The legalities of incorporation

Ray Goodman discusses things to consider before deciding whether or not to incorporate your dental practice

Since 2006 dentists have been able to enjoy the benefits of becoming a limited company. In short, this means that the dentist will no longer have to be personally liable for debts incurred by their practice and can protect their assets from business risks. It also allows greater flexibility in raising funds for the practice through outside investment such as share schemes to act as a financial incentive for key members of staff and provides opportunity for non-dentists to invest in dental practices.

The process of incorporation involves two stages. The first is to formally register the new company at Companies House. Often this can be short circuited by purchasing a company “off the shelf.” This will normally dealt with by your solicitor or accountant and can be done very quickly.

The second stage is the transfer of the existing business to the new company via an incorporation agreement. This transfers the contracts, property, goodwill and business from the dentist to the new company or LLP. Employees are automatically transferred with the business. The document should be tailored to reflect the nature of the practice and the consequences of the transfer. It is important that you have a properly drafted agreement transferring the assets and that you consult a specialist dental solicitor with experience of such matters as the drafting of the agreement and the proper vesting of the assets in the new company can have major tax consequences.

Restrictions

Consideration will also have to be given to tasks such as the naming of the new entity as restrictions exist on the use of words such as ‘dental’, ‘dental practice’, ‘dental surgeon’ or ‘dentists’. If you want to use a protected word in the name of your company, first you will need to obtain permission from the General Dental Council. Dentists will also need to take out professional indemnity insurance for the Limited company which may be vicariously liable for the acts of the dentists working for it or under its name and consider any stamp duty that may be incurred by transferring leases or property.

Agreements

A shareholders’ agreement will clarify the obligations of all members of a company in a similar way to a partnership or expense sharing agreement where there are two or more shareholders at the practice. A solicitor will be able to draft a shareholders’ agreement, as well as advise in other areas.
including:

- Service contracts with directors - A solicitor will be able to tell whether service contracts are required and, where necessary, will draft a contract tailored to your individual needs.
- Advice on relevant regulations: Full compliance with the Transfer of Undertakings (Protection of Employment) Regulations 2006 is vital. A solicitor will be able to offer advice on this and other regulations such as the Employment Rights Act 1996.

- Sale of assets - Assets such as goodwill which were previously owned by the principals will not automatically be transferred on incorporation. In terms of taxation, it is vital there is an agreement setting out the terms of the transfer and the apportionment of the purchase price. A solicitor will be able to provide reliable advice on the transfer of contracts including equipment leases and software licenses as well as the preparation of the necessary documentation.

- Goodwill - In case HM Revenue and Customs is determined on a lower figure, the solicitor will prepare documentation to include a goodwill valuation accompanied by provisions to prevent the document failing in the event of a successful challenge by HMRC.

- Freehold or leasehold - Depending on whether the property is freehold or leasehold, the solicitor will be able to offer advice on the transfer of the property or lease to the new company and decide whether or not this is the best option for them. Where the property is mortgaged and freehold, the solicitor will communicate with the lender to obtain any necessary consents and deal with stamp duty, land tax and registration. If the property is leasehold, the solicitor will be able to liaise and handle the license arrangements with the landlord whose consent will be required.

Get it right

Each dental professional will require bespoke advice that is tailored to their individual needs. The solicitor will also be able to advise on many other aspects regarding the incorporation of the practice. Due to the various legal issues inherent in the incorporation process, it is advisable to use the help of a solicitor experienced in dental matters right from the start. This will provide a firm legal foundation out of which the practice and its employees can grow.

Clinical Governance including Patient Quality Measures - Is your practice compliant?

Are you waiting to find out when the Care Quality Commission* inspect your practice?

Have you addressed all 28 CQC outcomes?

Your compliance with Clinical Governance and Patient Outcomes will be questioned with the introduction of the Care Quality Commission* HTM 01-05 and the increase in PCT practice inspections.

Would you like to know how you would fare when your practice is inspected and have the opportunity to take corrective action?

The DBG Clinical Governance Assessment is the all important experience of a practice audit visit rather than the reliance on a self audit which can lead to a false sense of compliance. The assessment is designed to give you reassurance that you have fulfilled your obligations and highlight any potential problems. We will provide help and advice on the latest guidance throughout the visit.

The areas the DBG assesses are:

- Your premises including access, facilities, security, fire precautions, third parties and business continuity plans.
- Information governance including Freedom of Information Act, manual and computerised records, Data Protection and security.
- Training, documentation and certificates.
- Radiography including IRR99 and IR(ME)R2000 compliance.
- Cross infection and decontamination including HTM 01-05 compliance and surgery audits.
- Medical emergencies including resuscitation, drugs, equipments and protocols.
- Training, documentation and certificates.
- Waste disposal and documentation and storage.
- Practice policies and written procedures.
- Clinical audit and patient outcomes including quality measures.

The assessment will take approximately four hours of your Practice Manager’s time depending on the number of surgeries and we will require access to all areas of your practice. A report will be despatched to you confirming the results of our assessment. If you have an inspection imminent then we suggest that you arrange your DBG assessment at least one month before the inspection to allow you time to carry out any recommendations if required. Following the assessment you may wish to have access to the DBG Clinical Governance Package with on-line compliance manuals.

For more information and a quote contact the DBG on 0845 00 66 112

*England only.

www.thedbg.co.uk

Please Note: Errors and omissions excluded. Any prices quoted are subject to VAT. The DBG reserves the right to alter or withdraw any of their services at any time without prior notice.

About the author

Senior Partner
Ray Goodman is a Member of the Association of Specialist Providers for Dentists (ASPD), legal member of NASDA (National Association of Dental Accountants) and included on the BDA list of recommended dental solicitors. He has a comprehensive understanding of the commercial and professional objectives of Dental Practices, along with the relevant legal requirements. In his spare time, Ray has ambitions to be the next Eric Clapton.

For more information contact Ray Goodman on 0151 707 0000 or email ray@goodmanlegal.co.uk

www.goodmanlegal.co.uk

Due to the various legal issues inherent in the incorporation process, it is advisable to use the help of a solicitor experienced in dental matters right from the start!