

Incorporating a private limited company Considerations

Introduction

A new business can be set up as a company or an existing business can be incorporated as a company. The latter is often the case when a business has reached the stage where the increased administrative burden of company law requirements is offset by the benefits that the company structure offers, such as limited liability.

Types of incorporation

A company can be incorporated as company limited by shares (the most common form); a company limited by guarantee; or an unlimited company. A company is incorporated by filing the necessary documents and paying the required fee at Companies House. You can either:

- **Create a tailor-made company.** This is a new company with documents that are specifically tailored to their requirements.
- **Buy a shelf company.** This is a company that has already been incorporated but has not yet traded. Law stationers and company formation agents register shelf companies with standard provisions in their constitutions and sell them to buyers who can change them to meet their requirements.

the subscribers to the company want to form a company and have agreed to become members and, in the case of a company that is to have a share capital, to take at least one share each. The memorandum must state the name of each subscriber and their individual authentication.

- **Articles of association.** The Articles set out the basic management and administrative structure of the company. They regulate the internal affairs of the company (for example, the issue and transfer of shares) and create a contract between the company and each of its members in their capacity as members. Companies can either create bespoke articles of association or adopt (in whole or in part) model articles.

Incorporating a tailor-made company

To register a private limited company, Form IN01 and the memorandum of association must be lodged with the Registrar of

Companies at Companies House. Form IN01 includes:

- **The proposed company name.** There are restrictions on the choice of registered name that a company may adopt both on incorporation and on a later change of name. A company cannot be registered with a name that an existing company is already registered with. You should search the index of company names at Companies House to check that your preferred name is not already registered by another company.
- **The type of company.** You must state whether the company is to be limited by shares or guarantee or to have unlimited liability.
- **Details of the registered office.** A company must have a registered office at all times, so that communications and notices can be addressed to it.
- **Articles of association.** The form allows a new company to indicate whether it is adopting model articles in

Company constitution

A company's constitution and the rules governing its administration are set out in its:

- **Memorandum of association.** It states that

their entirety or with amendment; or entirely bespoke articles.

- **Details of directors.** Private companies must have at least one director who is at least 16 years of age. They do not need to have a company secretary. The form sets out the particulars that must be provided.

- **Statement of initial shareholdings.** This states the total shares taken by the subscribers when the company is formed. It includes the number, class and aggregate nominal value of those shares as well as the amount paid up or the amount to be unpaid on each of the subscriber's shares.

- **Statement of capital.** This statement sets out:

- each class of shares in the company;
- the number of shares in each class;
- the aggregate nominal value of the class; and
- the amount paid up or unpaid on each share.

The statement must also include details of the rights attaching to each class of shares of the company:

- voting rights;
- rights to dividend;
- rights on a capital distribution (including on a winding up of the company); and
- any redemption rights.

- **Statement of guarantee.** If the company is limited by guarantee, it must deliver a statement of guarantee. This is a statement from each of the subscribers that if the company is wound up while he is a member or within one year of him ceasing to be a member, he will contribute (up to a specified amount) to the assets of the company:

- payment of the debts and liabilities of the company contracted before he ceased to be a member;
- payment of costs, charges and expenses of winding up; and
- adjustment of the rights of the contributories among themselves.

- Statement of compliance with the registration requirements of the Companies Act 2006.

Filing the registration documents

- The required documents must be delivered to the appropriate office of the Registrar. The company is brought into existence when the Registrar issues the certificate of incorporation. This normally takes seven days if the application for registration is made using the normal service and currently costs £40 (unless the company is an unlimited company where the fee is £20).
- An expedited service of incorporation within 24 hours is available and currently costs £100.

Electronic incorporation

- Companies House has an electronic filing service for new incorporations, which allows for electronic submission of the necessary documents. It currently costs £14 (£30 for same day service).
- A web incorporation service has been launched in conjunction with Business Link. The service enables individuals to set up a simple private limited company using model articles. Online applications made on the Business Link website are submitted directly to Companies House. The service is available 24 hours a day, seven days a week and costs £18.

Post-completion formalities

The incorporation formalities should be completed at a meeting of the board of directors as soon as possible after receipt of the certificate of incorporation and any documents that require filing at Companies House must be filed within the statutory time limits.

Our Commercial Team can provide specialist advice in a broad range of commercial matters and would be happy to speak with you without commitment to see if we could help you.

Please call Mark Dewey or Andrew Doinik on 01233 625 711 for more information, or email them on mjd@hallettandco.co.uk.