

LAWPACK



Self-Help Kit

Limited Company








Guidance Manual

The contents of this Manual have been approved by
H M Williams Chartered Accountants



How to use this Kit

This Lawpack Kit can help you achieve an important legal objective conveniently, efficiently and economically. Nevertheless it is important for you to use this Lawpack Kit properly if you are to avoid later difficulties.

-  Read this Manual carefully. It contains the instructions you need to complete the company formation forms. If after thorough examination you decide that your requirements are not met by this Lawpack Kit, or you do not feel confident about writing your own documents, consult a solicitor. The law is stated as at 1 October 2009. This Kit is intended to reflect the changes to company law brought about by the Companies Act 2006.
-  Always use a pen or type on legal documents; never use pencil.
-  Do not cross out or erase anything you have written. Always provide all the information requested or the forms will be returned to you.
-  Always keep legal documents in a safe place. Registers, Minutes, the Memorandum and Articles of Association, and the original Certificate of Incorporation should be kept at the company's registered office.
-  If you have any queries about what information should be filed with the Registrar of Companies, contact Companies House, Crown Way, Cardiff CF14 3UZ, for companies registered in England and Wales. For information on Scottish companies, contact Companies House, 4th Floor, Edinburgh Quay 2, 139 Fountainbridge, Edinburgh, EH3 9FF. For information on companies in Northern Ireland contact Companies House, First floor, Waterfront Plaza, 8 Laganbank Road, Belfast, Northern Ireland, BT1 3BS. Companies House's national telephone number is 0303 1234 500. Companies House products and services are also detailed on its website at: www.companieshouse.gov.uk.
-  This Kit provides you with access to the basic documents and legal forms you will need to set up your company. To help you run your company after incorporation, we have provided example formats of standard minutes and completed examples of forms for reference, which are available to download using our Product Update Service (see page 5 for further details).
-  Lawpack also have a range of products to help you run your company after incorporation. See Lawpack's website www.lawpack.co.uk for further details.



FORM
DOWNLOAD

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Included as loose leaf

- Share Certificates
- Register of Members
- Register of Directors
- Register of Charges
- Register of Directors' Interests
- Register of Secretaries

Forms available to download

- Form IN01 – Application to register a company
- Model Articles of Association
- Memorandum of Association
- Form SH01 – Return of allotment of shares
- Form AA01 – Change of accounting reference date

This is an excerpt from Lawpack's *Limited Company Formation Kit*.
To find out more about creating a limited company, [click here](#).

What is a private limited company?

A private limited company is:

- a legal entity in its own right distinct from its members;
- owned by its members;
- run by directors who are appointed by the members;
- empowered to do anything contained in its constitution (Articles of Association).

If the company is limited by shares your financial responsibility as a shareholder is limited to paying for your shares in full. This means that, in principle, provided you have paid for your shares in full, your personal assets cannot be touched, even if the company cannot pay its debts. We say 'in principle' because if you have given a bank guarantee for the company's overdraft etc, or if it is decided by a court that you have failed to fulfill your duties as a director, you can indeed find that you, personally, have to contribute towards paying the company's debts, but if you are only a shareholder, and not a director, you won't have any of these problems.

Should you incorporate your business?

Whether you are currently running a business or planning to start a new enterprise, you should consider carefully the various types of business organisation that exist.

The three basic types of business entity are: sole trader, partnership and limited company. Each offers its own advantages and disadvantages.

A Sole Trader

Operating as a sole trader is the simplest form of business.

As a sole trader you are in charge of all aspects of the business. You are personally liable for all debts of the business, even in excess of the amount invested. You and the business are considered the same entity.

The advantages of being a sole trader are:

- 1** No requirement to file Accounts or Annual Returns or other information at Companies House, which means you have greater privacy.
- 2** You are in complete control of the business.
- 3** There may be tax advantages.

The disadvantages are:

- 1** Unlimited liability. You will be responsible for any amount of business debts no matter how incurred, which means that your personal property can be used to settle business debts. This, of course, is a significant disadvantage.

- 2 Potential difficulty in raising capital because you cannot transfer an interest in the business to investors as security for their investment.

B Partnerships

A partnership involves two or more individuals carrying on a business together with a view to profit. Each partner is personally liable for all debts of the partnership, including those incurred by the other partners. Partnership agreements can be quite complex.

The advantages of a partnership are:

- 1 There is a broader management base than a sole trader.
- 2 There are possible tax advantages, such as avoiding double taxation whereby the company pays corporation tax on its profit and then later the shareholders effectively pay tax on the same profits through capital gains tax on the sale of their shares and income tax on their dividends.

The disadvantages of a partnership are:

- 1 There is unlimited liability for all the partners. The personal assets of each partner are available to satisfy debts of the partnership.
- 2 The partnership may come to an end when existing partners leave or die. If there are two partners and one leaves or dies, the remaining partner automatically becomes a sole trader, unless he admits another partner.
- 3 Obtaining large sums of capital is relatively difficult as investment cannot be obtained from new shareholders.
- 4 Business decisions taken by just one partner bind all the partners.
- 5 It may not be easy to sell or transfer an individual partnership interest.
- 6 Some tax incentives, such as employee share option schemes, are not available to partnerships.

Since April 2001, new 'limited liability partnerships' have also existed; these pay income tax on their profits (not Corporation Tax) but have to file accounts at Companies House. Details are available from Companies House.

C Companies

There are several distinct advantages to forming a company, which can be done individually or in concert with one or more investors or shareholders. Of course, the benefits of having potentially limited liability and raising capital easily may not outweigh the disadvantages of higher costs, increased paperwork and greater regulation to which you will be subjected once you form a company.

The advantages of a company are:

- 1** Limited liability. In theory and in law the shareholders are not personally liable for the debts of the company. The company can only ask shareholders to pay for their shares in full, if they have not already done so. The shareholder's responsibility is limited to this amount and this amount is determined when the shareholder agrees to buy shares. Should the business fail, the creditors cannot obtain possession of shareholders' assets, such as homes or cars, in settlement of debts. However, as we have seen, the directors may find themselves liable to pay the company's debts. Limited liability is the most important reason why so many businesses are incorporated.
- 2** Capital can be raised with relative ease because investors can buy shares in the company. This does not mean, however, that a new company can simply offer shares to the general public. Share offers are regulated by law.
- 3** Subject to the Articles of Association, shares can be transferred to existing members and to family members as gifts or otherwise. It is possible to sell your shares to other people, but not in a general offer to the public. Investors in a private company do not receive the same protection as they would have if they were investing in companies listed on the Stock Exchange.
- 4** Since the company is an independent legal entity, it does not cease to exist because one of the shareholders dies or retires. It is therefore easier to ensure the continuity of a company than of a partnership.

The disadvantages of a company are:

- 1** It must comply with statutory rules and disclose information to the public.
- 2** It is usually the most expensive form of business to organise and run, although a partnership can be equally expensive, especially a Limited Liability Partnership.
- 3** Both the company and the individual shareholders have to make tax returns.
- 4** Record keeping (such as keeping a minute book) can be more extensive for a company.
- 5** Winding up a company and in many cases even changing its structure can be more complicated and expensive than for partnerships and sole traders.
- 6** Please remember it's not your money. Any money in the company's bank account belongs to the company and it can only be taken out as a dividend or wage, or set against money you put into the business.

The choice of the structure for your business should be considered carefully. Once you have decided that a company is the appropriate structure for your business, you must go through the legal steps required to create your company. With careful planning most people can easily set up and run their own company without needing a solicitor, thus saving substantial legal fees.

Types of company

The liability of the shareholder is determined by the type of company formed:

1 Limited by Shares

The shareholder's liability is limited to the nominal value of the shares held by the shareholder. If the shareholder has agreed to pay more than the nominal value, the liability is for that greater sum. Provided the company is successful, the value of the shares should increase but if the company goes into liquidation, the shareholder can lose this investment.

2 Limited by Guarantee

The member's liability is limited to an amount the member has personally guaranteed to contribute to the assets of the company if it is wound up, this guarantee also applies for a period of one year after membership has ceased. This type of company has no share capital and is usually used by charities that wish to be formed as limited companies. This Kit is not suitable for setting up companies that are limited by Guarantee.

3 Unlimited Company

The shareholder's liability is not limited and the shareholder could be asked to pay the company's debts.

4 Public Limited Company

The shareholder's liability will be limited to the nominal value of the shares held by the shareholder. If the shareholder has agreed to pay more than the nominal value, the liability is for that greater sum. On incorporation, the company's name and Memorandum of Association must specify that it is a public limited company. The statutory rules which a public company must comply with are stricter than those which apply to private companies.

With this Lawpack Kit, you can set up a private company limited by shares.

What this Lawpack Kit gives you

By following the instructions in this Lawpack Kit and completing the forms provided, you will be able to set up a private limited company along the following lines:

- A new company can operate with a minimum of one director or with two or more directors who are responsible for the management of the company.
- From 6 April 2008 a company secretary is no longer legally required; however, we strongly suggest you appoint a company secretary who can also be a director. The secretary is responsible for the administration of the company and compliance with filing requirements. It is because these legal requirements still exist that we believe it to be wise and sensible to formally appoint someone to ensure they are carried out.

- A registered office in England or Wales, so that English law applies, or in Scotland, so that Scots law applies.

Note that all aspects of the company can be changed later, although certain formalities (and possibly fees) will be required. If you make any changes to the constitutional arrangements, you must notify Companies House.

The documents needed for incorporation are as follows:



- 1 Memorandum of Association** simply sets out the name of the company and who the initial subscribers (shareholders) are. This form is available to download from www.lawpack.co.uk (see page 5 for further details).



- 2 Articles of Association** contain the company's regulations for its internal management. The official title of this document used to be Table A but it's now called 'Model Articles'. We include the latest Model Articles for a limited company, as issued by the government for use after 1 October 2009. This form is available to download from www.lawpack.co.uk (see page 5 for further details).



- 3 Form IN01** gives details of the directors, company secretary and the address of the registered office. It also states that the directors have complied with all proper procedures to form a company. This form is available to download from www.lawpack.co.uk (see page 5 for further details).

A fourth requirement is the fee for incorporation. Companies House can advise on the current amount (tel 0303 1234 500).

Naming your company

Once you are ready to set up your company, you must choose a company name and then determine whether you are allowed to use that name. The following points should be noted:

- 1 The name must include the word 'Limited' at the end of it.** If you are incorporating a company in Wales (i.e. its registered office is in Wales) the name may be written in either English or Welsh. The Welsh word for 'Limited' is 'Cyfyngedig'. You can also use the abbreviations 'Ltd' or 'Cyf'.

- 2** You cannot use a name for your company which:

- Is identical to a name already on the Register at Companies House.
- Is so similar as to be considered the same as or too like a name on the Register. For example:

a) Lawpack Publishing Limited

Lawpack Publishing Company Limited

The above names would be considered the same.

b) Lawpack Publishing Limited

Law Pak Publishing Limited

The above names would not be refused initially, as they are not identical; the lower company may have to change its name on a successful objection from the upper company.

- Is offensive or would constitute a criminal offence.
- Is so misleading as to the activities of the company that it causes harm to the public.
- Gives the impression that the company is connected with HM Government or a local authority.
- Includes any sensitive words or expressions listed on pages 28-32.

If you have any doubts about your choice of name, consult Companies House where you can check the index of Company Names. You can also consult the Trade Marks Register of the UK Intellectual Property Office at www.ipo.gov.uk.

Use of company name

As soon as your company is incorporated you are required to specify its name on business stationery, emails, your website and at business premises as well as the registered office, if they are not one and the same. You are also required to publish the following additional information on your business stationery, emails, your website, and company order forms:

- place of registration (e.g. registered in England and Wales, Scotland);
- registration number (which you will find on your Certificate of Incorporation);
- registered office address (see below).

1 Place of business

You must paint or affix your company name outside any office or place of business of your company. The name should be conspicuous, well presented and easily legible.

2 Business stationery and emails

Your company name should appear on:

- all company business letters;
- all emails;
- all notices and other official publications;
- all bills of exchange, promissory notes, endorsements, cheques, and orders for money or goods by or on behalf of the company;
- all bills, invoices, receipts and statements.

You must use your company name exactly as it appears on your Certificate of Incorporation. Remember to include the word 'Limited' or 'Ltd'.

3 Trade names

If your company trades under a different name from its registered name you may be personally liable for its debts, unless you state the company's registered name on all its business stationery, emails etc.

The registered office

Often this will be your company's office. You could alternatively use the address of your solicitor or accountant, but they may make a charge for this.

This Lawpack Kit is only suitable for forming a company with a registered office in England, Wales, Scotland and Northern Ireland.

How you form your company

There are numerous ways to form a company, the most common being electronic incorporation or by post. We will mainly cover by post (paper forms) incorporation in this pack, but will offer an overview of incorporating online.

1 Application to Register a Company Form IN01

For those of you familiar with the old forms, this Form IN01 replaces forms 10 and 12, and is the new 'master' form for incorporating your company. Although the new form is considerably longer than the old ones, due to the extra detail required it is likely that a continuation sheet of sorts will be required and these are available to download from www.lawpack.co.uk (see page 5 for further details).

We will break down below what needs to go where, and who needs to sign what, we also aim to highlight the more important parts of the form:

Part 1 – Company details

This is where you enter the company name and its first registered office. You will also need to confirm the company type and confirm that the company name does not have any 'sensitive' words (See page 28).

It is highly unlikely that you will need to tick the box so as not to include 'Limited' in the name. If you do want to do this you should contact your accountant.

Also in this section, you must indicate what type of Articles of Association will be used. Most new companies will use the Model Articles in its entirety and tick 'private limited by shares' in option one. However, if you require option two or three, or the Articles will be restricted, you should contact your accountant or solicitor.

