



Samir Moftah

Head of Litigation & Serious Crime

Employment Law



Nosheen Bukhari

Solicitor/Director & Head of Private Client



Today

'Why every Business Owner, Partner, Director and Shareholder with voting rights should have a Business Lasting Power of Attorney (LPA) in place.'



LPA

An LPA is a powerful legal document that ensures your wishes and instructions are followed during your lifetime if you lose physical or mental capacity.



LPA

You are referred to as the Donor and the people you have appointed to make decisions and act on your behalf are known as your Attorneys.



LPA

In a standard Property & Finances LPA we include specific wording to allow your Attorneys to invest your money with fund managers who have the discretion to invest your monies to generate better financial returns.



LPA

A conventional LPA may not be appropriate for a business owner as these usually appoint a spouse or family member to deal with your personal finances but these individuals may not have the knowledge or expertise or be qualified to run your business on your behalf. Would they be able to make sound business decisions if they have no awareness of how the business is run?



LPA

As a business owner if you lose capacity, who has the authority to continue running your business on your behalf? Who will continue to liaise with suppliers, pay salaries, deal with customers, access your business banking accounts? If a sole practitioner loses capacity, his business accounts are usually frozen and the business cannot continue to operate.



LPA

A Business LPA can protect the interests of business owners and the organisations they manage.



LPA

It can be used if the business owner is away for long periods of time, or has an accident that causes temporary incapacitation, or if they lose mental capacity and cannot continue to manage the business or sit on the company board.



LPA

A Business LPA specifically allows suitably qualified Attorney(s) to stand in the shoes of the Donor and continue to manage the Donor's interest in a particular business in order to maintain continuity. It can also enable the Attorney(s) to remove the incapacitated business owner if required.



LPA

It should include wording giving the Attorney the authority to act in relation to the Donor's specific business only and not their personal finances.



LPA

It can include wording setting out the business decisions the Attorneys are allowed to deal with and those which they do not have authority to make. It can include preferences as to how to manage the business or legally binding instructions.



LPA

The Attorney(s) must be someone suitably qualified who has knowledge of the business and is trusted to continue to manage the Donor's role in the business on their behalf. This could be another director or partner of the business.



LPA

All Business LPAs have to be specifically targeted to that particular business so if a business owner has a number of different businesses they will need a separate Business LPA for each one.



LPA

The Attorney(s) will have to meet all professional regulatory standards and should be noted as a person with significant control on the Companies House Register for the business.



LPA

We need to ensure the authority given in the Business LPA does not contradict the Articles of Association or the Partnership agreement of the business, for example in relation to the appointment of a proxy director if a director loses capacity. Therefore any company or partnerships governing documents have to be considered carefully to ensure both work in tandem with one another.



LPA

A Business LPA must be registered at the Office of the Public Guardian before it can be used. You cannot put a LPA in place if you have lost capacity.



LPA

A Business LPA is a complex and bespoke legal instrument that requires knowledge of private client law, employment law, company and commercial law therefore it needs to be carefully drafted to ensure it works both commercially and legally.

Questions?





Thank You

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