

Disclaimer: This toolkit describes the law in general terms. It is not intended to provide legal advice on specific situations and should not be relied upon as a source of legal advice.

Date produced: 2 March, 2015

qLegal Toolkits

What are the key considerations in setting up a limited company in the UK?

United Kingdom law provides for a diverse range of business models. Each of these carries its own advantages and disadvantages, and attempts to address the commercial requirements of traders. For example, depending on the needs of an individual business, it is possible to carry on trading:

- as a sole trader;
- in a partnership; or,
- by setting up a limited company.

This toolkit will focus on the main issues and considerations relevant to setting up a **limited company** in the UK and is based on our previous qLegal toolkit on [UK Company Structure](#).

A company is a legal person **separate from its members** (a “shareholder” is a kind of “member” where the company has shares). It conducts business in its own name rather than in the name of its members. In addition, the undoubted advantage of a **limited company** over other types of business models is that the liability of its shareholders is **limited**. A limited company may enter into legally binding agreements; obtain a bank account; borrow money; incur debts; or, own property, without its owners being personally liable for more than the amount they invested when setting up the company. The company is liable for actions taken on its behalf.

By way of contrast, a sole trader is an individual who owns his or her own business over which they exercise complete control, obtains all business profits he or she makes but, critically, is also personally liable for all potential debts, which may in extreme cases lead to bankruptcy.



qLegal at the Legal Advice Centre
lac@qmul.ac.uk
qlegal.qmul.ac.uk

This short guide explains the main steps and considerations relevant to setting up a limited company in the UK.

Types of Limited Companies

Private Company Limited by Shares

All companies that are not public companies are **private**. A private company limited by shares is usually called a private limited company ("Ltd").¹

The expression "limited by shares" indicates that the company has "shareholders", and that the liability of shareholders to the creditors of the company is **limited to the capital originally invested**, i.e. the nominal value of the shares and any premium paid in return for the issue of the shares by the company.

If the company becomes insolvent, a shareholder will only lose the amount invested in the company. Their personal assets will be protected.

Private companies can range from a small family company to a subsidiary in a large group. What distinguishes them from a public limited company ("Plc") is that their shares cannot be offered to the general public.

Private Company Limited by Guarantee

A private company "limited by guarantee" is an alternative type of corporation and often found in the non-profit, charity or non-trading sectors, though there is no restriction on the use to which they may be put.

Such companies have "guarantors" rather than shareholders. These are members who agree to make a limited contribution towards the payment of the company's debts in the event of a winding up. That limit is usually fixed at a nominal £1 and is only required if the company's assets fall short.

¹ This sign may also refer to a private company limited by guarantee.



qLegal at the Legal Advice Centre
lac@qmul.ac.uk
qlegal.qmul.ac.uk

Common uses of companies limited by guarantee include clubs, membership organisations (including students' unions), residential property management companies, sports associations (e.g. the PGA European Tour), workers' co-operatives, social enterprises, non-governmental organizations (NGOs) and charities (e.g. Oxfam).

Community Interest Company

A Community Interest Company ("CIC") is a special type of company that may be set up either as a company limited by shares or guarantee. The company may be private or public. The stated purpose of these types of companies is to **benefit the community**.

The distinguishing feature of a CIC is that its assets are "locked". This means that it may only transfer its assets to another similar organisation such as a CIC or charity. The CIC is a looser structure than a charity in that (i) it may exist for purposes that would not be strictly charitable, even though they would benefit the community; and (ii) CIC's may (if set up as a company limited by shares) pay some (up to 35%) of their profits to investors.

The asset lock may encourage donors and funding organizations to invest in the CIC, confident that their investment will be used for the public benefit.

The documents required for setting up and registering a company are listed and described below. In setting up a CIC, **Form CIC36**, also known as the Community Interest Statement, is required in addition to the other standard documentation. Form CIC36 is especially important as it confirms the company's purpose of benefiting the community and thus enables the Regulator to assess the its eligibility. The Form contains explanatory notes that should be read very carefully before filling out the application.

The traditional focus of activities of CICs has mostly been on sectors of the economy such as health, education and community services.

Company Registration

All limited companies, whether private or public, must be registered and incorporated with **Companies House**. For a limited company to acquire a **certificate of incorporation**, which proves it exists as a legal entity, one must provide Companies House with the following information:

- a company name;
- a company address;
- the names and addresses of one or more directors;
- the names and addresses of one or more shareholders;
- a memorandum of association;
- a statement of capital - *details of the company's shares and the rights attached to them*; and,
- Articles of Association.

Upon incorporation of a limited company, Companies House issues a certificate of incorporation, which among other things contains the name, registered number of the company and confirms the date of its formation.

Company Name

For a company to be registered with Companies House, it has to have a unique name that is not (at the time or registration) being used by another company. In other words two companies with the same or even similar name cannot exist at the same time. It is advisable to search the Companies House register to find out whether a particular name has already been taken.

Registering a company name is not the same as registering a trade mark. If a company name is intended to be used as a trade mark, a search in the trade mark register should be conducted to make sure such trade mark is not already taken.

A company name also cannot contain any "sensitive" word or expression, be offensive or suggest a connection with any government or local authorities. For further information please refer to the Company House Guidelines on Names²

² <https://www.gov.uk/government/collections/companies-house-guidance-for-limited-companies-partnerships-and-other-company-types>



qLegal at the Legal Advice Centre
lac@qmul.ac.uk
qlegal.qmul.ac.uk

Company Address

The address of a limited company needs to be in a country where such company is registered, e.g. a company registered in Wales will need to have a registered office address in the Wales. All official communications regarding the company will be sent to the physical address, which will also be publicly available on the register. A home address of any member or director of the company may be used and so can a P. O. Box, provided that it includes a physical address and a postcode.

Directors

Directors are the people who collectively manage the day to day running of the company. They are responsible for making decisions as to what the company will do and must act in the company's best interests. A director may, but need not be, an employee of the company.

According to the Companies Act 2006, a private limited company must have at least one director, however, the company's articles of association may require more than that. As long as at least one private limited company director is an individual, other directors of such company may be other companies.

A public limited company is required to have a minimum of two directors and a secretary, who must be qualified (i.e. a person who has held the office of a public company secretary for at least three of the five years before their appointment, is a barrister, advocate or solicitor called or admitted in any part of the UK, etc.).

Members of a company are free to appoint directors of their choosing. For a person to perform the role of a company director, they must be at least 16 years old, they must not be undischarged bankrupt and they must not have been disqualified from acting as a company director.

Shareholders

As previously noted, a limited liability company is a legal entity distinct from those who invest in the enterprise. In return for their investment, they receive a number of "shares" in the company.

A company's shareholders will, by default, have the same rights as one another in proportion to the number of shares they hold, but it is possible to create different "classes" of share with different associated rights. For example, it would be possible to create a class of shares which did not give their holders a right to vote in general meetings of the company.

Despite this, most companies only have one class of shares (“ordinary shares”) The rights of shareholders are determined by the Companies Act 2006, the company’s Articles of Association, the terms of issue of the shares.

Shareholders may agree amongst themselves that, at least between themselves, different rules will apply. Such an agreement is known as a “shareholders’ agreement”. For example, such an agreement could allow one shareholder or group of shareholders, such as a new investor, the right to nominate a director for the company even though the Articles of Association would not give them such a right. The parties to the shareholders’ agreement can then ensure that that director is appointed in any general meeting.

A non-exhaustive list of some of the most common shareholder rights includes:

- attendance at general meetings;
- voting rights, which may vary in nature (e.g. each share may carry one vote, however, there may also be shares with multiple votes, non-voting shares, etc.);
- a share of the company’s profits by way of dividend;
- in case of winding up, a share of the company’s assets once creditors have been paid; and,
- the right to sue to oblige the company to act lawfully, although this area of law is complex.

For further general information about shareholders’ rights please refer to: Mayson, French & Ryan on Company Law.

Company documents

Memorandum of Association

The memorandum of association is a fundamental document that lists all the persons who intend to form a company, known as ‘subscribers’. In a company limited by shares, subscribers will become shareholders and must take at least one share. All subscribers must sign the memorandum in order to authenticate their intention. As the memorandum shows only the initial interest of the subscribers in the creation of a company, is it not possible to change it at a later date. You can find an example [here](#).



qLegal at the Legal Advice Centre
lac@qmul.ac.uk
qlegal.qmul.ac.uk

Form IN01

In order to register a limited company, you will need to fill in an application for registration called Form IN01. The form includes diverse information, such as:

- the company's name;
- registered office;
- whether liability is limited by shares or guarantee;
- whether the company will be private or public;
- the names and usual residential address of directors; or,
- whether model articles are used.

Articles of Association

Articles of Association state the rules governing the functioning of the company. Among other things, they deal with the operation of the directors, for example the allocation of their powers, method of appointment and decision-making process and the conduct of 'general meetings' of members, in particular voting rights. For instance, they prescribe who may decide on the payment of dividends to shareholders and how the amount is determined.

Although everyone is free to draft their own Articles of Association, model articles have been prepared for various types of companies. If you do not submit any Articles of Association, or do not modify some provisions, the model articles will apply (or at least to the not modified part).

If you register a private company limited by shares online using model articles, you may lower the cost of application from £40 to £15. It is common practise for most companies to use an online company registration agent.

Unlike the memorandum of association, it will usually be possible to change Articles of Association at any time by a special resolution.



qLegal at the Legal Advice Centre
lac@qmul.ac.uk
qlegal.qmul.ac.uk

Statement of Capital

The application for registration must further include a Statement of Capital, which sets out the capital of the company and its initial shareholdings. It must include:

- the total number of shares;
- the aggregate nominal value of shares;
- the classes of shares, together with the total number of shares of such class, their aggregate value, any details concerning voting rights or dividends; and,
- the amount to be paid or unpaid on each share.

The statement should also contain the name and address of each subscriber to the memorandum of association.

It is important here to understand what is meant by the nominal value of a share. Each share issued by a company must have a nominal value. This can be 1p, 10p, £1 or any other value of choice. The nominal value represents the minimum value the share can be issued (first sold by the company) for. A company can subdivide shares into really small nominal values in order to make dividing the share capital between investors easier. Thus, if a company has capital of £100 in 100 share of £1 nominal value, it can subdivide those shares so that each share becomes 10,000 shares with nominal value of 0.01p. The company will continue to have a capital of £100 but will now have 1,000,000 shares of 0.01p each. This allows companies to have a lot more control over the manipulation of shares.



qLegal at the Legal Advice Centre
lac@qmul.ac.uk
qlegal.qmul.ac.uk

Bibliography

John Birds, *Annotated companies legislation*, Oxford University Press (3rd edition)

Ala Dignam & John Lowry, *Company law*, Oxford University Press (8th edition)

Saleem Sheikh, *A Guide to the Companies Act 2006*, Routledge Cavendish

Derek French & Stephen Mayson & Christopher Ryan, *Mayson, French and Ryan on Company Law*, Oxford University Press (31th edition)

Websites

<https://www.gov.uk/browse/business> Accessed on 1 March 2015.

<https://www.gov.uk/government/publications/community-interest-companies-how-to-form-a-cic> Accessed on 1 March 2015.

This toolkit was drafted by students from the Centre for Commercial Law Studies, Queen Mary University of London: Liam Philip Nowak, Syed Dipon, Nihal Sandhu, Katerina Sedlata and Lukas Augustin Mrazik ©