



FORMING A COMPANY

This information sheet summarises the key issues when forming a company in the UK.

The factors covered are:

1. Overview
2. Definition of a UK registered company
3. Setting up a UK registered company
4. Alternative business structures for foreign investors
5. Choosing a company name
6. Further information

1. OVERVIEW

The UK has an open, transparent and business-friendly system to encourage the formation of new businesses. There are more than 2.6 million registered companies in the UK, with over 350,000 new registrations each year. No permission is required to establish a business presence in the UK, although there are regulations on the use of business names and certain business sectors which may require licences or authorisation (such as finance, defence and oil exploration).

Companies House is the key government organisation that co-ordinates the administration of businesses in the UK (*Companies Registry* in Northern Ireland). Detailed guidance on the requirements for forming a company in the UK is available at: www.companieshouse.gov.uk (for England, Scotland and Wales) or: www.companiesregistry-ni.gov.uk (for Northern Ireland).

Independent professional advice on forming a company in the UK can also be obtained from accountants, solicitors and company formation agents (see Appendix A for further information).

2. DEFINITION OF A UK REGISTERED COMPANY

The majority of foreign investors will establish a UK registered company when setting up in the UK. There are four different types of UK registered company:

- *Private company limited by shares* ("Ltd") – the members' liability is limited to the amount unpaid on shares they hold.
- *Private company limited by guarantee* – the members' liability is limited to the amount they have agreed to contribute to the company's assets if it is wound up.
- *Private unlimited company* – there is no limit to the members' liability.
- *Public company limited by shares* ("plc") – the company's shares are offered for sale to the general public through a stock exchange and the members' liability is limited to the amount unpaid on shares held by them.

The vast majority of foreign businesses are established as a company limited by shares, either as a *private* limited company or as a *public* limited company. Most foreign companies set up a private limited company that is a subsidiary of the overseas company (for a formal definition of a subsidiary, please see: www.clickdocs.co.uk/glossary/subsidiary-company.htm).

3. SETTING UP A UK REGISTERED COMPANY

It is a straightforward process to establish a company in the UK and there are no separate rules for foreign nationals. To register a company, certain mandatory documents such as the "Memorandum of Association" and "Articles of Association" must be filed with Companies House (for England, Scotland and Wales) or with Companies Registry (for Northern Ireland).

The documentation can be prepared and the company registered in a day, provided that standard Memorandum of Association and Articles of Association are adopted (it can take considerably longer if tailor-made Memorandum of Association and Articles of Association are required). "Ready-made" companies are available from company formation agents throughout the UK.

4. ALTERNATIVE BUSINESS STRUCTURES FOR FOREIGN INVESTORS

Instead of registering a UK company, foreign businesses can establish a presence in the UK through the following:

- a) A branch
- b) A place of business
- c) A partnership

- d) A limited partnership
- e) A limited liability partnership
- f) A joint venture
- g) A European public limited company (SE)

a) *A branch*

A branch is part of an overseas limited company organised to conduct business through local representatives in the UK.

After opening a branch, the following documents must be submitted to Companies House (or Companies Registry in Northern Ireland) within a month:

- a completed BR1 form,
- a certified copy of the company's constitutional documents (for example, the charter, statute and operating agreement),
- a copy of the latest set of audited accounts required to be published in the overseas country, and
- the registration fee (currently £20 in England, Scotland and Wales, and £35 in Northern Ireland).

Constitutional documents and accounts must be in the home country language of the overseas company, with (if not in English) a certified translation made in the country where the company was incorporated.

b) *Setting up a place of business*

A place of business gives a physical or visible indication that a company may be contacted there. An overseas company also has to register if it regularly conducts business from a particular location in the UK, even if there is no physical sign of the company's connection with it.

Within a month of establishing a place of business, the company must submit the following documents to Companies House (or Companies Registry in Northern Ireland):

- a completed 691 form (for England, Scotland and Wales) or 641 form (for Northern Ireland),

- a certified copy of the company's constitutional documents (for example, the charter, statute and operating agreement), and
- the registration fee (currently £20 in England, Scotland and Wales, and £35 in Northern Ireland).

Constitutional documents and accounts must be in the home country language of the overseas company, with (if not in English) a certified translation made in the country where the company was incorporated.

c) *Partnerships*

Individuals, including overseas investors, can set up as a partnership in the UK. The partners have "joint and several" liability for all debts. This means that if a partner or a number of partners cannot pay, or be made to pay, their share of any debts, the other partners become liable (in addition to their own share of debt).

d) *Limited partnerships*

A limited partnership consists of:

- one or more persons called "general partners" who are liable for all debts and obligations of the firm, and
- one or more persons called "limited partners" who contribute a sum or sums of money as capital, or property valued at a stated amount. Limited partners are not liable for the debts and obligations of the firm beyond the amount contributed.

A limited partnership must be registered under the Limited Partnership Act of 1907. To register, all partners must sign and submit Form LP5 – including details of the business name, nature of the business, commencement date and the sum contributed by each limited partner – to Companies House (or Companies Registry in Northern Ireland).

An overseas limited partnership cannot usually register in the UK because the main place of business of a limited partnership has to be in the UK.

e) *Limited liability partnerships (LLP)*

An LLP is an alternative corporate business structure providing the benefits of limited liability but allowing its members the flexibility of

organising their internal structure and tax arrangements as a traditional partnership.

Any new or existing firm of two or more “persons” (in law a “person” can be an individual or a company) can incorporate as an LLP. An LLP is incorporated by registration at Companies House or Companies Registry in Northern Ireland (following a similar process to that required for registering a company).

LLPs have similar disclosure requirements to a company, including the filing of accounts. They are also required to:

- file an annual return,
- notify any changes to the LLP’s membership,
- notify any changes to their members’ names and residential addresses, and
- notify any change to their Registered Office address.

For further detailed information on LLPs, please see:
www.companieshouse.gov.uk/infoAndGuide/llp.shtml

f) *Joint ventures*

An overseas company can form a base in the UK by joining with a UK company. Such joint ventures (JVs) are usually made with limited companies or established as a partnership. Information on possible JV partners is available from the relevant UK trade association. For further information, please contact the Trade Associations Forum at:
www.taforum.org

g) *European public limited company*

European Union legislation allows overseas companies to establish a European public limited company (also known as a “Societas Europaea” or “SE”) in the UK. An SE can be registered in any country within the European Economic Area although the registered office and head office must be in the same country.

There are several ways of forming an SE:

- By merger

- As a holding company
- As a subsidiary
- By a plc transforming into an SE

An SE must have share capital and shareholders whose liability is limited in a similar manner to that of a plc. As with a plc, an SE registered in the UK may denominate its share capital in any currency it chooses, provided that at least £50,000 is denominated in sterling.

The major benefit of an SE is that the registered office can be transferred to another European country without a loss of legal status (avoiding, for example, the requirement to deregister the company in one country and reregister in another).

For further detailed information on the procedures to establish an SE, please see: www.companieshouse.gov.uk/about/gbhtml/gb06.shtml

5. CHOOSING A COMPANY NAME

Regulations restrict the choice of a company name. A company name cannot be chosen if it is the same as an existing registered company or uses certain words regarded as sensitive (please see: www.companieshouse.gov.uk/about/gbhtml/gbf3.shtml#appa for a list of sensitive words).

Before applying to set up a company, or doing anything to change its name, it is recommended that a search of the company name index is undertaken. Please see: www.companieshouse.gov.uk (for England, Scotland and Wales) or www.secure.detini.gov.uk/crni/companysearch.aspx (for Northern Ireland).

6. FURTHER INFORMATION

This information sheet was updated in November 2007.

As information changes from time to time, please contact the organisations listed or UK Trade & Investment to confirm any item that you intend to rely on.

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APPENDIX A

Contact details for solicitors and accountancy firms

England and Wales:

The Institute of Chartered Accountants in England & Wales

Chartered Accountants Hall
PO Box 433
Moorgate Place
London EC2P 2BJ

Tel: +44 (0)20 7920 8100
Website: www.icaew.co.uk

Association of Chartered Certified Accountants

29 Lincoln's Inn Fields
London WC2A 3EE

Tel: +44 (0)20 7059 5000
Website: www.accaglobal.com/

Scotland:

The Institute of Chartered Accountants of Scotland

CA House
21 Haymarket Yards
Edinburgh EH12 5BH

Tel: +44 (0)131 347 0100
Website: www.icas.org.uk

The Law Society
113 Chancery Lane
London
WC2A 1PL

Tel: +44 (0)20 7242 1222
Website: www.lawsociety.org.uk

The Law Society of Scotland

26 Drumsheugh Gardens
Edinburgh EH3 7YR

Tel: +44 (0)131 226 7411
Website: www.lawsocot.org.uk

Northern Ireland:

The Institute of Chartered Accountants in Ireland

The Linenhall
32-38 Linenhall Street
Belfast BT2 8BG

Tel: +44 (0)289 032 1600
Website: www.icaei.ie

The Law Society of Northern Ireland

40 Linenhall Street
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Tel: +44 (0) 289 023 1614
Website: www.lawsoc-ni.org/