

LIABILITY FOR BUSINESS DEBTS

Liability for business debts depends on the type of business and the way it is set up. To understand whether you are liable for debts incurred by a business you own (or are involved in), find out which type of business it is: sole trader, a partnership, or a limited company.

IF YOU'RE A SOLE TRADER

A sole trader is an individual who works for themselves, and has no business partners. However, they may have people working for them. Common examples of sole traders are: plumbers, electricians, tradesmen, taxi drivers, freelancers, etc. If you're a sole trader, you should be registered as such with HMRC for Income Tax and National Insurance purposes.

If you're a sole trader, you're personally liable for your business debts in exactly the same way as you are for your personal debts. This means you have to repay any business debts out of your own personal funds. If you can't repay these debts, your creditors could take action against you personally, and any assets you have (either personal or business assets) could be at risk. You could also be at risk of bankruptcy.

IF YOU'RE IN A PARTNERSHIP

When two or more people carry out a business together, this is known as a partnership. There will normally be a partnership agreement, prepared by a solicitor, which sets out each partner's share of the partnership. If there is no partnership agreement, any disputes or problems can be resolved via the Partnership Act (1890).

Regardless of how the partnership is divided up amongst the partners – equally or not – all the partners will be held jointly and severally liable by creditors for debts incurred by the partnership. This means the creditor can pursue both you and all the other partners for the full outstanding amount until they have received what's due to them, either from you or one of the other partners, or a combination of both.

Income tax is an important exception to joint and several liability. Each partner is only liable for tax on their share of the business profits. A partner is not responsible for another partner's income tax.

If you join an existing partnership, you won't normally be liable for any debts incurred by the partnership before you joined, unless the partnership agreement says something different.

If you leave a partnership, you will remain liable for any debts incurred by the partnership before you left, and you may also be liable for any debts incurred after your departure too.

If you're a 'silent' or 'sleeping' partner in a partnership (meaning you don't play any part in the day-to-day running of the business), you will still normally be held jointly and severally liable by creditors for debts incurred by the partnership.

IF YOU'RE IN A LIMITED COMPANY

A limited company is a separate legal entity which exists independently of the people involved in it (including the owners/shareholders/directors). It will be registered as a limited company at Companies House. A limited company has its own set of accounts, can own things itself, can borrow money, and can be sued in its own name. It is therefore liable for repaying all its own debts.

NOTE: CREDIT OR LOANS TAKEN OUT BY A LIMITED COMPANY CAN'T BE REGULATED UNDER THE CONSUMER CREDIT ACT.

This means that the owners, shareholders and directors of a limited company can't be held personally responsible for any debts incurred by the limited company – unless they have agreed to act as a guarantor, or they have acted fraudulently and the limited company has been liquidated.

If an owner, shareholder or director has personally guaranteed a debt (acting as a guarantor), and the limited company can't repay the debt, the guarantor will be liable to repay this, and it will be treated like any other personal unsecured debt.

For further information on Business Debts, please contact your local **Citizens Advice Bureau (CAB)**.