SETTING UP IN BUSINESS

INTRODUCTION:

Businesses are set up to make a profit.

A business generates income by **selling products and/or services.**

To be able to sell products/services, the business must **incur expenses.** If the income exceeds the costs of the business, the business makes profit.

Companies House – the Registrar of Companies in the UK.

Considerations that determine the most suitable business media:

1. **Cost considerations:**
   - A proportion of the company's profit may be **given** to the business owners. The rest is **retained** by that business for growth.
   - The company will need to raise finance to: pay for set-up costs, develop and expand.
   - Businesses raise finance in four ways:
     - investment by the company's owners.
     - investment by outside investors.
     - Borrowing money – e.g. by way of a loan.
     - Retaining a proportion of the profits instead of distributing it to investors/owners (dividend).
2. **Mitigating or minimising risk:**
   Does the owner have personal liabilities for all debt?
3. **Structural considerations:**
   Business media should provide a clear organisational structure.

CHOICE OF BUSINESS MEDIA:

Sole trader:

An individual running a business on their own as an entrepreneur.

PROS	CONS
• Sole trader has **complete control** over how the business is run. • No formalities when setting up and **no setting up costs** nor ongoing expenses. • No publicity requirements, **easy to maintain privacy.**	• **Unlimited personal liability** • **No quick finance options.** Sole trader can get a bank loan but cannot create floating charges nor raise finance by share issue. • **Owner pays tax as an individual** (income tax and CGT) – may pay higher rates

Partnerships:

Two or more people running a business for profit together without incorporating a company. – **s.1(1) Partnership Act 1890**

PROS	CONS
• Partners may set out **how the partnership is run in the Partnership Agreement.** If no PA, the default provisions in the **PA 1890** step in. • **No setting up costs** nor ongoing expenses, however it is advisable to have a **PA** signed. • Easy to maintain privacy.	• **Unlimited personal liability. No separate legal identity.** Partners own property and enter into contracts jointly. • **No quick finance options.** Partners can borrow but cannot create floating charges nor issue shares. • **Partners pays tax as an individual** (income and CGT) – may pay higher rates

Limited Liability Partnerships (LLPs):

Two or more people running a business with the benefit of **limited liability** but without becoming a company.

PROS	CONS
• **Limited liability. Different types of partners** – General partners (unlimited liability) and Limited partners. • Partners may set out **how the LLP is run in the Partnership Agreement.** If no PA, the **LLPR 2000** default provisions step in. • **Low setting up costs.** However it is advisable to have a **PA** signed but must **incorporate the business** at Companies House. • **Good finance options.** Partners can borrow and create floating charges but cannot issue shares.	• **Ongoing expenses** as accounts must be prepared and a Confirmation Statement must be filed. • **Partners pays tax as an individual** (income and CGT) – may pay higher rates • Privacy is lost when the LLP is registered due to the disclosure requirements. • **If a loan is underwritten** by a member's personal guarantee, **limited liability is removed.**

Private companies limited by shares:

One or more people running a business under the **separate legal personality** of a company with the benefit of limited liability.

PROS	CONS
• **Limited liability. Separate legal personality** – The company may own property and enter into contracts in its own name. • The company can set out **its own procedures** (partially) in the articles. • **Cheap to register** online. • **Good finance options.** Company can borrow, create floating charges and issue shares. • The company **pays corporation tax** – may pay lower rates.	• **Higher ongoing expenses** due to the filing requirements and other regulations. • The company must follow the **CA 2006 decision-making procedures.** • Privacy is lost when the LLP is registered due to the disclosure requirements. • Cannot offer its shares to the public so **harder to find investors.**

Public companies:

A company that is able to offer its **shares to the public** and must comply with higher reporting requirements as a result.

s.755 CA 2006 Only public companies can offer shares to the public.

s.58(2) The name of public companies must end in 'Public Limited Company' or 'plc'.

Public companies must have:
- At least **1 Annual General Meeting** each year. – **s.336**
- At least **1 shareholder** – **ss.7(1) and s.8(1)**
- At least **2 directors** – **s.154(1)**
- At least **1 company secretary** – **s.273**
  s.273(3) The company secretary must have the requisite knowledge and experience and hold a relevant qualification.
- Share capital with **a nominal value of at least £50,000.** – **s.763**
  s.761(1)(2) Public companies cannot commence business until a **trading certificate** is issued by Registrar showing that the company allotted share capital is not less than the minimum.

Listed companies:

The company's **shares** will be **listed on the London Stock Exchange** to market the shares. The company may raise large amounts in funds this way.
The company must be a plc before listing, so private companies must be converted. All the **listings regulations** must be complied with before making an application.

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