



## HOW TO SET UP A BUSINESS IN THE UK

### 1. Introduction

This guide is intended to provide broad advice on the main legal requirements that will need to be complied with or considered on setting up a business in England and Wales.

Essentially, the main issues addressed are those of liability, capital commitment, business style and taxation. Some business models are better suited to certain styles whilst not to others, and each mode has distinct advantages as well as disadvantages.

The principal forms of trading entities considered in this guide are **partnerships, limited liability partnerships, private limited companies** and **public limited companies**. There are other commercial modes available such as sole trader, franchising or licensing though these will not be addressed below.

### 2. Business Organisations

#### ***Partnership***

Where two or more persons carry on business together with a view to making a profit then a partnership can be said to exist. There is **no formal procedure** to form the partnership and no legal requirement for anything to be in writing, though naturally, this is highly advisable. Therefore, it is relatively easy to set up and run a partnership.

In the absence of anything in writing to the contrary, the **Partnership Act 1890** will apply; all profits and assets of the partnership are equally divisible amongst the partners and similarly, the partners shall be jointly and severally liable for all the debts and obligations incurred by the Partnership. The important point to bear in mind here is that a partnership vehicle is not a separate legal entity in law. Consequently this **joint and several liability** is not affected by any private agreement or apportionment between the partners.

It is important to note that the liability of partners in a partnership is **unlimited** and as a partner you are personally responsible for any debts that the business as a whole incurs. Additionally, subject to certain conditions, a partnership can contain no more than 20 partners.

The treatment for tax purposes of a partnership is that each partner is treated as self employed and must file a personal tax return each financial year.

#### ***Limited Liability Partnership (LLP)***

The formation of an **LLP** is more complex and costly than that of a partnership but similar to that of a private limited company (see below) where there is a statutory requirement to file particular forms with Companies House. Furthermore, like a limited company there are statutory obligations which those in the partnership ("**members**") must adhere to.

The LLP retains the **flexibility** of a traditional partnership (see above) as opposed to the rigid structure of a private limited company. Personal liability of members is limited as the LLP is a separate legal entity in law. Consequently, there is no joint liability on the part of members for contracts entered into by the LLP. However, there are “**claw-back**” provisions in the case that the LLP ceases to trade, and the members can be more exposed to liability than as for a private limited company. Other than this, members can still be liable in tort or their own negligence.

There is no restriction on the number of members that can be admitted to an LLP but a minimum of two of them must be “**designated members**” – akin to the role of company secretary and director – and the law places extra responsibilities on them. If ever an LLP reduces to one member, that member is the designated member.

Members enjoy tax transparency as if they were partners in a partnership. Likewise new members can bring new capital to the LLP where investors can be involved in the management without losing the benefit of limited liability. However, the admittance of a new member is treated as if the existing members are making a disposal of part of the assets of the LLP for purposes of **capital gains tax** and therefore a possible tax charge arises.

### **Companies**

There are four types of companies. They are:

- a private company limited by shares (members liability is limited to the unpaid share capital except where any personal guarantees have been given);
- a private company limited by guarantee (members liability limited to the amount undertaken to be contributed by members);
- a private unlimited company (unlimited liability of members); and
- a public limited company (“plc”) (members liability is limited to the unpaid share capital and at the time of incorporation a plc must have an allotted share capital of £50,000.00).

### **3. Private Limited Company (LTD)**

By far and away the most popular company is the private company limited by shares. Though straightforward, its formation is more complicated than forming a partnership or LLP (see above).

#### **Capital requirement**

There is no minimum threshold of either the share capital requirement or the par value of those shares. Shares can be issued at a price above the par value (at a premium), may have different class rights and values, and generally, ordinary shares do not need to be paid up (the situation is different for plc’s). Only public companies may issue shares to the public and only if listed on a recognised exchange.

#### **Formation**

Forming a company introduces a range of extra legal duties than with the previous types of partnership. The minimum requirements for a private limited company are:

- one **director** need to be appointed.
- a registered office in England (which is the official address for service of legal proceedings and other documents and where Company's **statutory books** should be held).

- one **shareholder**, holding one share of any value.

Appointing a company secretary is no longer compulsory for private limited companies under the new Companies Act but it remains, however, advisable to have a company secretary.

The constitution of the company is set out in the Memorandum of Association and Articles of Association.

### **Constitution**

The **memorandum** now serves a more limited purpose than before the Companies Act 2006. It sets out the first shareholders of the company. A **statement of capital and initial shareholdings** must be delivered to the Registrar on an application for the registration of a company having a share capital. This statement must detail:

- the proposed company's aggregate share capital;
- the nominal value of the shares;
- the amount to be paid up on each share;
- the number of shares to be taken by each of the subscribers to the memorandum;
- the number and aggregate value of any class of shares; and
- particulars of the rights attached to those classes.

Under the new Companies Act, the memorandum no longer stipulates the purposes for which the company was formed or all the acts which it is lawful for the company to do. Now all companies have unlimited objects unless the objects are specifically restricted by the articles of association.

The **articles** govern the internal workings of the company and how it will be operated. The Companies Act provides a specimen form of articles, which is usually called "**Model Articles**". This is generally accepted in England as fair and effective. Accordingly, the articles of most companies simply adopt Model Articles with a few amendments reflecting the specific requirements of the company:

- empowering directors to allot shares, and, to whomsoever they wish
- enabling directors to vote on issues in which they have personal interests
- restrict the right of shareholders to transfer their shares
- prevent removal of directors
- elective regime – simplifies the daily administration of a company.

### **Responsibilities**

Companies must be registered at Companies House and the directors are responsible for notifying Companies House of changes in its structure and management. Certain documents need by law to be sent to Companies House about the company (such as the accounts, annual return etc) and the **statutory books**, which must be kept up to date and include current records of the following:

- minutes recording the proceedings of board meetings or shareholders' meetings
- the directors of the company
- the company secretaries of the company
- any security granted over the company's property
- any transfers of shares
- any directors' interests in shares and/or security of the company.

Often the administrative side of running a business is carried out by the **company secretary**. The company secretary is the principal administrative officer of the company for legal matters. The company secretary is no longer compulsory for private limited liability companies. If a LTD does not have a secretary, the directors may do anything that the secretary was required or authorised to do.

### ***Directors and Shareholders meetings***

It is, however, important to distinguish the roles of shareholders and directors: shareholders own the company but directors make the day to day business decisions. The directors are usually appointed by the shareholders and there are few matters on which directors require the approval of the shareholders before they can act.

When the directors act or meet collectively, this is generally referred to as the "**board**": hence "**board meeting**". The Model Articles requires a record to be made of the proceedings of all board meetings with the names of the directors present (or involved by telephone) ("**minutes**"). The board can act by a written resolution, but this must be signed by all the directors to be valid.

When shareholders meet this is called a general meeting of members. It is either an **annual general meeting** ("AGM") or otherwise an **extra-ordinary general meeting** ("EGM"). Likewise, the members can act by a written resolution, but again, it must be signed by all the members to be valid.

## **4. Public Limited Company (PLC)**

PLCs are very heavily regulated by statute, far more so than for a private company limited by shares and some of the concessions available to private companies are not available to PLCs. PLCs are not able to neither avail themselves of the elective regime nor pass a resolution by way of a written resolution, and the rules for issuing dividends are stricter and there are codes of conduct for directors. Finally, there is a shorter period for the laying of accounts with Companies House; only six months after the end of its accounting reference period.

### ***Capital requirement***

A PLC must by law have:

- a minimum of an authorised share capital of £50,000; and,
- allotted shares to the value of £50,000 of which 25% of each allotted share must be fully paid up.

### ***Formation***

- a minimum of 2 **directors** and one **company secretary** (the latter must have suitable experience, a suitable qualification or both);
- a registered Office in England (which is the official address for service of legal proceedings and other documents and where the Company's **statutory books** should be held); and,
- one **shareholder**, holding one share of any value.

### ***Constitution***

- Articles of Association as above for a private limited company

- a **memorandum** stating that the company is a public limited company and be in a specified form

Furthermore, there are additional rules and regulations that a plc has to abide by including but not limited to **The Listing Rules**, where a PLC wishes to become a listed company and **The City Code on Takeovers and Mergers** for any sale, purchase or merger activity of the plc.

PLCs though are able, if the necessary resolutions have been passed, to create and issue share capital in another **currency**. This ability, however, does not affect the requirement to always have at least the authorised minimum of £50,000 sterling as issued capital. A PLC may use as many currencies as it wishes for its share capital, provided that they are true currencies.

Finally, a PLC cannot apply for voluntary strike-off as a private company limited by shares is able to do.

#### *Residence*

Any person wishing to establish a company or LLP in the UK needs to be able to evidence their identity for compliance purposes. However, there are no special requirements which may act as barriers to the formation of an LLP or private limited company other than the requirement to have a registered office in the UK.

## 4. Taxation of businesses<sup>1</sup>

### *Companies*

Up to 31 March 2011 corporation tax on profits shall be:

<b>Profit level (£)</b>	<b>Effective tax rate (%)</b>
0-300,000	21 <sup>2</sup>
1,500,001+	28 <sup>3</sup>

There is a marginal tax relief in the interval between £300,001 and £1,500,000.

### *Partnerships and LLPs*

Everyone receiving an income as a partner in a partnership or a member in an LLP is responsible for, and required to, file a personal tax return for the year after the relevant income tax year. The tax return must be filed with the local tax office by September each year.

---

<sup>1</sup> If you have any questions or queries please do not hesitate to let us know and we can arrange for you to speak to a suitably qualified professional

<sup>2</sup> Small companies rate

<sup>3</sup> Full rate

Each partner or member is taxed on the following scale:

<b>Rate of tax (%)</b>	<b>Income (£)</b>
20% income tax on first	37,400
40% on income over	37,400

### ***Small Companies***

Small companies can take the advantage of filing abbreviated accounts to Companies House under company law and they need not be audited accounts. However, the larger companies accounts do need to be audited and all companies have to ensure that their accounts are sent on time to Companies House.

### ***Customs and Excise***

If the value of your:

- taxable supplies or acquisitions in the past 12 months or less have exceeded the current VAT registration threshold of £68,000, or the value of such is, in the next 30 days alone, expected to exceed this threshold, and/or,
- you are a supplier in another EU country and the value of your distance sales to the UK has exceeded £70,000 in the calendar year, or part year;

you must, by law, register for the purposes of Value Added Tax (VAT). There are fines and potential criminal liability for not doing so. If you are obliged to be registered for VAT, when you issue an invoice, you must include the business' VAT number on the invoice.

VAT is currently charged at 20% on the supply of goods and services delivered in the course of a business.

### ***Dividends***

Profits are usually distributed to shareholders in the form of dividends. Individuals in receipt of dividends from UK-resident companies are entitled under current law to a non-payable dividend tax credit.

### ***Inland Revenue - PAYE***

Company directors are employees of the company and must pay Class 1 National Insurance contribution (NIC) as well as income tax on their salaries. If your company or organisation has any taxable income or profits, you must tell the Inland Revenue that your company exists and that it is liable to tax.

For LLPs and partnerships the NICs are paid in addition to income tax, and separate provisions must be made as against the partners' or members' drawings.

***For further information and advice please contact:***

***Steen Rosenfalck  
Partner***

***T +44 (0)20 7553 9931  
E sr@millerrosenfalck.com  
I millerrosenfalck.com***

***The material contained in this guide is provided for general purposes only and does not constitute legal or other professional advice. Appropriate legal advice should be sought for specific circumstances and before action is taken.***

© Miller Rosenfalck LLP, January 2011.