

# Incorporating a private limited company

## Corporate & Commercial

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### What type of company can be incorporated?

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. A company can be incorporated as:

- a company limited by shares (the most common form); or
- a company limited by guarantee.

A company is incorporated by filing the necessary documents and paying the required fee at Companies House.

### Company constitution

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

- **Memorandum of association.** A memorandum of association must be submitted to Companies House with the other registration documents. It states that 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 cannot be updated; it is a "snapshot" of part of the company's constitution at the point of registration. The memorandum must state the name of each subscriber and their individual authentication.
- **Articles of association.** All registered companies must have articles of association which 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) the model articles. If no bespoke articles are registered, the model articles will apply as the default set of articles for limited companies.

### Incorporating a tailor-made company

To register a private limited company, Form IN01, the memorandum of association and any bespoke articles 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. The Registrar of Companies will refuse registration of any unacceptable name. A company cannot be registered with a name that an existing company is already registered with.
- **The type of company.** A statement must indicate whether the company is to be limited by shares or guarantee.
- **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 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 of a company limited by shares 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.** If the company is limited by shares, it must deliver a 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.**

*Please note that the information contained in this fact sheet does not constitute legal advice. This fact sheet is not intended to be a full summary of the law and advice should be sought on individual situations. All statements of law are applicable to the laws of England and Wales only.*