below.

Step by step guide on how to register as a sole trader:

- i. Go through the government websites and information which is available, this includes:
 - <https://www.gov.uk/working-for-yourself>
 - <https://www.gov.uk/set-up-self-employed>

- <https://www.gov.uk/set-up-sole-trader>- steps summarised below.
- ii. Register for self-assessment online, this notifies HMRC that the Business will pay tax through self-assessment: <https://www.gov.uk/register-for-self-assessment/self-employed>.
- iii. As mentioned, you will have several additional responsibilities to carry out throughout the year. These include:
- Keeping records of the Business’ sales and expenses, which you must ensure are accurate and up to date.
 - Submitting a self-assessment tax return every tax year.
 - As stated above, as the Business’ income is added to all other personal income, you will need to pay Income Tax on the Business’ profits. You will also need to contribute a National Insurance Contribution.
- iv. If the Business’ turnover is over £85,000 you must register for VAT. More information can be found here: <https://www.gov.uk/vat-registration>.
- You do not need to register the name of the Business, you must simply include your name and the Business’ name on any official paperwork. However, there are specific rules for business names as follows:
 1. They should not include ‘limited’, ‘Ltd’, ‘limited liability partnership’, ‘LLP’, ‘public limited company’ or ‘plc’,
 2. They should not be offensive,
 3. They should not be the same as an existing trade mark, for more guidance: <https://www.gov.uk/search-for-trademark>.
 4. They cannot contain a ‘sensitive’ word or expression,
 5. They cannot suggest a connection with government or local authorities (unless permission to do so is granted by the relevant authorities). For more information and guidance: <https://www.gov.uk/government/publications/incorporation-and-names>.
 - If you wish to register the Business’ name as a trade mark, you can do so here: <https://www.gov.uk/how-to-register-a-trade-mark/apply>.

Summarising the advantages and disadvantages of the sole trader corporate structure:

Advantages	Disadvantages
Sole control and decision-making power.	Unlimited personal liability; particularly little opportunity to minimise tax liability as entire income is subject to income tax and national insurance contribution.
Extensive privacy that extends to all financial and business activity.	Minimum benefit if the Business expands, as liability grows while profits are reduced.
Minimal capital requirement.	Limited sources of capital as there is a lack of equity or debt investors; e.g. COVID-19 relief.
Easier to make structural changes; including seizing operations and closing down business.	Lack of continuity of the Business. No succession plan.

Can hire employees.	Can only be done once the Business is registered with the HMRC, you will also directly carry the burden of employee liability.
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What does this mean for the Business?

Overall, it is our view that the sole trader structure would be a viable short-term solution. You wish to adopt a structure with little administrative burden and this structure is relatively hassle free to set up. However, the disadvantages outweigh the advantages in the long-run as unlimited personal liability may be detrimental. Nonetheless, the extensive book-keeping duties of the owner of a sole trader business could be compared to the steps required to incorporate a more ‘complicated’ business structure such as a private limited company structure- detailed below. Therefore, you may find it more beneficial to spend a little more time setting up an alternative corporate structure that would ensure smoother future operations.

II. What is a private limited company structure?

We advise you to incorporate the Business as a private limited company (“PLC”) aligned with the mission of expanding the Business’ operations and reducing personal liability. The ownership of a PLC is divided into units known as shares held by shareholders, and these cannot be offered to the public. These shareholders own and manage the PLC.

The profits earned by the PLC are distributed amongst the shareholders in the form of dividends. In this case, the Business can be incorporated as a PLC and you can become the sole shareholder of the company. The table below provides a brief overview of advantages and disadvantages of PLC structure:

Advantages	Disadvantages
Owned by single shareholder or shareholders. You can retain control of Business activities and decisions. You can be sole shareholder and you can also allot some shares to your mother or anyone you wish.	Must be registered with the Registrar of Companies (Companies House – online).
Profits will be received by you in the form of dividends.	Audit and accountancy fees.
If further money was needed for the Business in the future, you could sell shares. It is relatively easy to do and you would not have to resort to personal assets to raise funds.	Additional administrative work and regulatory requirements like Companies House fillings.
The liability in case of loss is limited to the value of shares owned. This means that, in most instances, you can only ever lose the amount of money you put into the Business.	

You can keep your personal finances protected.	
The taxation rate is 19% and profits not taken as dividend are taxed at lower rate.	
No payment of national insurance on dividend.	

Below is detailed information on characteristics which could be advantageous to the Business:

- i. ***Taxation:*** A PLC is more tax efficient in comparison to a sole trader structure. If the profit of the Business is below £300,000, it will have to pay 19% corporation tax (<https://www.gov.uk/corporation-tax>). You could then utilise your maximum personal dividend allowance tax free per year (currently £2,000 per year). You will not be required to pay National Insurance Contribution if taking a dividend up to £2,000. You can also allot shares to family members to split profits and thereby minimise personal liability.
- ii. ***Separate legal entity:*** The PLC is separate from the person who owns or manages it. It can enter into contracts in its own name distinct from you as a director. The director of the PLC is the person entitled to manage and take majority decisions regarding the PLC. They can earn profits or own assets separately. The director (you) cannot be held liable for the debts of the Business. A PLC can be sued or sue in its own name, removing your personal liability. Therefore, as an example, if a student were to complain that you did not provide the course even though they paid you, they could sue the Business, but not you personally. In this worst-case scenario, a court could award the student a sum of money which would be collected from what is in the Business' bank account or what the Business owns. Your personal bank account and property cannot be touched. This would not be the case if you were a sole trader in this scenario.
- iii. ***Shares and shareholders:*** Shares can be issued at any value. They can be used further to raise additional capital (money) for the Business. Your mother can also own shares in the company thereby being entitled to receive profits through dividends.

You can manage the company and hold significant power over the operations of the company as director. You may own 100% shares in the company.

- iv. ***Separate Finances:*** The accounts of the PLC are maintained separately from yours. In this case, the annual accounts of the PLC will consist of business transactions done in the name of Business. The income earned by you will be accounted for separately.
- v. ***Assets and Profits:*** The PLC can secure assets in its own name. It also has the ability to retain profits after paying the required taxes.

How to incorporate and maintain a PLC?

- i. *Choose a name:* The Business is currently functioning under the name '[Confidential]'. The PLC can be incorporated under the same name after checking the availability of the name on <https://find-and-update.company-information.service.gov.uk/company-name-availability>. The name of a PLC cannot be same as name of another registered PLC. It should end with 'Limited' or 'Ltd'. It is also advisable to secure a trade mark for the Business' name, irrespective of the company structure.
- ii. *Choose a company director:* There must be minimum of one director of the PLC. There is no maximum limit to the number of directors. The director of the PLC is required to follow the PLC's rules, specified in articles of association (explained below). The director is required to keep a record of the company's activities, report changes and file the company's accounts along with tax returns. The director may seek assistance from an accountant or other professional to handle accounts and file tax returns. We recommend hiring an accountant to keep a record of the PLC income and expenses, including employee salaries.
- iii. *Register as an employer:* In the event of employing staff, the PLC will be required to pay salaries. Therefore, the PLC is required to register as an employer with HMRC. If you intend to take a salary from the business in place of a dividend, the PLC must be registered with HMRC.
- iv. *Decide shareholders and guarantors:* PLC's are limited by shares, i.e. they are owned by shareholders. Most PLC's issue 'ordinary shares.' These shares carry one vote per share on company decisions. The votes determine the percentage of influence shareholders can have on company decisions and activities. The PLC needs to prescribe about share of dividends, voting rights.

A company limited by shares is required to have a minimum of one shareholder who can also be the director. In this case, you can be the shareholder and director of the Business. This will enable you to have full ownership and control of the Business.

The shares can be created for any value, we recommend choosing a lower value of £ 1.00 to limit liability. This will enable the Business to be established at a minimal cost. The Business needs to specify the information about the number of shares and their value also known as 'statement of capital'. Therefore, the Business can issue 10 shares at £ 1 each and have a share capital of £10. You should hold all the shares at present to retain full control over the activities of the Business. In future, you may consider allotting some of the shares to your mother. It will entitle her to receive income from the profits of the Business and can vote on some Business decisions.

- v. *Identify People with significant control (PSC):* A shareholder with more than 25% shares or voting rights in the company can be a PSC. They are also known as 'beneficial owners.' In this case, you can be identified as a PSC. You would be required to register the following information:
 - Name
 - Date of birth
 - Nationality and country of residence

- Correspondence address - known as the 'service address'
 - Home address (this must not be disclosed)
 - The date they became a PSC of the company
 - The date you entered them into your PSC register
 - All natures of control which apply
- vi. *Prepare Memorandum and Articles of Association:* Both documents need to be agreed to at the time of registration.
- 'Memorandum of Association' is a document signed by initial shareholders who agree to form the PLC. The Memorandum gets created automatically when you register your company online.
 - The rules about the operation and management of the PLC agreed by shareholders and directors are known as 'articles of association'. The Business can use 'model articles limited by shares' as the articles for PLC. You can view the standard model articles at <https://www.gov.uk/guidance/model-articles-of-association-for-limited-companies>.
- vii. *Record keeping:* The PLC must keep the following records
- Company Records include:
 - Details of directors and shareholders
 - Transactions recording trade of shares
 - Loans and mortgages of the PLC
 - Register of PSC
 - Accounting Records include:
 - Income and expenditure of the PLC
 - Assets of the PLC
 - Debts the company owes or is owed
 - Other financial records and information required for filing tax return (<https://www.gov.uk/prepare-file-annual-accounts-for-limited-company>)
- viii. *Register the PLC:* The Business is required to register
- Official Address: This would be the registered office of the PLC and all the written communication will be sent to this address. This address should be a physical address in the UK. You may also use your accountant's address as registered address after obtaining their permission. You may use your address as the official address in the event of no physical office.
 - Obtaining SIC Code: This code is used to classify the activities of the PLC and determine the type of economic activity they are engaged in. "85590 'Other education n.e.c'" would be your SIC code.
 - Register PLC with Companies House: You will need at least three parts of information from the following about yourself and your shareholders:
 - Town of birth
 - Mother's maiden name

- Father's first name
- Telephone number
- National insurance number
- Passport number

The cost of registration is approximately £12 and it can be done online. You can visit <https://www.tax.service.gov.uk/register-your-company/setting-up-new-limited-company> to register the Business. A certificate of incorporation will be issued after you have successfully registered PLC.

What are the responsibilities after incorporation of PLC?

After successfully registering PLC, the Business needs to file following documents once a year with Companies House

- Annual accounts- <https://www.gov.uk/prepare-file-annual-accounts-for-limited-company>, <https://www.gov.uk/annual-accounts>
- Tax returns: <https://www.gov.uk/file-your-company-accounts-and-tax-return>
- Confirmation statement: <https://www.gov.uk/running-a-limited-company/company-annual-return>

To know more about registration of PLC and future compliances visit <https://www.gov.uk/government/organisations/companies-house>.

We are aware that the process of incorporation of PLC sounds complex but the protection and benefits provided by the company structure outweigh the cost. PLC filings are also comparatively easier as all the documents need to be submitted online.

III. A table comparing the two corporate structures

Key Points	Sole Trader	Limited Company (you are director and sole shareholder)
Nature of Entity	You are the Business.	The Business is separate legal entity.
Ownership and Management	You hold the ownership and management of Business.	You are sole shareholder and manager of Business activities.
Annual Filing	Self-Assessment Tax.	Corporation Tax.
Taxation	Tax on income from the Business as well as current employment. The individual has to file his own tax returns, which can be tedious process.	A potentially greater take home pay to the director (you) as can pay yourself via dividends, which are subject to a (currently) potentially lower tax rate and are not taxed under National Insurance. Complex accounting and taxation requirements.
Tax Rate	More tax as income increases	Fixed tax rate of 19%.

Liability	Personally responsible for all the debts and can lead to personal bankruptcy. Unlimited liability.	Business is responsible for debts so it would not lead to personal bankruptcy. Limited liability.
National Insurance	Class 2 and Class 4 National Insurance and income tax on profits.	No National Insurance contribution.
Borrowing	Can borrow from business bank account.	Limits to borrowing from company bank account.
Book of Accounts	Owner must keep records of Business's sales and expenses, for tax return.	Legally obliged to keep annual accounts through self or accountant.
Employees	Need to register with HMRC to pay salaries.	Need to register with HMRC to pay salaries.
Exit	Tedious to Exit.	Easier to exit by selling shares.

Next Steps

We advise you to pursue a PLC structure as it offers more protection and is potentially more suited to your Business' future needs and operations. We acknowledge the current benefits of operating as a sole trader but recommend you register with the HMRC, if you haven't already done so. Thus, you could temporarily establish the Business as a sole trader and then turn it into a PLC at a later stage.

We hope that the advice provides you with a comprehensive understanding of the legal questions you asked us to address. Should you require any assistance in any future matters, please do not hesitate to contact us.

We would be extremely grateful if you could take a few moments to complete this short form <https://qmul.onlinesurveys.ac.uk/client-feedback-on-qLegal-2021-22>, as your feedback is important to our educational development and the development of our services.

Yours sincerely,

[Confidential]
Student Adviser

[Confidential]
Student Adviser

On behalf of qLegal