Bribery Act 2010

The Bribery Act 2010 (the Act) applies across the UK and all businesses need to be aware of its requirements which came into effect on 1 July 2011.

The Act introduced a new 'corporate' offence of 'failure of commercial organisations to prevent bribery'. The defence against this offence is to ensure that your business has adequate procedures in place to prevent bribery. To help ensure this we recommend that, once you are familiar with the requirements of the new Act, you undertake a risk assessment for your own business and establish appropriate compliance procedures.

What action should you take?

- familiarise yourself with the guidance issued by the Ministry of Justice
- review the current activities of your business and assess the risk of bribery occurring
- assess the strength of the measures that you currently have in place to prevent bribery
- make any necessary updates to your staff handbooks, for example, your human resources manual
- consider whether specific anti-bribery staff training is required
- consider if changes are needed to other policies and procedures, for example, expenditure approval and monitoring processes
- communicate the changes that you have made to your policies and procedures
- consider if you need to undertake any due diligence procedures.

The Bribery Act 2010

The Act replaces, updates and extends the existing UK law against bribery and corruption. It applies across the UK and all UK businesses and overseas businesses carrying on activities in the UK are affected.

The offences established by the Act are defined very broadly and the Act has significant extra-territorial reach in that it extends to acts or omissions which occur outside of the United Kingdom. Specific details about its jurisdiction can be found in the detailed guidance referred to under 'Ministry of Justice guidance' below, as well as in the Act itself.

What is bribery?

Bribery is a broad concept. In supplementary guidance published alongside the Act, it is very generally defined as 'giving someone a financial or other advantage to encourage that person to perform their functions or activities improperly or to reward that person for having already done so. So this could cover seeking to influence a decision-maker by giving some kind of extra benefit to that decision-maker rather than by what can legitimately be offered as part of a tender process.'

The key offences

Under the new Act there are two general offences:

1. **Active Bribery** – Section 1 of the Act prohibits offering, promising or giving a financial or other advantage (a bribe) to a person with the intention of influencing a person to perform their duty improperly.
2. **Passive Bribery** – Section 2 of the Act prohibits a person from requesting, agreeing to receive or accepting a bribe for a function or activity to be performed improperly.

In addition, there are two further offences that specifically address commercial bribery:

3. **Bribery of foreign public officials (FPO)** – Section 6 of the Act prohibits bribery of an FPO with the intention of influencing them in their official capacity and obtaining or retaining business or an advantage in the conduct of business.
4. **Failure of commercial organisations to prevent bribery** – Section 7 of the Act introduces a new strict liability offence that will be committed if:

- bribery is committed by a person associated with a relevant commercial organisation
- the person intends to secure a business advantage for the organisation
- the bribery is either an active offence (section 1 of the Act) or bribery of an FPO (section 6 of the Act).

This means that a commercial organisation commits an offence if a person associated with it bribes another person for that organisation's benefit. This new 'corporate' offence is the most significant and controversial change to existing law and it is primarily this new offence that you must now consider and prepare your business for as necessary.

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It is important to note however, that the Act also states that there is a defence available for commercial organisations against failing to prevent bribery if they have put in place 'adequate procedures' designed to prevent persons associated with them from bribing others on their behalf. The Secretary of State is required by the Act to publish guidance about such procedures.

Senior officers of an organisation can also be held personally liable under the Act for other bribery offences committed by the organisation, ie the active and passive bribery offences as well as the bribery of an FPO, where the offence is proved to have been committed with their 'consent or connivance'.

'Senior officer' is widely defined in the Act to include directors, managers, company secretaries and other similar officers, as well as those purporting to act in such a capacity.

Key definitions and terminology

Inevitably, in order to fully understand the requirements of the new Act it is necessary to be familiar with a number of key definitions.

Relevant commercial organisation

The new corporate offence can be committed by a 'relevant commercial organisation', which broadly includes:

- any body which carries on a business and is incorporated under, or is a partnership which is formed under, any UK law, regardless of where it carries on business
- any body corporate or partnership, wherever it is incorporated or formed, which carries on business in the UK.

We will refer to those affected by this corporate offence as 'businesses'.

Persons associated

The new corporate offence also refers to a person 'associated' with a commercial organisation. While there is a not an absolute list of all who could be included, we are told that this is a person who performs services for, or on behalf of, the organisation, regardless of the capacity in which they do so.

Accordingly, this term will be construed broadly and while examples are given of an employee, agent or subsidiary, it could also cover intermediaries, joint venture partners, distributors, contractors and suppliers.

Guidance issued by the Ministry of Justice (see below) acknowledges that the scope of 'persons associated' is broad and states that this is so as to 'embrace the whole range of persons connected to an organisation who might be capable of committing bribery' on its behalf.

Improper performance

The passive and active bribery offences both refer to the 'improper performance' of a function or activity. 'Improper performance' covers any act or omission that breaches an expectation that a person will act in good faith, impartially, or in accordance with a position of trust. This is an objective test based on what a reasonable person in the UK would expect in relation to the performance of the relevant activity.

Ministry of Justice guidance

The Act requires the Secretary of State to publish guidance for commercial organisations about procedures that they can put in place to prevent persons associated with them from bribing. This is important guidance in respect of providing a defence against the new 'corporate offence'.

The Ministry of Justice (MoJ) has issued the following formal, statutory guidance:

- The Bribery Act 2010 – Guidance about procedures which relevant commercial organisations can put into place to prevent persons associated with them from bribing (section 9 of the Bribery Act 2010).
- It has also produced non-statutory guidance for small businesses, providing a concise introduction to how they can meet the requirements of the new Act:
- The Bribery Act 2010 – Quick start guide.
- Whilst the guidance is not prescriptive and does not set out an absolute checklist of requirements for businesses to follow, it does aim to clarify the practical requirements of the new legislation. Illustrative case studies, which do not form part of the guidance issued under section 9 of the Act, are also included.

The guidance was published on 30 March 2011. Copies can be found on the 'Guidance' section on the MoJ website at www.justice.gov.uk

Defending your business against failing to prevent bribery

As you can see from the new legislation, all businesses will need to pay some attention to the new corporate offence of failing to prevent bribery. How much you will have to do will depend on the bribery risks facing your business.

If a business can show that it had 'adequate procedures' in place to prevent bribery then it will have a full defence against the corporate offence. The meaning of 'adequate procedures' is not defined in the Act and it is here that the MoJ guidance should be considered.

The guidance requires procedures to be tailored to the individual circumstances of a business, based on an assessment of where the risks lie. Therefore, what counts as 'adequate' will depend on the bribery risks faced by a business and its nature, size and complexity.

The MoJ guidance does recognise that the Act is not there to impose the 'full force' of criminal law upon well run businesses for an isolated incident of bribery. It also recognises that no business is capable of preventing bribery at all times. The 'quick start' guidance for smaller businesses comments that 'a small or medium-sized business which faces minimal bribery risks will require relatively minimal procedures to mitigate those risks'.

How should you begin to determine the approach needed in your business? The MoJ guidance identifies six guiding principles for businesses wishing to prevent bribery from being committed on their behalf (see the panel below). These principles are not, however, prescriptive

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The six principles that should guide anti-bribery procedures

1. **Proportionate procedures:** A commercial organisation's procedures to prevent bribery by persons associated with it are proportionate to the bribery risks it faces and to the nature, scale and complexity of the commercial organisation's activities. They are also clear, practical, accessible, effectively implemented and enforced.

2. **Top-level commitment:** The top-level management of a commercial organisation (be it a board of directors, the owners or any other equivalent body or person) are committed to preventing bribery by persons associated with it. They foster a culture within the organisation in which bribery is never acceptable.

3. **Risk assessment:** The commercial organisation assesses the nature and extent of its exposure to potential external and internal risks of bribery on its behalf by persons associated with it. The assessment is periodic, informed and documented.

4. **Due diligence:** The commercial organisation applies due diligence procedures, taking a proportionate and risk based approach, in respect of persons who perform or will perform services for or on behalf of the organisation, in order to mitigate identified bribery risks.

5. **Communication (including training):** The commercial organisation seeks to ensure that its bribery prevention policies and procedures are embedded and understood throughout the organisation through internal and external communication, including training, that is proportionate to the risks it faces.

6. **Monitoring and review:** The commercial organisation monitors and reviews procedures designed to prevent bribery by persons associated with it and makes improvements where necessary.

Other important matters

Corporate hospitality

A potential area of concern under the new Act is the provision and receipt of corporate hospitality, promotional and other such business expenditure and how this might be perceived. While this may not be a significant issue for your business, especially when you consider your own level of such expenditure, it may be an important consideration for others.

The MoJ guidance states 'Bona fide hospitality and promotional, or other business expenditure which seeks to improve the image of a commercial organisation, better to present products and services, or establish cordial relations, is recognised as an established and important part of doing business and it is not the intention of the Act to criminalise such behaviour. The Government does not intend for the Act to prohibit reasonable and proportionate hospitality and promotional or other similar business expenditure intended for these purposes.'

The guidance goes on to say 'It is, however, clear that hospitality and promotional or other similar business expenditure can be employed as bribes.'

Facilitation payments

Facilitation payments, which are payments to induce officials to perform routine functions they are otherwise obligated to perform, are bribes and are therefore illegal under the new Act.

Penalties

The penalties associated with the Act are significant. On conviction for one of the main bribery offences, an individual may face up to ten years' imprisonment and/or an unlimited fine. A business faces an unlimited fine.

The senior officers of a business could also be liable to a prison sentence if bribery was perpetrated with their 'consent or connivance'. Disqualification from acting as a director for a substantial period of time could also arise.

Conclusion

The steps to be taken to prevent bribery will clearly vary from business to business and not all businesses will need to put in place complex procedures to deal with the requirements of the new legislation. The supporting guidance issued by the MoJ emphasises the need for a common sense approach.

A key point noted in 'quick start' guidance is that 'there is a full defence if you can show you had adequate procedures in place to prevent bribery. But you do not need to put bribery prevention procedures in place if there is no risk of bribery on your behalf.'

How can we help

We believe the above summary above will help you understand the implications of the Bribery Act 2010. If you would like to discuss the implications of the new Act for you and your business in more detail please contact us.

Company Secretarial Duties

Company legislation provides an opportunity for a business organisation to benefit from the protection of limited liability, separating the legal persona of the organisation from the individuals who own it.

In return for this protection a certain amount of information about a company must be publicly available including, for example, the company's annual accounts, registered office address and details of directors, company secretary (if there is one) and members. Historically, providing and updating this information has been the job of the company secretary.

Do all companies need a company secretary?

There is no longer a requirement for all companies to appoint a company secretary. Private companies (whose name ends in ltd) do not generally need to appoint a company secretary to deal with this paperwork, unless they either wish to do so or their Articles of Association (their governing document) requires them to do so.

Public limited companies (whose name ends in plc) must still have a company secretary who must have specialist, up to date knowledge of company law.

The company secretary is an officer of the company. This means that they may be criminally liable for company defaults, for example, failing to file a document in the time allowed or to submit the company's annual return.

If your private company does not want to have a company secretary

If a private company decides not to have a company secretary then it should check its Articles of Association to ensure that its own regulations do not require it to appoint one. The company should inform Companies House of the resignation of any existing company secretary.

Where a private company chooses not to have a company secretary, any item that would normally be sent to the company secretary is treated as being sent to the company. Any duties which would normally be the responsibility of the company secretary will be carried out either by a director or a person authorised by the directors.

The company secretary and Companies House

A company secretary, or in the case of a private company the person responsible for company secretarial duties, will have regular dealings with Companies House as this is where public records about the company are held.

Most communications with Companies House nowadays will be online using a computer package or through the Companies House dedicated website. Companies House is hoping to move towards 100% online filing.

Company secretarial duties

The duties of the person responsible for company secretarial matters are not defined specifically within company law but may be divided generally into three main areas:

- maintaining statutory registers (keeping the company's records up to date)
- completing and filing statutory forms (keeping the public record up to date)
- meetings and resolutions (making sure the company abides by both its internal regulations and the law).

Maintaining statutory registers

All companies must maintain up to date registers of key details, these include:

- a register of members
- a register of directors
- a register of charges.

The details in these registers include, for example, names, addresses, dates of appointment and resignation (for directors) and for members, the number and type of shares held. This is not an exhaustive list.

These registers must be made available for inspection by the general public at the company's registered office or at a single alternative inspection location (SAIL) which must also be recorded at Companies House.

A company may choose to keep its directors' residential addresses private and to record a service address for them. If so it will need to keep an additional register showing the directors' residential addresses which is not open to inspection by the general public.

Completing and filing statutory forms

The company must ensure that their record at Companies House is always up to date and contains current details of various statutory matters.

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Many of the more common types of information can be submitted on line by first registering at www.companieshouse.gov.uk. Alternatively Companies House currently has a series of over 200 statutory forms to allow paper filing.

The company secretarial duties would extend to ensuring that, for example:

- the company's annual accounts are filed on time at Companies House. For a private limited company, under normal circumstances, this must be within 9 months of the end of the accounting year. A fine will be levied if the accounts are late.
- the company's annual return is completed and filed. This is a snapshot of the information held by the Registrar of Companies about the company, which must be checked and amended if necessary within 28 days of a given due date. If this information is returned late or not returned at all, the company, director(s) and secretary (if appointed) may be prosecuted.
- all changes to the way the company is organised are notified to Companies House. The most common changes might include:
  - changes in directors, secretaries and their particulars
  - a change of accounting reference date
  - a change of registered office
  - allotments of shares.
- the current version of the company's Articles of Association is filed whenever a change in the company's internal rules is made.

Often this information must be filed at Companies House within a specified period of between 14 to 28 days following the change.

Charges

When a company gives security for a loan either the lender or borrower should notify Companies House within 21 days, by filling in the appropriate form and paying the statutory charge. Without timely registration the charge will be void – that is, the loan will still be repayable but the security given will not be valid. This does not apply to property acquired which is subject to a charge.

Good company secretarial practice ensures that any charges created are registered and indeed the company's credit profile is protected by removing the charge from the register as soon as the loan is repaid.

Meetings and resolutions

Company law sets out procedures for conducting certain aspects of company business through formal meetings where resolutions will be passed. When resolutions are passed, the company is bound by them (a resolution is an agreement or a decision taken by the members).

Here the company secretarial role would be to ensure that proper notice of meetings is given to those who are entitled to attend, to minute the proceedings and to ensure that copies of resolutions which affect the way the company is run are sent to Companies House within the relevant time frame.

Notice of company meetings

Members and auditors are entitled to notice of company meetings. For a private limited company a general meeting notice of at least 14 days is needed. Notice can be in writing, by email or by means of a website (if certain conditions are met). However, a private company is no longer required to hold an Annual General Meeting (AGM), unless the company's Articles of Association make express provisions for holding AGMs.

If an existing company with an existing express provision for an AGM wishes to abolish this requirement, it will need to change its articles by special resolution.

Resolutions

There are two types of resolution that may be passed, ordinary resolutions (passed by a simple majority of the members) or special resolutions (passed by a 75% majority of the members). In general, resolutions will be voted on by any members present at a meeting.

Private companies can take most decisions by written resolution. Such a resolution does not require a hard copy and can be passed by email. These resolutions however, need to be passed by a majority of all members of the company, not just by those who return the voting form!

It is important that companies retain copies of all important decisions taken in the management of the company where they are taken at a meeting or by written resolution. Where these decisions change the way a company is run, a copy needs to be filed at Companies House.

Keeping your public record safe

Companies House has recently reported increasing levels of fraudulent filing of information. A favourite ploy is to change the company's registered office by submitting the appropriate form to Companies House. Once this has been accepted, the fraudsters can change directors or file false accounts without the company having any idea that they have been hijacked! They can then buy goods or obtain credit based on this false information.

Companies House is keen that companies file their information online. This can be a very secure method, particularly if the company signs up for the enhanced security arrangements offered by their PROOF (protected online filing) system, which prevents the paper filing of certain forms.

How we can help

If you would like to discuss any of the issues raised above please do contact us. We are able to provide comprehensive assistance with company secretarial matters such as:

- the maintenance and safekeeping of the company registers
- the processing and filing of minutes
- the preparation and filing of resolutions
- the completion and filing of statutory forms
- the filing of the annual accounts
- filing online.

Even though the need to appoint a company secretary in a private company has been abolished, there are a number of statutory procedures that companies must continue to comply with. We would be pleased to discuss these with you.

Directors' Responsibilities

The position of director brings both rewards and responsibilities upon an individual.

Whether you are appointed to the Board of the company you work for or you are involved in establishing a new business and take on the role of director you will feel a sense of achievement.

However the office of director should not be accepted lightly. It carries with it a number of duties and responsibilities. We summarise these complex provisions below.

Companies

You can undertake business in the UK as either:

- an unincorporated entity, ie a sole trader or a partnership or
- an incorporated body.

An incorporated business is normally referred to as a company. Although there are limited liability partnerships and unlimited companies the vast majority of companies are limited by shares. This means the liability of shareholders is limited to the value of their share capital (including any unpaid).

A limited company can be a private or public company. A public company must include 'public' or 'plc' in its name and can offer shares to the public.

The responsibilities and penalties for non compliance of duties are more onerous if you are a director of a public company.

Directors

When you are appointed a director of a company you become an officer with extensive legal responsibilities. For a director of an incorporated body, the Companies Act 2006 sets out a statement of your general duties. This statement codifies the existing 'common law' rules and equitable principles relating to the obligations of company directors that have developed over time. Common law had focused on the interests of shareholders. The Companies Act 2006 highlights the connection between what constitutes the good of your company and a consideration of its wider corporate social responsibilities.

The legislation requires that directors act in the interests of their company and not in the interests of any other parties (including shareholders). Even sole director/shareholder companies must consider the implications by not putting their own interests above those of the company.

The aim of the codification of directors' duties in the Companies Act 2006 is to make the law more consistent and accessible.

The Act outlines seven statutory directors' duties, which also need to be considered for shadow directors. These are detailed below.

Duty to act within their powers

As a company director, you must act only in accordance with the company's constitution, and must only exercise your powers for the purposes for which they were conferred.

Duty to promote the success of the company

You must act in such a way that you feel would be most likely to promote the success of the company (ie. its long-term increase in value), for the benefit of its members as a whole. This is often called the 'enlightened shareholder value' duty. However, you must also consider a number of other factors, including:

- the likely long-term consequences of any decision
- the interests of company employees
- fostering the company's business relationships with suppliers, customers and others
- the impact of operations on the community and environment
- maintaining a reputation for high standards of business conduct
- the need to act fairly as between members of the company.

Duty to exercise independent judgment

You have an obligation to exercise independent judgment. This duty is not infringed by acting in accordance with an agreement entered into by the company which restricts the future exercise of discretion by its directors, or by acting in a way which is authorised by the company's constitution.

Duty to exercise reasonable care, skill and diligence

This duty codifies the common law rule of duty of care and skill, and imposes both 'subjective' and 'objective' standards. You must exercise reasonable care, skill and diligence using your own general knowledge, skill and experience (subjective), together with the care, skill and diligence which may reasonably be expected of a person who is carrying out the functions of a director (objective). So a director with significant experience must exercise the appropriate level of diligence in executing their duties, in line with their higher level of expertise.

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Duty to avoid conflicts of interest

This dictates that, as a director, you must avoid a situation in which you have, or may have, a direct or indirect interest which conflicts, or could conflict, with the interests of the company.

This duty applies in particular to a transaction entered into between you and a third party, in relation to the exploitation of any property, information or opportunity. It does not apply to a conflict of interest which arises in relation to a transaction or arrangement with the company itself.

This clarifies the previous conflict of interest provisions, and makes it easier for directors to enter into transactions with third parties by allowing directors not subject to any conflict on the board to authorise them, as long as certain requirements are met.

Duty not to accept benefits from third parties

Building on the established principle that you must not make a secret profit as a result of being a director, this duty states that you must not accept any benefit from a third party (whether monetary or otherwise) which has been conferred because of the fact that you are a director, or as a consequence of taking, or not taking, a particular action as a director.

This duty applies unless the acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.

Duty to declare interest in a proposed transaction or arrangement

Any company director who has either a direct or an indirect interest in a proposed transaction or arrangement with the company must declare the 'nature and extent' of that interest to the other directors, before the company enters into the transaction or arrangement. A further declaration is required if this information later proves to be, or becomes either incomplete or inaccurate.

The requirement to make a disclosure also applies where directors 'ought reasonably to be aware' of any such conflicting interest.

However, the requirement does not apply where the interest cannot reasonably be regarded as likely to give rise to a conflict of interest, or where other directors are already aware (or 'ought reasonably to be aware') of the interest.

Enforcement and penalties

The Companies Act states that they will be enforced in the same way as the Common Law, although under Company Law. As a result there are no penalties in the Companies Act 2006 for failing to undertake the above duties correctly.

Enforcement is via an action against the director for breach of duty. Currently such an action can only be brought by:

- the company itself (ie the Board or the members in general meeting) deciding to commence proceedings; or
- a liquidator when the company is in liquidation
- an individual shareholder can take action against a director for breach of duty. This is known as a derivative action and can be taken for any act of omission (involving negligence), default or breach of duty or trust.

Where the company is controlled by the directors these actions are unlikely.

How we can help

You will now be aware that the position of director must not be accepted lightly.

- the law is designed to penalise those who act irresponsibly or incompetently.
- a director who acts honestly and conscientiously should have nothing to fear.

We can provide the professional advice you need to ensure you are in the latter category.

Please contact us if you would like more information.

Fraud and How to Spot It - Ten Step Guide

Major corporate frauds and collapses hit the headlines from time to time and many of these were high profile and the amounts involved quite spectacular.

With the current pressures we are still facing from the economic slowdown, difficulties in renewing finance, the challenge of achieving targets, even simply paying suppliers bills and it becomes easy to see that the risk of fraud for all sizes of businesses has increased significantly.

The issues associated with well publicised frauds may seem far removed from your business but the simple truth is that fraud can affect businesses of all sizes. Whether you employ a small team or a significant workforce, this factsheet considers how you can increase your awareness of the factors that indicate fraud. It also sets out the defences that you can implement to minimise the risk within your business.

It couldn't happen here

It is easy to think that fraud is something that 'couldn't or wouldn't happen here'. However while large businesses have the resources to implement what they hope are effective systems of internal control to prevent fraud, smaller and medium-sized businesses often have to rely on a small team of people who they trust. No doubt you can think of a handful of key employees who you couldn't imagine being without! On so many occasions employers have said "do you know he/she (the fraudster) was my most trusted employee".

A key difficulty faced by smaller businesses is the lack of options to segregate duties. Individuals have to fulfil a number of roles and this can lead to increased opportunity and scope to commit fraud, and for some, the temptation can be too great.

Areas where fraud can occur

While the precise nature of any fraud will be specific to the nature of the business and the opportunities afforded to a potential fraudster, there are a number of common areas where fraud can occur.

Employees abusing their position

Most fraud impacts on the profit and loss account, where either expenses are overstated or income understated. Frauds here could range from a few pounds of fiddled expenses, where no one checks supporting documentation or reviews whether the claim made is reasonable, to more significant frauds. These could involve the setting up of fictitious suppliers and the production of bogus invoices, or an employee who approves purchases working in collusion with a supplier.

Positions could also be abused where a business requests tenders. Here there is a risk of 'kickbacks' where the individuals involved in the tender process accept bribes or sweeteners from potential suppliers. This could result in inefficient contracts being signed perhaps for dubious quality goods.

The individual amounts involved in these types of fraud may not be large, so they go unnoticed for some time. However as time progresses the amounts involved can become significant. Many fraudsters gain in confidence and the figures involved escalate as they become 'greedy'. Of course large scale frauds are more likely to be discovered and greed often plays a part in the identification and capture of fraudsters.

Nevertheless the time taken to detect fraud is vital. It may make all the difference to cashflow as fraud drains a business of resources that it needs to grow.

Suppliers taking advantage

Where a business has few or weak checking procedures and controls, a supplier may recognise this fact and take advantage. For example fewer items may actually be delivered than those included on the delivery note. Invoices may include higher quantities or prices than those delivered and agreed.

This highlights the importance of checking both delivery notes and invoices and following up any discrepancies promptly.

Other risk areas

Theft of confidential information such as client or customer lists or intellectual property such as an industrial process could cause a business untold problems if these are stolen by disgruntled employees. There have even been examples of these being copied onto an iPod!

Information could also be vulnerable to attack from outside. Advances in technological developments mean that all businesses connected to the internet need to consider the risks associated with this. The same advances in technology sometimes lead us to believe that the computer is always right, so fewer manual checks are completed generally within the organisation as a result.

Certain types of organisation are at greater risk of fraud, for example those that are cash based can be more vulnerable due to the difficulties in implementing effective controls over cash. Similarly businesses that deal in attractive consumer goods are at increased risk.

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You might think that this could never happen to you but if your trusted bookkeeper presents you with an invoice and a cheque to sign, just how hard do you look at the invoice? The amount might be relatively small and is of course supported by an invoice. You have to sign the cheque in a hurry as you won't be in tomorrow and it's 5.15pm. Your bookkeeper will fill the payee line in before the cheque is sent out.

Ultimately, your year end figures just don't look quite right and subsequent investigations identify missing invoices and eventually, that the bookkeeper has been making these cheques payable to himself.

Sporting life!

Stock controls were put to the test in the sportswear and equipment business that showed up too many discrepancies between computerised stock and that actually counted at the year end. The differences could not be explained and eventually surveillance was used to monitor the warehouse.

Revealing footage showed the cleaners adding various bats, balls and kit to the bin bags full of rubbish removed each evening!

Businesses that are growing rapidly may also be more susceptible to fraud. When both company resources and directors personally are stretched to capacity, it is even more difficult to maintain an overview. Indicators of fraud may go unnoticed.

Does anyone know where Sid is?

Imagine the surprise a director of a local manufacturing company had when he handed out the payslips to his workforce and two were left over! His financial controller, who had never missed handing these out previously, had been taken ill and could not come into work. Subsequent investigations revealed that for some time, this much trusted staff member had created fictitious employees and had been paying the wages into his own bank account.

Ten step guide to preventing and detecting fraud

Given the wide range of fraud that could be committed, what steps can you take to minimise the risk of fraud being perpetrated within your organisation? Consider our top ten tips for detecting and preventing fraud.

1. Begin by recruiting the right people to work in your organisation. Make sure that you check out references properly and ensure that any temporary staff are also vetted, particularly if they are to work in key areas.

2. Ensure that you have a clear policy that fraud will not be tolerated within the organisation and ensure that this is communicated to all staff.

3. Consider which areas of your organisation could be at risk, then plan and implement appropriate defences. Target the areas where most of your revenue comes from and where most of your costs lie. Develop some simple systems of internal control to defend these areas. Effective controls include:

    - segregating duties
    - supervision and review
    - arithmetical checks
    - accounting comparisons
    - authorisation and approval
    - physical controls and counts

4. Wherever possible don't have only one person who is responsible for controlling an entire area of the business.

    This in particular includes the accounting function but will also include other key areas. For example ordering goods, stock control and despatch in a business where stocks include attractive consumer goods.

5. Always retain a degree of control over the key accounting functions of your business. Don't pre-sign blank cheques other than in exceptional circumstances and ensure that the corresponding invoices are presented with the cheques.

6. Be on the lookout for unusual requests from staff involved in the accounting function.

7. Watch out for employees who are overly protective of their role - they may have something to hide. Similarly watch out for disaffected employees, who might be bearing a grudge or those whose circumstances change for the worse or inexplicably for the better!

8. Watch out for notable changes in cashflow when an employee is away from the office, on holiday for example. Similarly be aware of employees who never take their holiday. These could both be indicators of fraud, something we see when we look back retrospectively.

9. Prepare budgets and monthly management accounts and compare these against your actual results so that you are aware of variances. Taking prompt investigative action where variances arise could make all the difference by closing the window of opportunity afforded to fraudsters.

10. Where a fraudster is caught, make sure that appropriate action is taken and learn from the experience.

Winning the battle against fraud

While the most devious of fraudsters might go unnoticed for some time, many fraudsters are ordinary individuals who see an opportunity. The frauds that they commit are quite simple in nature.

The implementation of some simple checks within a business can make it much more difficult for a fraudster to take advantage. The results could be startling - preventing a fraud of £100 each week equates to around £5,000 leaving a business over a year. Operating at a 20% margin would mean generating £25,000 of turnover to compensate for this.

How we can help

If you would like to discuss any of the issues raised in this factsheet please do contact us.

Grants

Ensuring adequate finance is a fact of life if you run a business. Whether you are looking to expand, undertake a specific project or simply fund your day to day purchases, finance is essential.

Obtaining finance is not always easy especially if yours is a small business and particularly if it is a recent start-up. Borrowing may be difficult due to lack of security.

A grant may be the answer.

What is a grant?

A grant is a sum of money awarded, by the government or other organisation, for a specific project or purpose. Normally it will cover only some of the costs (typically between 15% and 50%); the business will need to fund the balance. Their availability is limited and competition for the funds can be quite intense. One of the main features of a grant is that the money generally becomes repayable if the terms and conditions of the grant are not met.

This sounds quite simple in principle. However, in practice, it can be somewhat daunting because of the huge number of different schemes in operation and the fact that schemes are constantly changing. Government grants are distributed through a variety of ministries, departments and agencies both on a national and local basis. They are usually for proposed projects only, so ensure you have not already started the project otherwise you may not be entitled to the grant.

The following websites may help with initial research into grant availability:

https://www.gov.uk/business-finance-explained/grants

https://www.gov.uk/business-finance-support-finder

The European Union is also a provider of funds, mainly through the European Commission which administers a large number of schemes.

http://ec.europa.eu/contracts_grants/grants_en.htm

Grants can also be received through Local Enterprise Partnerships (LEPs), local authorities and charitable organisations.

Is my business eligible?

Many of the available schemes are open to all without restriction. Eligibility for others will generally depend upon a number of factors:

- geographical location of the business - for example some schemes are targeted in areas of social deprivation or high unemployment
- size of business - for example some schemes are restricted to small or medium sized businesses – such as those businesses with fewer than 250 employees
- industry or sector in which the business operates - for example some schemes aim to tackle particular problems or issues affecting an industry sector - these are generally defined by the European Commission
- purpose of the grant - grants are often awarded for specific purposes - for example purchasing a new machine or increasing employment. Grant bodies often seek specific targets which are often in line with their own objectives.

Applying for a grant

Before applying

Initial research is essential so that you know what's on offer.

It is also necessary to ensure that you:

- have funds available to 'match' any grant that may be awarded (where this is a condition of the grant)
- need the money for a specific 'project' or purpose
- have a business plan
- do not start work on the project before the award is confirmed.

Making the application

It is a good idea, if possible, to make personal contact with an individual involved in administering your chosen scheme. This will give you a feel for whether it is worthwhile proceeding before you spend too much time on a detailed application. You may also be able to get some help and advice on making the application.

It is also a good idea where you can to apply as soon as possible after launch of the scheme. Many grant schemes run for a limited period of time; there will be more money available at an early stage and the administrators will be keen to receive applications and make awards.

The application itself should focus on the project for which you are claiming a grant. It should include an explanation of the potential benefits of the project as well as a detailed plan with costings. You should ensure that your application matches the objectives of the scheme. You will almost certainly need to submit a business plan as part of the application. It is important to show that the project is dependent on grant funds to proceed and that you have matching funds available.

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Hearing back

This can take anything from a few weeks to a year or more. Your application will generally be assessed by looking at a variety of factors including your approach, your expertise, your innovation and your need for the grant.

Why you might be turned down

There are various reasons why your application may be turned down. The common ones include:

- your industry sector or field is not relevant to the body making the award
- your plan of action was not detailed enough or was unfocused and lacking in clarity
- you have not made it clear that the grant is vital to the success of the project
- matched funds are not available.

Finally, if your application is unsuccessful, ask for feedback. This will help you to be more effective when applying for funds in the future.

How we can help

We can help you to find an appropriate source of grant funds and also assist with your business plan and detailed application. Contact us to find out more.

Preparing for your Accountant

Whether we are producing your accounts or carrying out your annual audit, being prepared for us will ensure our work is carried out smoothly and efficiently and with the minimum disruption to yourselves.

You may also be able to help by preparing some of the routine schedules for us. This will mean our time can be better spent advising you on the running of your business.

We highlight below many of the ways in which you can help.

It is however important for you to discuss these ideas with us since all of the suggestions may not be applicable.

Setting the scene

Keeping us informed

We will be better prepared ourselves if we know of any changes within your business which could affect our work. These could include changes in your:

- product or market
- business strategy eg pricing policy
- bookkeeping system
- key personnel.

What we need

If you know what information we need to be able to complete our work you can make sure it is available.

We can decide together what you can prepare for us and what we will need to prepare for ourselves.

Better communication between us will help to minimise misunderstandings and avoid unnecessary work.

Timetable

We need to agree a suitable timetable in advance. This gives us both a chance to be properly prepared.

However, if you find yourself behind schedule let us know as soon as possible so that the timetable can be rearranged if necessary.

How you can help

Books and records

Setting up and maintaining your books in an organised manner will help us to extract quickly and easily the information needed to prepare or audit your accounts. It will also enable you to see at a glance the state of your business.

Consideration of the following points may improve the organisation of your records:

- totalling and balancing your books at regular intervals will help you spot and correct any mistakes
- analysing your payments and receipts so that information can be easily extracted
- filing your invoices in a logical order (numerical, alphabetical or date) to make it easy to find any one of them.

Procedures

By establishing and maintaining certain procedures you will be able to keep a better control over your records and your business. It will also mean we can cut down on the work we need to do which may save you some money.

We can help you set up these procedures initially and once established you will be able to carry them out yourself. These procedures will include control accounts, reconciliations and stocktaking.

Control accounts

Control accounts record the movements of cash, debtors and creditors by using the monthly totals from your cash book and sales and purchases summaries.

The cash control account will show how much cash the business has at the end of each month.

The debtors or sales ledger control account will show how much your customers owe you at the end of each month.

The creditors or purchase ledger control account will show how much you owe your suppliers at the end of each month.

Reconciliations

Reconciliations help to ensure that the figures in your books are complete and accurate. Therefore if produced on a regular basis they will help you spot any errors which can then be corrected before we examine your records. Some of the records which will need reconciling are:

- bank accounts
- control accounts
- suppliers' statements.

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Stocktake

If your business carries any stock you will need to count it at least once a year. To ensure that the count is carried out efficiently and accurately you should consider the following points:

- stock items should be stored neatly and logically to make counting easier
- all staff involved in counting should be given clear instructions
- try to minimise the movement of stock during the count. If possible deliveries in and out should be withheld until the counting has finished
- spot checks should be performed during the count.

If you hold large amounts of stock we may need to attend the stocktake and perform our own checks.

Schedules

There are a number of schedules which have to be produced in order that the accounts can be prepared and/or audited. We can prepare all of these schedules ourselves but obviously if you were to produce them it would save time and money.

You may wish to consider the preparation of some of the following schedules:

- a detailed list of additions and disposals of fixed assets with a copy of the appropriate sales and purchase invoices attached
- schedules showing each item of stock held, the quantity, unit value and total value. Indicate any stock items which are old or damaged
- a list of your debtors at the year end including how much they owe you and how long they have been outstanding. Indicate any which are unlikely to pay you
- a schedule of all bank and cash balances at the year end, together with all the bank statements for each bank account
- a list of creditors which should include HMRC as well as the usual business suppliers.

Not all of these schedules will be applicable to your business and therefore before doing anything you may wish to discuss this with us.

How we can help

There are undoubtedly many advantages to be gained if you are better prepared before we commence our work.

We will be able to complete our work in less time. This will mean less disruption to you and your staff. In addition we will be better placed to provide you with useful and constructive advice regarding the development of your business.

However, perhaps the most rewarding of all these advantages will be the fact that your books and records will provide you with more useful information which will help you make better informed business decisions.

If you would like to discuss these procedures any further or would like us to provide further assistance with your monthly or quarterly accounts please contact us.

Securing Business Success

As many as half of all businesses fail in their first three years of trading, and the recession has wiped out many well established businesses over the last few years. A contributor to ensuring business success and avoiding failure is to know your enemies.

Generally the main reason for the high failure rate of small newly established businesses is when the owner lacks experience in managing all aspects of the business. Interestingly, new businesses appear to have survived better in the recession than older more established businesses. This may be because they are more adaptable to change, or possibly perhaps they were set up in the recession and therefore were not surprised by the sudden weakening in trading conditions.

There are many more specific reasons for business failure.

Common reasons cited by many owner managers for business failure

Increased competition from larger businesses

Increases in competition from larger businesses have been especially noticeable during the recession as they make use of their size and buying power to reduce costs and therefore selling prices to levels which smaller businesses simply cannot compete against.

As a small business, one of the best ways to protect against this threat is to carry out industry research to ensure that you know who your competitors are, what size they are in relation to your business, and what support network they have, such as whether they are part of a large group.

As a business owner, you need to identify the threats that competitors pose to your business and try to mitigate those threats by developing your strengths against the weaknesses of the competitor.

For example, a small local grocery shop may be under threat from a large supermarket chain opening a store on the edge of town. It would be unrealistic to consider trying to compete on price so the grocer needs to differentiate their business from that of the superstore by building on the strengths it has, such as:

- focusing on local produce from local suppliers
- offering a personal service and knowing customers and their families by name
- introduce a local delivery service where goods can be ordered by phone rather than online
- order in specific goods for customers with special requirements.

Lack of sales

A lack of sales is not only a particular problem for a new business but can also apply when new product lines or services are introduced in existing businesses.

Carrying out market research will help to eliminate as many problems as possible in the early stages. By researching the target market and local conditions, inappropriate products or incorrect pricing should be identified and corrected before, or soon after, the business commences.

Market research is an expense which many business owners try to avoid, but it can provide valuable information and prove to be cost effective. It may even be possible to conduct your own market research surveys rather than paying an expensive agency to do it on your behalf.

For example you could visit local businesses which you may want as your customers to canvass opinion on your product, or if your target market is made up of consumers, you could survey shoppers in the local town centre.

Gaining credibility for a business venture can be extremely difficult and so market research is important to assist in obtaining finance for the business.

To protect your business against loss of customers, you should try to have a mixed range of customers, in different industries and avoid over reliance on just one or a few key customers. By doing this, your business will be naturally protected against one customer going bust, or a dip in a particular industry.

Failing to keep up with technological advances in your market can also lead to lack of sales, as your business loses out to more up to date products sold by competitors. It is imperative to stay up to date for the sustainability of the business unless you choose to operate in a specialist niche market, which may have a finite life or limited market.

Poor cashflow

Poor cashflow is a key problem for many owner managed businesses as many owner managers tend to have good knowledge in their field but little experience of managing other aspects of the business, including cashflow.

It is important to ensure that the business has enough working capital to meet day to day cashflow requirements.

Day to day cashflow can be improved by:

- making sure the business is not carrying too much stock, particularly old or slow moving stock

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- having disciplined credit control procedures to chase up overdue debts
- undertaking credit checks on new customers before offering credit facilities.

Common reasons cited by many professional advisers for business failure

Lack of monitoring of performance and results

Many small businesses do not prepare management accounts, so the only time they review the results of their business is when the year end accounts are prepared, which is typically at least six months after the year end. Year end accounts do not carry much detail which means that the business is often lacking in detailed information. Consequently a business cannot use this for comparisons to actual and expected performance.

All businesses should carry out reviews of their results periodically during the year, and compare the actual results to last year and expected figures. This will help to identify any potential problems so that corrective action can be taken on a timely basis.

Turnover instead of profit led

It is easy for business owners to focus on sales growth and be overoptimistic about the level of sales which can be achieved, especially in the early years. Very few such entrepreneurs actually have any solid facts behind their projected turnover figures. As previously mentioned, market research is very important to ensure that the expected market share is realistic.

Many business owners also tend to focus on trying to increase sales, instead of focusing on controlling costs and increasing profits.

As a business owner you must put together a proper budget to ensure that all costs are covered. Typical errors made include setting sales prices based on the direct costs of the product and not including any of the overheads of the business such as rent and rates.

Preparing an annual business plan to include a forecast profit and loss account can help to identify all potential costs to ensure they are considered when calculating selling prices. This will also give you a valuable measurement tool to compare with the actual performance of the business.

Taking too much out of the business

Some business owners like to take large amounts out of their business, either by way of drawings, salaries, bonuses or dividends. If your business is struggling it may be worth reviewing personal drawings and reducing them for a short period, to help the long term viability of the business.

It is better to have lower income from a sustainable business than higher income over a short term.

Other issues

Taxation

Some businesses struggle to meet their tax liabilities on time. The Business Payments Support Service provided by HMRC allows a business to negotiate 'time to pay arrangements' across the various taxes. However, this service is only offered to businesses who are likely to be able to pay their tax liabilities if they are given more time to pay and not to those which can no longer feasibly pay at all.

Therefore, if your business is struggling to meet its tax liabilities, it may be worth contacting the service to see if you can agree a time to pay arrangement before matters reach a crisis level.

Management skills

Management skills are necessary to develop a strategy and to train and manage people. Owner/managers are usually specialists in the product and services their business offers, so issues are dealt with on a day to day basis.

These individuals often have a passion for their business however may not possess expertise in the area of management and as a result long term planning is neglected. It may be worth investing in a training session or online course to develop management skills to obtain the best results from your staff.

A happy, motivated workforce can drive the success of a business.

It is especially important to have the right people in key roles within your business, so you must consider how to retain them within the business over the long term.

Every business should also have a 'succession plan' in place to cover roles if a key person leaves. This helps the business to survive when it loses a key member of staff, whether permanently or temporarily if for example, they are off sick for a long period.

If a business is being run single-handedly by the owner/manager, you should have a succession plan and insurance in place in case of personal emergencies.

Legislation

Small businesses often do not have the necessary in house expertise to ensure compliance with legislation for issues such as employment law, health and safety law and environmental standards.

Complying with all the legislative requirements can be a major problem for the small business. Form filling and staying up to date with all of the changes is unlikely to be a priority for the owner, and yet it is essential if the business is to survive and continue successfully. Occasionally new legislation can remove a market or actually make it too costly to continue to serve it.

This can lead to costly consultancy fees for the business. Unfortunately, it is difficult to avoid these fees for complex issues.

There are government agencies which offer free, impartial support to businesses, such as Acas which offers advice regarding employment issues. Health and safety information can be found on the internet and consultants may only be needed if trading in a high risk environment.

Location

The choice of location can have a big influence on your business. If your business depends on customers visiting the premises, it must be based somewhere which is easily accessible for customers, and not somewhere which is too remote or in a bad area. If the business depends on passing traffic, such as a shop, it must be situated somewhere with a lot of people passing on foot or with easy parking.

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Finance and business plans

In the current economic climate, it can be difficult to obtain financing for a business. You may even have found that it is difficult to keep your existing facilities.

When applying for finance it is very important to submit a business plan to demonstrate the viability of your business and lend credibility to your application. This business plan should include forecast financials (profit and loss account, cashflow statement) as well as market research backing up your sales figures.

Even if you do not require finance, it is a good idea for any business to prepare a business plan. This will give the business a strategic direction and something to monitor actual results against.

Planning is extremely important. It can be said that 'failing to plan, is planning to fail'. The business plan should include external and internal issues to see if the owner/manager can cope with the potential 'worse case scenario' that could arise. Comprehensive discussions with an adviser can prevent (or at least highlight) a wide range of problems and methods of minimising or overcoming their impact.

When things go wrong

It can be extremely difficult and traumatic to face up to the failure of your own business. Many owners are tempted to bury their heads in the sand and hope that things will somehow improve. However, the best way to get things to improve is to face up to the fact that the business is struggling as soon as possible – the earlier you identify there is a problem, the earlier you can take remedial action to try to save the business before it is too late. If you think that your business is struggling, seek help and advice immediately.

How we can help

There are undoubtedly many advantages to securing business success.

We are able to assist you in the areas where businesses generally fail and assist in ensuring that you have the right mix of skills suitable to making your business a success.

We can assist with preparing management accounts, cash flow forecasts and finance and business plans and, if things go wrong we can assist with remedial action.

If you would like to discuss these procedures any further please contact us.

Valuing Your Business

There are many reasons why you may need to calculate the value of your business. Here we consider the range of methods available as well as some of the factors to consider during the process.

It is important to remember throughout that valuing a business is something of an art, albeit an art backed by science!

Why value your business?

One of the most common reasons for valuing a business is for sale purposes. Initially a valuation may be performed simply for information purposes, perhaps when planning an exit route from the business. When the time for sale arrives, owners need a starting point for negotiations with a prospective buyer and a valuation will be needed.

Valuations are also commonly required for specific share valuation reasons. For example, share valuations for tax purposes may be required:

- on gifts or sales of shares
- on the death of a shareholder
- on events in respect of trusts which give rise to a tax charge
- for capital gains tax purposes
- when certain transactions in companies take place, for example, purchase of own shares by the company.

Share valuations may also be required:

- under provisions in a company's Articles of Association
- under shareholders' or other agreements
- in disputes between shareholders
- for financial settlements in divorce
- in insolvency and/or bankruptcy matters.

When a business needs to raise equity capital a valuation will help establish a price for a new share issue.

Valuing a business can also help motivate staff. Regular valuations provide measurement criteria for management in order to help them evaluate how the business is performing. This may also extend to share valuations for entry into an employee share option scheme for example, again used to motivate and incentivise staff.

Valuation methods

While there is a ready made market and market price for the owners of listed public limited company shares, those needing a valuation for a private company need to be more creative.

Various valuation methods have developed over the years. These can be used as a starting point and basis for negotiation when it comes to selling a business.

Earnings multiples

Earnings multiples are commonly used to value businesses with an established, profitable history.

Often, a price earnings ratio (P/E ratio) is used, which represents the value of a business divided by its profits after tax. To obtain a valuation, this ratio is then multiplied by current profits. Here the calculation of the profit figure itself does depend on circumstances and will be adjusted for relevant factors.

A difficulty with this method for private companies is in establishing an appropriate P/E ratio to use - these vary widely. P/E ratios for quoted companies can be found in the financial press and one for a business in the same sector can be used as a general starting point. However, this needs to be discounted heavily as shares in quoted companies are much easier to buy and sell, making them more attractive to investors.

As a rule of thumb, typically the P/E ratio of a small unquoted company is 50% lower than a comparable quoted company. Generally, small unquoted businesses are valued at somewhere between five and ten times their annual post tax profit. Of course, particular market conditions can affect this, with boom industries seeing their P/E ratios increase.

A similar method uses EBITDA (earnings before interest, tax, depreciation and amortisation), a term which essentially defines the cash profits of a business. Again an appropriate multiple is applied.

Discounted cashflow

Generally appropriate for cash-generating, mature, stable businesses and those with good long-term prospects, this more technical method depends heavily on the assumptions made about long-term business conditions.

Essentially, the valuation is based on a cash flow forecast for a number of years forward plus a residual business value. The current value is then calculated using a discount rate, so that the value of the business can be established in today's terms.

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Entry cost

This method of valuation reflects the costs involved in setting up a business from scratch. Here the costs of purchasing assets, recruiting and training staff, developing products, building up a customer base, etc are the starting point for the valuation. A prospective buyer may look to reduce this for any cost savings they believe they could make.

Asset based

This type of valuation method is most suited to businesses with a significant amount of tangible assets, for example, a stable, asset rich property or manufacturing business. The method does not however take account of future earnings and is based on the sum of assets less liabilities. The starting point for the valuation is the assets per the accounts, which will then be adjusted to reflect current market rates.

Industry rules of thumb

Where buying and selling a business is common, certain industry-wide rules of thumb may develop. For example, the number of outlets for an estate agency business or recurring fees for an accountancy practice.

What else should be considered during the valuation process?

There are a number of other factors to be considered during the valuation process. These may help to greatly enhance, or unfortunately reduce, the value of a business depending upon their significance.

Growth potential

Good growth potential is a key attribute of a valuable business and as such this is very attractive to potential buyers. Market conditions and how a business is adapting to these are important - buyers will see their initial investment realised more quickly in a growing business.

External factors

External factors such as the state of the economy in general, as well as the particular market in which the business operates can affect valuations. Of course, the number of potential, interested buyers is also an influencing factor. Conversely, external factors such as a forced sale, perhaps due to ill health or death may mean that a quick sale is needed and as such lower offers may have to be considered.

Intangible assets

Business valuations may need to consider the effect of intangible assets as they can be a significant factor. These in many cases will not appear on a balance sheet but are nevertheless fundamental to the value of the business.

Consider the strength of a brand or goodwill that may have developed, a licence held, the key people involved or the strength of customer relationships for example, and how these affect the value of the company.

Circumstances

The circumstances surrounding the valuation are important factors and may affect the choice of valuation method to use. For example, a business being wound up will be valued on a break up basis. Here value must be expressed in terms of what the sum of realisable assets is, less liabilities. However, an on-going business (a 'going concern') has a range of valuation methods available.

How we can help

With any of the valuation methods discussed above, it is important to remember that valuing a business is not a precise science. In the end, any price established by the methods described above will be a matter for negotiation and more than one of the methods above will be used in the process. Ultimately, when the time for sale comes, a business is worth what someone is prepared to pay for it at that point in time.

We would be pleased to discuss how we can help value your business as well as help you develop an exit strategy to maximise the value of your business.