

Forming a Company

Incorporation as a Company

A company has a separate legal personality which will only be looked through under very limited circumstances. Generally, if a business is carried on through a company, the shareholders and directors will not be personally liable for its actions. The law on this matter is effectively the same as in Ireland.

Companies are formed in the UK by filing certain key documents with Companies House. These documents, the Memorandum and Articles of Association of the company set out the basic rules or constitution of the company. Company law allows a certain degree of freedom in relation to the content of the documents. Most companies adopt model Memorandum and Articles of Association to a greater or lesser extent. Once the documents are filed and accepted, the company comes into existence and a Certificate of Incorporation is issued by Companies House.

The types of company which can be formed under the UK Company Law are broadly the same as in Ireland. There are public and private companies. Private companies may be limited or unlimited. Private companies may be, with or without, share capital or may be limited by guarantees.

The vast majority of companies in England and Wales are private limited companies. Public limited companies (plcs) can raise money by selling shares. Private companies cannot do so. Plcs are subject to a tighter regime and must have share capital of at least £50,000. They must have at least two shareholders, two directors and a qualified company secretary.

The basic principle of company law is that the liability of shareholders is limited to the value of the share contribution, which is usually nominal and is paid up front or at an

early date. The liability of the company itself is unlimited, but in effect, it is limited to the value of its assets, net of its liabilities.

Objects / Purpose

Formerly, every company had to state his objects (or purpose) in the Memorandum of Association. As of the 1st October 2009, the limitation on a company's powers will effectively be abolished, except for certain limited classes of companies. The Companies Act, 2006 provides that unless a company specifically elects to restrict its objects, it can do any act which an individual can undertake.

Required Officers of the Company

The officers of the company are the directors and (possibly) a company secretary. The names and addresses of the company's officers must be included on the registration documents. If they resign or if new ones are appointed or other details change, Companies House must be informed.

Private companies must have at least one director. A company secretary has not been mandatory, since October 2008. This is different to the position in Ireland where two directors and a company secretary are always required.

It has been possible for a number of years for one person to form a single member private company and to be the sole director of this company. There are some special rules applicable to single member companies, arising from the fact that there are no members meetings to decide critical matters.

Shareholders Agreements

The UK Companies Act, 2006 has reformed companies law with a view to making it more user friendly. However, even with these reforms, the Companies Act still tries to provide a "one size fits all" solution for the management of companies. In reality, there is a significant difference between smaller companies where the shareholders are also

the managers and directors and larger companies with multiple shareholders, who do not participate in the running of the business.

It is desirable to have a Shareholders Agreement for private companies. This is because shareholders in a private company are more like partners and participate jointly in the business. A well drafted shareholders agreement can avoid potential disputes and uncertainties and clarify the role of the participants. It will typically deal with key matters such as critical decisions, financing issues and the parties obligations to contribute capital, loans or grant guarantees. There are a wide variety of protections which can be drafted into a shareholders agreement to ensure the smooth running of the company and protect the long term interests of the participants.

Shareholders Agreement should deal with long term issues and exit mechanisms for shareholders. For example, they should cover a situation where one party wishes to sell but the other does not. They may cover circumstance where one party receives an offer for shares and it would be desirable to be able to require the other parties to sell. Alternatively, the other parties might themselves want the right to ensure that they are also bought out.

This Guide is intended as an overview and broad outline of the matters covered in it. Its purpose is to inform and raise awareness. We are happy to offer specific legal advice on particular circumstances.

This Guide should not be relied on as a substitute for comprehensive legal advice with reference to the particular circumstances.

While we have taken due care in the preparation of this publication, we do not accept legal liability as a result of any reliance placed on anything in this Guide. The reader should rely only on specific legal or taxation advice.