

SETTING UP AND MAINTAINING A COMPANY IN THE UNITED KINGDOM



PART A: Setting up a limited liability company in the United Kingdom

PART B: Maintaining a limited company in the United Kingdom

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Part A

Setting up a limited liability company in the United Kingdom

1. Limited liability company in the United Kingdom

The law relating to registered companies in the United Kingdom is the Companies Act of 2006. It forms the primary source of UK company law. It contains a massive 1300 sections and 16 schedules. It was brought into effect in stages, starting in January 2007 with the final, and main, provisions becoming operative on the 1st of October in 2009.

The word ‘company’ has no strictly legal meaning, however it is defined as an association of individuals who share a common purpose and mix their various skills, knowledge and talents in order to achieve a specific goal. In common business language, the word company is associated with economic purposes.

One or more persons can form a company for any lawful purpose by subscribing their names to a memorandum of association and by complying with the requirements of the Companies Act of 2006 as to registration. In law, ‘person’ includes individuals, companies and other bodies.

A company is something artificial, an entity whose existence is only recognised by law and it is not a product of nature like humans.

It is a legal entity with a separate identity from those who own or run it. A company is a “limited company” if the liability of its members is limited by its constitution. It may be limited by shares or limited by guarantee. According to Section 4 of the companies Act of 2006, a private company is a company that is not a public company. A company limited by shares or limited by guarantee must not:

- Offer to the public any securities of the company. Or,
- Allot or agree to allot any securities of the company with a view to their being offered to the public.

Furthermore, a limited company in the United Kingdom has no restriction on its authorised share capital (no minimum) and no limitation on the number of members.



Finally, a company limited by shares has a share capital and the liability of each member is limited to the amount, if any, unpaid on their shares. A private company cannot offer its shares for sale to the general public.

2. Incorporation and capacity to contract

A company comes into existence as a legal entity as soon as it is incorporated by the Companies House. Incorporation is the process by which a new or existing business registers as a limited company. A business cannot operate as a limited company until it has been incorporated at Companies House under the Companies Act 2006.

The certificate of incorporation is conclusive evidence that the requirements of the Companies Act 2006 as to registration have been complied with and that the company is duly registered under the companies Act Of 2006.

The companies act 2006, allows one or more persons to form a company for any lawful purpose by subscribing to its memorandum of association.

In order to register a company in the United Kingdom it is necessary to file with Companies House some documents in accordance with the provision of the companies Act of 2006. These documents are:

- Application to register a company (form IN01) and the fee.
- Memorandum of association.
- Articles of association.
- Capital statement.
- Additional information if the application includes a sensitive word or expression.

2.1 Memorandum of association

According to Section 8 of the Companies act of 2006, the memorandum confirms that the subscribers wish to form a company under the Companies Act and agree to become members of the company. In the case of a company that is to be limited by shares, they undertake to receive at least one share each. The memorandum of association must be in a prescribed form and must be authenticated by each subscriber.

Under the Companies Act 2006, the memorandum of association is a much shorter document because all the constitutional rules of the company are contained in the articles of association. Consequently, the memorandum serves a more limited purpose and once the company has been incorporated, it cannot be amended. Before the Companies Act 2006 came into force a company's memorandum included provisions which now fall within the articles, including any restrictions on what the company could do. For companies formed before 1 October 2009 these restrictions are now treated as being part of the articles of association and not the memorandum.

2.2 Articles of association

All limited companies must have articles of association. This document sets out the rules for the running of the company's internal affairs.

The Articles define how meetings of shareholders and directors are held, the powers bestowed on directors, the method of



appointing and removing directors, determine the minimum number of persons that must be present for a quorum, set out the procedures for issuing new shares, transferring shares, and so on.

The articles help to ensure the company's business run as smoothly and as efficient as possible and will set out how decisions are taken by the members and directors as well as various matters connected with the shares. The articles cannot contain rules that are against the law.

On incorporation a company can adopt the model articles in entirety, model articles with amendments or it can draft its own bespoke articles.

Articles of association registered by a company must:

- i. Be contained in a single document.
- ii. Be divided into paragraphs numbered consecutively.

3. Names

3.1 Choosing name

Although the vast majority of applicants register their chosen name there are some restrictions that affect a choice of a name.

These restrictions are set out in the Companies Act 2006, The Company, Limited Liability Partnership and Business (Names and Trading Disclosures), Regulations 2015 (SI 2015/17) and The Company, Limited Liability Partnership and Business (Sensitive Words and Expressions) Regulations 2014 (SI 2014/3140).

A company could be required to change its registered name following a complaint. The name:

- Must not be offensive or contain offensive words or expressions.
- Must not include sensitive words or expressions included in regulations (only with permission).
- Cannot be "same as" name (difference with existing names is a punctuation/ a letter/ a special character/ one more words listed in the naming guidance) (e.g. "Hands LTD" vs "Hand's LTD" vs "Hands UK LTD") (If two company names are so similar they are likely to confuse the public as to which company is which, then they are the 'same as').
- Cannot be "too like" name (differs from another name only by few characters, signs, symbols but it looks or sounds the same) (e.g. "Dynamics Tech LTD" vs "Dinamix Tech LTD").
- Cannot suggest any connection with government or any Local Authorities.
- No opportunistic name registration.



4. Share capital

When people form a company, they decide whether to limit the members' liability by shares. On registration of a company limited by shares at Companies House, the shareholders must agree to take some, or all, of the shares. The statement of capital and initial shareholdings must show the names and addresses of the people who have agreed to take shares and the number of shares each will take. These people are called the subscribers.

Payment for shares in a private company can be in a variety of ways including cash, goods, services, property, good will, know-how, or even shares in another company.

Generally, people can pay for shares in a private company;

- Wholly for cash.
- Partly for cash and partly for a non-cash payment.
- Wholly for a non-cash payment.

Whatever form this property will take, a monetary value should be placed upon it, if for no other reason than because this will facilitate the preparation of accounts and enable the proprietor to see what return he is getting for the property contributed into the business. Hence the owners of a business start with a fund of capital and their aim is to use this fund so that it increases and provides profits.

With an incorporated company limited by shares it is essential that capital should be more clearly defined. Hence the law has worked out certain principles relating to the raising and maintaining of capital. The Companies Act 2006 introduced the statement of capital for all companies with share capital. The statement of capital is a "snapshot" of a limited company's share capital at a given time. Companies incorporating with share capital on or after 1 October 2009 must complete a statement of capital and initial shareholdings as part of the application to incorporate.

The statement of capital must show the following details of the capital:

- The total number of shares of the company.
- The aggregate nominal value of those shares.
- For each class of shares:
 - Prescribed particulars of the rights attached to the shares.
 - The total number of shares of that class.
 - The aggregate nominal value of shares of that class.
- The amount paid and the amount (if any) unpaid on each share (whether on account of the nominal value of the share or by way of premium).

4.1 Authorised share capital

The total of the share capital which a limited company is allowed to issue is the authorised share capital. It represents the upper boundary for the actually issued share capital.

The amount of the authorised capital in itself is of no importance as an indication of creditworthiness. All that it shows is the



maximum number of shares that the company can issue.

Currently there is no restriction on Authorised Share Capital. There is no maximum to any company's authorised share capital and no minimum share capital for private limited companies.

The requirement to have an authorised share capital is abolished from 1.10.2009 when the Companies Act 2006 finally came into full effect. Any company registered from that date has no restriction on the number of shares it can issue, unless a limit is set in the company's articles. Companies registered before that date will still be subject to the authorised capital figure in their memorandum and articles until they are amended. There is now no statutory procedure for that increase of authorised capital.

4.2 Issued share capital

The number of shares from the authorised share capital that have been issued to shareholders is the issued share capital. The amount of issued capital cannot exceed the amount of the authorised capital and there is no requirement on companies to issue all their authorised share capital.

A company may increase its issued capital by allotting more shares but only up to the maximum allowed by its authorised capital. Allotments must only be done under proper authority. A private company cannot offer shares to the general public as it is restricted.

- A private company may normally only issue shares to its members, to staff and their families, to debenture holders, or to others by private arrangement
- 25% of the nominal value of each share and any premium must be paid up before it can get a trading certificate allowing it to commence business and borrow.

4.3 Share premium

A company's authorised share capital is divided into shares of a nominal value. While the real value of the shares of a company may change over time, reflecting the company's current market value, their nominal value will always remain the same.

When a company sells shares for more than their nominal value, then a sum equal to the aggregate amount of the premium over the nominal value should be transferred to a "share premium" account which in general should be treated as if it was part of the paid-up share capital.

According to Companies Act 2006, if a company issues shares at a premium, whether for cash or otherwise, a sum equal to the aggregate amount or value of the premiums on those shares must be transferred to an account called "the share premium account".

Where, on issuing shares, a company has transferred a sum to the share premium account, it may use that sum to write off:

- i. The expenses of the issue of those shares;
- ii. Any commission paid on the issue of those shares.

4.4 Payment for shares

A company, if so authorised by its articles, may:



- Make arrangements on the issue of shares for a difference between the shareholders in the amounts and times of payment of calls on their shares;
- accept from any member the whole or part of the amount remaining unpaid on any shares held by him, although no part of that amount has been called up;
- Pay a dividend in proportion to the amount paid up on each share where a larger amount is paid up on some shares than on others.

Moreover a company's shares must not be allotted at a discount.

Payment for shares in a private company can be in a variety of ways including cash, goods, services, property, good will, know-how, or even shares in another company.

Generally, people can pay for shares in a private company;

- wholly for cash
- partly for cash and partly for a non-cash payment
- wholly for a non-cash payment

5. Directors

A company being an abstraction cannot itself perform any real acts at all. The abstraction can act only through the agency of other people. In practice the constitution of the company, its Articles that is, will provide that the power of management lies with the board of directors; the power of management is delegated to the directors as a board.

According to Section 154 of the Companies Act 2006, limited companies are required to have at least one director who is required to be a natural person. Moreover the Companies act of 2006 states:

- A director must not be under the age of 16
- She/he must not have been disqualified from being a director
- Directors must not be an undischarged bankrupt, unless specific permission has been granted by court
- A public company must have at least 2 directors

A director is legally responsible for running the company and making sure company accounts and reports are done properly.

The director of the company can also be the secretary of the company or a member of the company.

6. Secretaries

In accordance with section 270 of the companies Act 2006, it is not required for a private company to have a secretary. This is different from a public company, which must have a qualified one. The company secretary can be a director but she/he cannot be the company's auditor or an 'undischarged bankrupt'. Finally the company secretary does not need to be resident in the United Kingdom.



7. Registered office

Every company must have a registered office.

According to section 86 of the companies Act 2006, the registered office must be a physical location where notices, letters and reminders can be delivered to the company. It is where the official communication will be sent and it must be in the same part of the United Kingdom as where the company was incorporated. E.g. a company registered in England and Wales must have its registered office in England and Wales, not in Scotland or Northern Ireland.

8. New companies

As was explained in section 2 of this publication, in order to register a new company in the United Kingdom it is necessary to file with Companies House prescribed documents in accordance with the provisions of the Companies Laws. It is safe for someone to assume that from the time the required documents are submitted to Companies House the company is ready for incorporation, subject to Companies House procedures. The time of incorporation largely depends on the method someone chooses to follow for incorporation.

- i. Electronic Software Filing: (third party software-price depend on the agent).
- ii. Web Incorporation Service: (Online applications are usually registered within 24 hours).
- iii. Paper filing: (Postal applications take 8 to 10 days. There's also a same day service which is more expensive).





Part B

Maintaining a limited company in the United Kingdom

1. Accounting records

Under the Companies Act of 2006, and more specifically in section 386, every company is required to keep accounting records.

In accordance with section 394 of Companies act 2006, the directors of every company are responsible for keeping proper books of accounts defined as those books deemed necessary for the preparation of financial statements and which are adequate for the presentation of a true and fair view of the company's affairs and an explanation of its transactions. The directors of every company must prepare accounts for the company for each of its financial years.

A company must always send copies of the statutory accounts to:

- All shareholders.
- People who can go to the company's general meetings.
- HM Revenue and Customs (HMRC) as part of a Company's Tax Return.
- Companies House.

The presentation of the true and fair view is achieved through the application of either the International Financial Reporting Standards (IFRS) or the UK Generally Accepted Accounting Practice (GAAP) which is compulsory for all companies. A company can use accountants or tax advisers to make sure their accounts meet the standards. "The directors of a company must not approve accounts unless they are satisfied that they give a true and fair view of the assets, liabilities, financial position and profit or loss" (section 393, Companies Act 2006).



What must accounting records include?

Accounting records must in particular contain:

- Entries showing all money received and expended by the company.
- A record of the assets and liabilities of the company.

Also, where the company's business involves dealing in goods, the records must contain:

- Statements of stock held by the company at the end of each financial year.
- All statements of stock takings from which you have taken or prepared any statements of stock.
- Statement of all goods sold and purchased, other than by ordinary retail trade. This should list the goods, the buyers and sellers.

1.1 What is a financial year?

A financial year is usually a 12 month period for which a company prepares accounts. Every company must prepare accounts that report on the performance and activities of the company during the financial year. This starts on the day after the previous financial year ended or, in the case of a new company, on the day of incorporation. Financial years are determined by reference to an accounting reference period. The financial period ends on the accounting reference date, Companies have the choice to make up their accounts to the accounting reference date or a date up to seven days either side of it.

1.2 What period must a company's first accounts cover?

A company's first accounts cover the period starting on the date of incorporation, not the first day of trading. They end on the accounting reference date or up to 7 days either side of that date. Subsequent accounts start on the day after the previous accounts ended and finish on the accounting reference date or up to 7 days either side of it. (Section 390-392)

For example, if a company is incorporated on the 6 April 2014 the accounts must cover the entire period of 6 April 2014 – 30 April 2015. Subsequent periods will start on 1 May each year and end on 30 April the following year.

A period of months after a given date ends on the corresponding date in the appropriate month. For example a private company with an accounting reference date of 4th April has until midnight on 4 January of the following year to deliver its accounts, not 31 January. This does not apply if the accounting reference date which is the last day of the month. In this case the period allowed for filing accounts would end with the last day of the appropriate month. For example a private company with an accounting reference date of 30th April has until midnight on 31 January of the following year to deliver its accounts, not 30 January.

At the end of its financial year, a limited company must prepare full ('statutory') annual accounts.

The company then uses this information to:

- Send accounts to Companies House (Deadline: 9 months after the company's financial year ends).
- Pay Corporation Tax - or tell HM Revenue and Customs (HMRC) that the limited company doesn't owe any (Deadline: 9 months and 1 day after a company's financial year ends).
- Send a Company Tax Return to HMRC (Deadline: 12 months after a company's financial year ends).



1.3 Preparing and filing accounts

All limited companies, whether are trading or not, must keep accounting records.

Filing a company's first account

If the accounts cover a period of more than 12 months, the accounts must be delivered to the Companies House:

- Within 21 months of the date of incorporation for private companies.
- Within 18 months of the date of incorporation for public companies.
- 3 months from the accounting reference date, whichever is longer.

If the first accounts cover a period of 12 months or less, the normal times allowed for

delivering accounts apply (9 months from the accounting reference date for a private company and 6 months for a public company).

1.4 What does a set of accounts include?

Generally, accounts must include:

- A profit and loss account (or income and expenditure account if the company is not trading for profit).
- A balance sheet signed by a director on behalf of the board and the printed name of that director.
- Notes to the accounts.
- Group accounts (if appropriate).

And accounts must generally be accompanied by:

- A directors' report signed by a secretary or director and their printed name, including a business review if the company does not qualify as small.
- An auditors' report stating the name of the auditor and signed and dated by him (unless the company is exempt from audit).

1.5 Where must a company keep its accounts

A company must keep its accounting records at its registered office address or a place that the directors think suitable. The records must be open to inspection by the company's officers at all times.

If the company holds the records at a place outside of the UK, it must send accounts and returns at least every six months and keep them in the UK. Those accounts and returns must disclose the financial position and enable the directors to prepare accounts that comply with the requirements of the Companies Act, including where the accounts are prepared using International Accounting Standards.



1.6 Who can approve and sign accounts?

The company's board of directors must approve the accounts before they send them to members etc.

- A director must sign the balance sheet on behalf of the board and print their name, with any exemptions statements appearing above the director's signature.
- A director or the company secretary must sign the directors' report on behalf of the board and print their name. Any statement about its being prepared under the small companies regime must appear above the signature.
- If the company has to attach an auditor's report to the accounts, the report must include the auditor's signature and their name must be printed where the auditor is a firm the auditor's report must state the name of the auditor and the name of the person who signed it as senior statutory auditor on behalf of the firm.

1.7 Group accounts

"If at the end of a financial year a company subject to the small companies' regime is a parent company, the directors, as well as preparing individual accounts for the year, **may** prepare group accounts for the year" (Section 398, Companies Act 2006). Therefore companies subject to the small companies regime have the option to prepare group accounts if they wish, but it is not obligatory.

In accordance with section 399, Parent companies that are not subject to the small company regime **must** prepare group accounts, subject to exceptions.

Small companies

A parent company qualifies as a small company in relation to a financial year only if the group headed by it qualifies as a small group. A company will be 'small' if it satisfy two of the following criteria:

- A turnover of £6.5 million or less.
- £3.26 million or less on its balance sheet.
- 50 employees or less.

2. Annual return

In Accordance with section 854 every company must deliver an annual return to Companies house at least once every 12 months.

The Annual Return gives a snapshot of general information about a company's directors, secretaries, registered office address, shareholders and share capital. An annual return must contain the following information:

- The name of the company.
- Its registered number.
- The date to which the annual return is made-up.
- The principal business activities of the company.



- The type of company it is, for example, private or public.
- The registered office address of the company.
- The address where the company keeps certain company records if not at the registered office, and those records held there.
- The details of the company secretary (corporate or individual), where applicable.
- The details of all the company's directors (corporate or individual).

The paper form is for limited companies in the UK which need to file a return dated on or after 1 October 2011. There is a cost of £40 to file the paper form. To take advantage of a reduced fee of £13, in-built checks and pre-populated data, a company can file the return online

The company's director(s) and the secretary (where applicable), are responsible for ensuring that they deliver the annual return to Companies House within 28 days after the anniversary of incorporation of a company or of the anniversary of the made-up date¹ of the last annual return.

3. Annual tax return

Someone can use the online Corporation Tax service to file a limited company's or organisation's Company Tax Return with HM Revenue and Customs (HMRC).

A company may also be able to use this service to file accounts jointly with Companies House.

To use HMRC's Corporation Tax service a company will need:

- Government Gateway user ID and password (register for one at HMRC online).
- Company accounts.
- Corporation Tax calculations.
- Supporting documents e.g. claims for relief.

A company will also need Companies House password and authentication code if it is filing accounts jointly with Companies House (register online with Companies House)

Company accounts

Create these in the online 'accounts template' or upload either:

- The limited company's statutory accounts.
- The accounts required by an unincorporated association's rules.

¹ The date at which all the information in an annual return must be correct. The made-up date is usually the anniversary of:

- The incorporation of the company, or
- The made-up date of the previous annual return registered at Companies House.



Corporation Tax calculations

- A company may enter these in the online 'computations template' or upload its own calculations.

4. Audit requirement

4.1 What is an auditor?

An auditor is a person who makes an independent report to a company's members as to whether the company has prepared its financial statements in accordance with Company Law and the applicable financial reporting framework. The report must also state whether a company's accounts give a true and fair view of its affairs at the end of the year.

4.2 Who appoints the first auditor of the company?

An auditor must be appointed for each financial year, unless the directors reasonably resolve otherwise on the ground that audited accounts are unlikely to be required.

For private companies, the directors appoint the first auditor of the company. The members may then appoint or re-appoint an auditor each year at a meeting of the company's members, or by written resolution, within 28 days of the directors sending the accounts to the members. If they do not do so for a particular year, however, the appointed auditor remains in office until the members pass a resolution to reappoint him or to remove him as auditor (5% of members, or fewer if the articles say so, can force the consideration of a resolution to remove an auditor). This provision about remaining in office, however, does not apply if the auditor's most recent appointment was by the directors or the company's articles require annual appointment.

4.3 Who can act as an auditor of a company?

An auditor must be independent of the company. Therefore, a company cannot appoint a person as an auditor if they are:

- An officer or employee of the company or an associated company.
- A partner or employee of such a person, or a partnership of which such a person is a partner.

If the accountant of a company does not fall into one of the above categories and if he or she has a current audit-practising certificate issued by a recognised supervisory body, they may act as the company's auditors.

The Professional Oversight Board recognises these bodies as having rules designed to ensure that auditors are of the appropriate professional competence.



Each recognised body has strict regulations and a disciplinary code to govern the conduct of their registered auditors. The four recognised bodies are:

- The Institute of Chartered Accountants of Scotland.
21 Haymarket Yards
Edinburgh EH12 5BH
Website: www.icas.org.uk
- The Institute of Chartered Accountants in England and Wales.
Level 1
Metropolitan House
321 Avebury Boulevard
Milton Keynes MK9 2FZ
Website: www.icaew.com
- The Institute of Chartered Accountants in Ireland.
The Linenhall
32-38 Linenhall Street
Belfast BT2 8BG
Website: www.icaei.ie
- The Association of Chartered Certified Accountants.
29 Lincoln's Inn Fields
London WC2A 3EE
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