

Preparing a business-lasting power of attorney

In this article, private client solicitor [Herman Cheung](#) of West End law firm RIAA Barker Gillette (UK) considers the advantages, needs and practical examples of creating a business-lasting power of attorney.

[Home](#) » Preparing a business-lasting power of attorney



We are all familiar with lasting powers of attorney, which allows individuals to appoint an attorney to manage their personal affairs if they cannot do so themselves. A business-lasting power of attorney operates on the same basis. It is a document that appoints an attorney to deal with your business affairs and make decisions if you are incapacitated and can no longer manage the business yourself. That may include decisions about your business finances, operations and legal matters.

Why is it essential to have a business-lasting power of attorney?

A business-lasting power of attorney (LPA) is essential because it ensures business continuity and smooth continued operation should the owner be temporarily or permanently unable to manage the business. It allows the attorney to make decisions, process and pay wages, and sign or enforce contracts even though the business owner is incapacitated.

Who can benefit?

Sole traders and single-director limited companies benefit most from a business-lasting power of attorney. A partner in a partnership or a director in a limited company (with more than one director) may also benefit. However, the terms of the partnership agreement or the articles of association may contain provisions for dealing with the incapacity of a partner or a director, rendering a business-LPA unnecessary.

How does a business-lasting power of attorney differ from a personal-lasting power of attorney?

A business-lasting power of attorney focuses on the donor's business. The donor is the person who grants the business Power of Attorney. A personal-lasting power of attorney will deal with the donor's personal affairs. In contrast, a business-LPA focuses on the donor's business needs. These include business continuity, finance management, contract negotiation, completion and enforcement and general business

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operations. The business-lasting power of attorney can be tailored to meet the specific needs of the donor's business.

Compliance with the Mental Incapacity Act 2005

A business-lasting power of attorney must comply with the [Mental Capacity Act 2005](#)'s terms, which set out the specifics regarding the donor's capacity. Section 9 of the Act and subsequent sections deal with the requirements for creating lasting powers of attorney, appointing attorneys ("donees"), restrictions, scope, and revocation.

Communicate the existence of the business-lasting power of attorney to stakeholders

It is essential to inform others involved in the business's management about the existence of the business-lasting power of attorney. Notifying the business's bank and professional advisers may also be advantageous. As a result of the grant of the business-lasting power of attorney, management will be confident of the business's continuity.

Some examples of the application of a business-lasting power of attorney

Unexpected Incapacity

Situation

You, the business owner, become incapacitated due to an accident or illness, rendering you unable to manage your business affairs.

Business-LPA Solution

Your attorney can step in to handle essential tasks, such as signing cheques, paying invoices, managing bank accounts and making important business decisions, preventing disruption and financial losses.

Example

The attorney can authorise the payment of salaries, service business loans, or sign contracts on your behalf.

Business Continuity

Situation

If you are a shareholder or director in a company or a partner in a partnership and you become incapacitated, should the partnership agreement or articles of association omit a procedure for dealing with incapacity?

Business-LPA Solution

The BLPA allows your attorney to act on your behalf, ensuring the business can operate smoothly without delays or complications.

Example

The attorney can manage business assets, handle tax affairs, or potentially hire or remove employees in coordination with and with the consent of other partners or co-directors.

Travel and Absence

Situation

You are a business owner who frequently travels and finds it challenging to manage certain aspects of the business while abroad.

Business-LPA Solution

Your attorney can handle business matters while you are away, allowing you to focus on other aspects of your life without worrying about the business.

Example

The attorney can manage business contracts, deal with clients, or attend meetings on your behalf.

Removing a Partner or Director

Situation

A partner or director in your company becomes incapacitated and cannot consent to being removed.

Business-LPA Solution

Suppose the partnership agreement or articles of association omit provisions dealing with incapacity. In that case, a BLPA may allow your attorney to remove the incapacitated partner or director, preventing potential issues and ensuring the smooth running of the business.

Example

The attorney can take the necessary steps to remove the incapacitated partner or director, ensuring the business can operate effectively.

If you are considering drawing up a business-lasting power of attorney, it is critical that you seek legal advice. Legal advice will ensure compliance with the most up-to-date legislation and that the power of attorney contains provisions tailored to your business and operational needs. So, contact [Herman Cheung](#) today.

Note: This article is not legal advice; it provides information of general interest about current legal issues.