

# BUSINESS AND COMMERCIAL LPA

**BISON**  
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A business lasting power of attorney (BLPA) is a legal document through which you can authorise a chosen person (attorney) to make decisions concerning your business interests either when you are unavailable or in the event that you lack mental capacity.

**We analyse the key benefits of these important tools which can provide essential protection for your business in reducing risk and ensuring effective crisis management practice.**

## Why make a separate business LPA

As a business owner, it is extremely important to consider what could happen to your business in the event that you were unable to make decisions. Whether you are a sole trader, partner or company director, effective, strategic advance planning for situations which could leave your business exposed to risk is essential to not only protect the continuing success of the business but also to reduce insurance costs and future claims.

Having a BLPA in place, you can ensure that in the event that you are either unavailable or lack capacity, you will have

## Protect your Business

Contact one of our experts:

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someone that you trust appointed as an attorney who will be able to continue the day-to-day running of the business.

For many business owners, both planned and unexpected events often mean that the person responsible for making decisions concerning the day to day running of the business is not available. This could be because the responsible person is either abroad on holiday or for business, incapacitated through an accident or, has a medical condition which has incapacitated them. In such circumstances, it cannot be assumed that a family member or a business colleague will have the necessary authorization to make decisions on their behalf. Consider, if you were unavailable to make business decisions, who would authorize the payment of bills, sign cheques, service supplier contracts or pay salaries? Not having anyone in place with this level of authorization will expose your company to risk.

The Mental Health Discrimination Act 2013 provides that in the event that a Director or Partner of a company loses their mental capacity (in accordance with the definition of mental capacity in s.2 Mental Capacity Act 2005) they cannot be removed as a Director for that company. In order to keep the business running, the only option would be to apply to the Court of Protection for an order authorising a finance / property Deputy to carry on managing the business affairs. This is a costly procedure and can take up to six months from the date that the application is lodged with the Court. This would leave the business exposed with no person authorized to make decisions to ensure effective business continuity. For a sole trader, in the event that they lose capacity, there will in most situations be no one able to carry on running the business and this would mean that the business would need to be wound-up.

The making of a BLPA to protect your business interests should therefore be as vital a consideration as making a personal will to protect your future interests.

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## Personal LPA versus Business LPA

It is extremely important to plan for the continuity in the management of your life and your family should you become unwell or lose the capacity to make decisions. A personal LPA is a legal document which would allow you to appoint a person to manage your financial affairs if you no longer had the capacity to do so. A personal LPA is a very important tool in ensuring that your future interests are protected and at Bison Solicitors we can assist and guide you through this process.

In many instances, it will not be appropriate for the same person to make both personal financial decisions and business decisions on behalf of the donor. There are also circumstances when this is expressly forbidden such as through commercial legislation or express provision within the company's articles of association or partnership agreement.

It is important to obtain legal advice regarding the need to create a separate BLPA in order to fully understand the role that it could play in protecting your business. Commercial LPAs go beyond simply drafting the relevant documents and require a more thorough assessment of the nature of the business and any partnership agreements or articles of association. Bison Solicitors have the expert knowledge of the legal process surrounding the creation of BLPAs and can provide a bespoke service which meets your specific business need.

## About the author

[Kate Churchouse](#) is a solicitor specialising in mental capacity issues including disputes in the Court of Protection.