

Operating a business in the UK

Just You!

There are no formalities, simply start doing business.

Many professions and activities are regulated, for example insurance, financial services and law- you would need to comply with those regulations where required.

If you carry on business with a name that is not your forename (or initial) and surname then you must put your identify yourself by putting your name on all written documents issued for the business and state an address for service of legal documents. You must also display that information at each place at which you do business.

Liabilities

You are personally liable for all contractual obligations that you incur and for all liabilities for civil wrongs (torts). All your personal assets(including your residence), wherever they are in the world, are available to satisfy your debts. Assets belonging to members of your family are not available (provided they are not part of an arrangement to cheat your creditors).

There are limits how long people with claims can take you to Court to recover. Generally this is six years, but may be longer or less depending on the type of claim.

You and others

There are two main types of business association

- (1) Partnerships -where the members act as the agents for each of the other member and;
- (2) Companies- where there is a separate 'legal entity' which operates the business.

Limited liability is available for both kinds of association.

Partnerships

A partnership exists whenever two or more persons (natural or legal) are engaged in a joint enterprise with a view to sharing the profits of that enterprise.

Creation

The partnership relationship is created by an agreement(oral, written or by conduct) by each partner to act in the joint enterprise. All that exists therefore is a state of affairs – there is no separate legal person distinct from the partners

The lack of formality required to establish a partnership is a very mixed blessing. It means that people can start business easily and with the minimum of fuss or delay. On

the other hand someone can very easily commit themselves, perhaps even unwittingly to the unlimited liabilities that their partners incur for them, or indeed having been successful in some venture they find someone claiming a part as a 'partner'.

There is a limit on the number of partners that a partnership can have, which is 20, unless the partners are members of specified professional bodies, in which case there is no limit.

Management

When an agreement that creates the partnership is made, each partner can carry out the objects of the agreement. If more control is needed (such as a management board) then that must be expressly provided for. Again, a written agreement is much the best way of ensuring that each partner knows what his rights and obligations are.

Because a partnership is not a legal entity it cannot legally own property (that is to say it cannot have its name on the property deeds). For partnerships of more than four partners some of the partners will have to be the legal owners.

Termination

In the absence of express agreement to the contrary the partnership will come to an end when its objects have been attained. If the venture was to be a continuing on, for instance running a professional practice, without some prior agreement for termination then it must continue.

A dissatisfied creditor can apply to the Court for the winding up of a partnership.

Partners breaching their obligations

The Court will exercise some supervisory control of partners who breach their obligations in bad faith. This could be either the expulsion of the defaulting partner, or if a minority of the partners are being oppressed – an order for the winding up of the partnership.

Disclosure

If you carry on business with a name that is not your own and your partners' forenames (or initials) and surnames then you must put your identify yourself by putting your name on all written documents issued for the business and state an address for service of legal documents. You must also display that information at each place at which you do business.

Liabilities

You are personally liable for all contractual obligations that you and your partners incur and for all liabilities for civil wrongs (torts) incurred in operating the business. All your personal assets (including your residence), wherever they are in the world, are available to satisfy your debts. Assets belonging to members of your family are not available (provided they are not part of an arrangement to cheat your creditors).

There are limits how long people with claims can take you to Court to recover. Generally this is six years, but may be longer or less depending on the type of claim.

Limited Partnerships

Limitation of the liability of partners is available, subject to certain conditions, which are

- (1) there must always be at least one partner without limited liability for the partnership debts;
- (2) the limited partners must not have any part in the management of the partnership business
- (3) the partnership must be registered with the Registrar of Companies
- (4) where the names of the partners are shown their limited liability status must be indicated.

Companies

Companies are legal persons and can be the legal owners of property and commence and be the subject of legal actions. There are several types, varying as to the arrangements for management – owner managed or where management is delegated, and whether limited liability is available.

Owner managed companies

Limited Liability Partnerships (“LLP”)

Creation

Is by two persons associated for carrying on business signing an incorporation document which is then registered with the Registrar of Companies.

The company can assume any obligations that the incorporators had incurred together in their business prior to the incorporation.

Management

The members manage the company by agreement (or if they are not able to agree, in accordance with statutory provisions).

Status of members

Each member of an LLP is an agent of that LLP in its business. The LLP is liable for all the liabilities incurred by the member in carrying on its business. The member is not an employee of the LLP.

Termination

A member may retire, or be expelled, from the LLP in accordance with the governing agreement. If there is no provision for retirement, by giving reasonable notice to the other members; the member may not be expelled.

The LLP may be wound in by agreement, or by being subject to insolvency proceedings by the Court.

Limitation of liability

The members have no liability to contribute to the LLP's assets in the case of winding-up.

A member of an LLP may however be liable for a civil wrong committed by him in the course of the LLP's business eg negligently causing personal injury, for which he would remain personally liable.

Formalities

The company must have a 'Registered Office' in either England and Wales or Scotland, depending on which jurisdiction it will be incorporated in.

The joining and retirement of members must be notified to the Registrar of Companies.

Disclosure

The LLP must produce accounts each year in accordance with the rules that apply to Limited Companies.

Costs: The Registrar of Companies charges £25 on incorporation and £30 for each annual return.

Delegated management companies

There are three types of company where the owners(shareholders) have a limited role in the management of the company business (which is delegated to a board of directors) ; with two of these the members have limited liability for the company's debts;(1) private limited company and (2) public limited company (3) the unlimited liability company. All these types of company can become hybrid member-managed/delegated management entities*.

Limited Liability Companies

Private Limited Company Creation

Is by the signing of governing instruments- the Memorandum of Association and Articles of Association (these provide the objects of the company and for how it is to be governed and application to the Registrar of Companies for registration.

Disclosure

Registers

The company must keep a register of directors and members. These must be made available to any one who requires to inspect them.

The company must make a return each year of its directors and secretary(s) to the Registrar of Companies (in practice the required form

Charges

Any mortgage or other charge over the company's property must be registered with the Registrar of Companies if it is to be effective.

Accounts

The company must publish accounts each year in a form required by statute – the members must be provided with full accounts. Those accounts may require to be audited by a qualified person depending of scale of the company's operations and whether it is a member of a group. A copy of the accounts (in abbreviated forms if so desired) must be lodged with the Registrar of Companies.

Management

Members (Shareholders/Stockholders)

Creation

Members join either by being subscribers for shares at incorporation or by having shares transferred to them

Rights

A member has the rights given in the company's constitution to the class of share that he holds. Most shares are what are called 'ordinary shares'; these carry one vote each and an equal share of the distributable income of the company. There are variations, such as preference shares; where the share is paid a dividend in preference to the ordinary shares, and many other weird and wonderful variations depending on the needs of the promoters/financiers of the company.

There is always a right to attend meetings of the company – but not necessarily to vote.

Management Powers

The members usually have a very limited role in the management of the company: the appointment and removal of directors, varying the authorised capital of the company and amending the governing instruments. By consent even the requirement to hold annual meetings and some other formalities can be waived.

Where a company is being operated to cheat the minority shareholders the Court will, on application, require the majority to buy out the minority at a fair price or order the winding up of the company. The Court may also allow the minority shareholders to sue others on behalf of the company.

Termination

A person can cease being a member by transferring his shares to another person.

A limited company must not return its paid-up capital to its members without the permission of the Court: if a member wishes to terminate by selling his shares to the company there must be sufficient profits available to members for it to be able to buy those shares.

Limitation of Liability

The members are not obliged to contribute to the company's assets either during its operation or on a winding-up (unless there are unpaid contributions on their shares, in which case those unpaid contributions can be called for).

Formalities

Entry of the member's shareholding in the Share Register of the Company is essential to the exercise of shareholder rights.

Status of Directors

Creation

Directors are appointed by the members, or more often by the exercise of powers given to them in the governing instrument to make appointments.

Management

The directors may exercise the management of the company's business as a body, or delegate to a sub-board, or even an individual (a managing director).

The directors do not have the power to change a company's constitution- that is reserved to the members. They do most often have the right to allocate any authorised but un-issued share capital- that right can be used to alter the balance of power between the members.

Duties to the company

Is a fiduciary

A director has a fiduciary duty to the company – that is to say a duty to act in good faith to the company (as distinct from the members)

Act with reasonable competence

A director must also act in the conduct of the company's business using the skills abilities with reasonable competence.

Liabilities

Acting on company's business.

It is possible for a person acting on behalf of a company to bring liability for the company's debts by failing to ensure that the company's name is not shown on order for goods of money.

- liable for civil wrongs

A director is not liable for the company's breaches of contractual arrangements with other parties, except where his particular skill was relied on by the other party.

A director of a company would be liable (along with the company) for other civil wrongs committed by him in the course of the company's business. For example personal injury.

Wrongful trading

If the company, to the directors knowledge, becomes insolvent and the directors decide that it should continue trading they may be liable for any further losses that are caused to the creditors.

If a director conducts the company's business on the instructions of some other person who has not been appointed – a so-called "Shadow Director", he and the "Shadow Director" are liable for the losses that result.

Penalties

Where a company becomes insolvent the Official Receiver may apply to the Court for an order that one or more directors be disqualified from acting as a director for a period of up to 15 years

Termination

A director may terminate his office by resigning; by the expiry of his term of office; or by removal by the members- the directors do not have the power to remove one of their number.

Disclosure

A director must notify the Registrar of Companies his present name, any previous names, his present residential address, occupation, nationality and any other directorships of UK companies.

Termination

A company be wound up by a resolution of the members (if solvent) or by a resolution of the creditors (if insolvent), or by order of the Court. On a winding-up the directors

lose their powers effectively to manage the company. In the course of the winding-up the creditors of the company are paid and any surplus is distributed to the members in accordance with their entitlements.

At the end of the winding up the company is dissolved and ceases to exist. However a person with a claim may apply to the Court for the company to be re-instated.

There is an informal approach for termination which involves an application to the Registrar of Companies to strike the company off the register- the company must have been dormant for three months and meet other conditions for the application to be granted.

Failure by the company to comply with the requirements to make an annual return to the Registrar of Company's for an extended period may result in the company being struck off the register. The company then ceases to exist and can do nothing until such time the directors or members apply to the Court to have the company restored to the register.

Public Limited Companies

Creation

Such a company is created in the same way as private limited company, except that its founding instrument states that it shall be a "public limited company". An existing private limited company may also re-register as public.

Minimum share capital

A public limited company must have a minimum authorised share capital on incorporation of £50,000, with £12,500 paid up.

Management

Members and Directors have largely the same rights, obligations and liabilities as apply with Private Limited Liability companies.

Disclosure

Registers

The company must keep a register of directors and members. These must be made available to any one who requires to inspect them.

The company must make a return each year of its directors and secretary(s)

Charges

Any mortgage or other charge over the company's property must be registered with the Registrar of Companies if it is to be effective.

Accounts

The company must publish full accounts in form required by statute. Those accounts must be audited by a qualified person. A copy of the accounts must be lodged with the Registrar of Companies.

Termination

The company's existence can be brought to an end by the same procedures used to terminate private limited companies.

Unlimited Liability Company

Creation and Management

This is identical to the creation and management of a private limited company, except:

The company does not have to maintain its share capital and can return it to its shareholders;

Any member of the company is liable to make up the deficiency of assets on a winding-up (to the total amount, not pro-rata). This liability exists for the three years after the person ceases to be a member.

There is no requirement to send accounts to the Registrar of Companies.