

PRACTICE BRIEFING

Starting a new law firm

Starting any new enterprise can be somewhat daunting. A great deal of planning is needed, and much has to be put in place before your new business can open its doors.

Starting a new law firm is no exception. Business imperatives include:

- » having a business plan;
- » the legal structure (eg, partnership, limited liability company);
- » how much capital you need;
- » banking, insurance, rent etc;
- » marketing;
- » staffing;
- » practice management; and
- » considering if you need a mentor.

Then there are the “must dos” provided in the Lawyers and Conveyancers Act 2006 (LCA) and its associated regulations and rules.

WHAT YOU MUST DO

Let's start with what you “must do” under the LCA.

1. Get approval

Before you start operating a law firm, you must get approval to practise on your own account. To get this approval, you must satisfy the Law Society that you are a suitable person to do so. You must also have completed the *Stepping Up* course before you can apply for approval. Information about the *Stepping Up* course is at <https://www.lawsociety.org.nz/for-lawyers/legal-practice/practising-on-own-account/stepping-up-course>.

You must meet certain criteria, and you must apply to the Law Society, including the fee.

Information on what you need to do to gain approval to practise on your own account is on the Law Society's website, at www.lawsociety.org.nz/for-lawyers/legal-practice/practising-on-own-account. A link to the application form is also on this page.

A webinar which describes the approval process for lawyers seeking to practise on their own account is at http://www.lawyerseducation.co.nz/site/nzlaw/files/2017_Uploads/Practising on Own Account Booklet.pdf.

2. Advise the Law Society

Once you have this approval, and before your new firm actually starts operating, you must advise the Law Society the following:

- » the name of the firm;
- » the principal, partners or directors;
- » the physical and postal addresses;
- » the telephone, email address and (if applicable) the website;
- » your start date; and
- » your trust account bank details (if you have a trust account).

(As well as advising the Law Society the names of the principal, partners or directors, some firms also advise the names of their employed lawyers. The Law Society needs to be advised of this, and although it is the responsibility of the individual lawyers, the Law Society accepts the information from firms.)

3. Pay the fees

You must pay the Law Society the inspectorate fee and all other relevant practising fees and levies.

4. Tell your clients about your PI cover

Professional indemnity (PI) insurance is not compulsory for lawyers in New Zealand. It is recommended, however.

What you must do is let your clients know your professional indemnity arrangements. If a lawyer or practice is not indemnified, you must disclose this to the client in writing. You comply with the rules either by doing that, or by letting them know your PI cover meets or exceeds the minimum currently specified by the Law Society. The minimum requirements are outlined in a briefing entitled *Insurance Disclosure*, at <https://www.lawsociety.org.nz/for-lawyers/regulatory-requirements/insurance-disclosure>.

When taking out PI cover, it is definitely worthwhile checking whether your policy provides for cyber cover. Most organisations, lawyers and law firms included, face increasingly complex computer security risks. Traditionally, PI cover has focused on “professional services” and often further tied to a requirement that there be an act of negligence. Civil wordings often provide some elements of cyber cover, but it is not always enough. Appropriate cyber cover is definitely worth considering.

While on the topic of insurance cover, law firms may also consider insuring for income protection as well as other cover such as general insurance on their premises.

5. If you have a trust account

If you have a trust account, you must be qualified to be a “Trust Account Supervisor” if you are in sole practice. If you are in a partnership or incorporated firm one of the partners or directors must be qualified to be a “Trust Account Supervisor”.

For more information, see www.lawsociety.org.nz/for-lawyers/legal-practice/practising-on-own-account/prerequisites-and-criteria.

6. Appoint attorney and alternative (if in sole practice)

If you are in sole practice you must, within three months of starting your new firm, give power of attorney to an agent (attorney) and an alternative to conduct your practice, or act as the board of your incorporated firm, should the need arise.

This is important in case you become incapacitated, take a holiday, are suspended or are struck off the roll. If situations like these arise, you need someone to step in to run or wind up your practice.

More information is on the Law Society’s website, at www.lawsociety.org.nz/for-lawyers/legal-practice/entering-sole-practice.

YOUR BUSINESS PLAN

Developing a business plan is critical to success.

Even more important than the plan is the journey you travel to write that plan.

A business plan needs to cover both the strategic and the operational aspects of your new firm. The process of business planning – if done properly – will force a would-be business owner to think critically about their idea. It requires an examination of the competitive market, consideration of strategic risks and evaluation of your ultimate goal. Most importantly, if written well the plan will allow others – friends, mentors, potential partners – to either accept or challenge your assumptions. There is a lot to think about before putting a plan together.

The Ministry of Business Innovation and Employment has a series of useful resources related to starting a business on its website. This includes a downloadable business plan template. The ministry website is <https://www.business.govt.nz/>.

This is one very good place where you can start your planning.

Lawyers have added considerations to accommodate than those setting up a business that does not belong to a regulated profession. That is because of the profession’s commitment to ethics, the administration of justice and the rule of law. There is, for example, a “client care” dimension that must be incorporated into your planning. When considering your IT requirements,

therefore, you will need to keep in mind the rules around client confidentiality and how these responsibilities will need to be applied to data privacy and protection. It will be up to you to understand your obligations and communicate them to any IT companies you may engage. You are the one who will need to ensure your IT service complies with your duty of care to your clients.

Running the business of a law practice is also covered in the *Stepping Up* course.

PRACTISING WELL

Practising Well is a well-known New Zealand Law Society initiative. It has three areas of focus: healthy mind, healthy body and healthy practice.

Mentoring can be a key to developing and maintaining a healthy practice.

Business Mentors New Zealand is one of the Law Society's Practising Well partners. It has a programme specifically developed for new enterprises. Its Start-up Business Mentoring Programme provides people who join it with six months of accelerated mentoring aimed specifically at getting a business up and running.

You can read more about this programme at www.lawsociety.org.nz/lawtalk/lawtalk-archives/issue-854/thinking-of-starting-a-law-firm.

In the above article, the 11 points covered in the Start-up Business Mentoring Programme provides very useful information.

To read the experience of a lawyer who had started a new business and who had a mentor through Business Mentors see www.lawsociety.org.nz/lawtalk/lawtalk-archives/issue-831/being-mentored-has-been-fantastic.

Taking opportunities to attend collegial events can also help in developing and maintaining a healthy practice. Law Society branches organise many collegial events, and many lawyers also find informal get togethers to be beneficial.

Two other important areas in developing and maintaining a healthy practice are having a healthy mind and a healthy body. Two partners in the Law Society's Practising Well initiative focus on this area:

- » Vitality Works (see <https://www.lawsociety.org.nz/practice-resources/practising-well/wellbeing-services>); and
- » Lifeline Aotearoa (see <https://www.lawsociety.org.nz/practice-resources/practising-well/lifeline-and-the-law-society>).

KNOW THE LAW

Lawyers who lead firms need to know the law that applies to them.

It is particularly relevant to have a working knowledge of the LCA, and the various regulations

and rules made under the LCA. These include the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 and the Lawyers and Conveyancers Act (Trust Account) Regulations 2008, particularly if you have a trust account. Other regulations may also be relevant from time to time, such as the Lawyers and Conveyancers Act (Lawyers: Practice Rules) Regulations 2008.

There is also legislation that applies to all firms operating in New Zealand. From occupational health and safety legislation to employment law to consumer law to taxation, there are things that you need to know. The Law Society advises people going into business to “see a lawyer” (https://www.lawsociety.org.nz/_data/assets/pdf_file/0008/69218/Going-into-Business-21-Mar-2013-WS.pdf), and there’s always a case for all of us to take advice when we need it. If you download the PDF, you can see that as well as asking the question “why use a lawyer?” it provides some very useful information about starting a business, and poses some very good questions to answer.

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Information in the Practice Briefing series is provided by the Law Society as a service to members. This briefing is intended to provide guidance and information on best practices. Some of the information and requirements may change over time and should be checked before any action is taken.

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