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DOING BUSINESS IN UNITED KINGDOM



COMPANY FORMATION IN THE UNITED KINGDOM

MAIN FORMS OF COMPANY/BUSINESS IN THE UNITED KINGDOM

The legal structures for setting up a commercial business entity in the UK are:

Incorporated entities

- Private limited company
- Public limited company
- Limited Liability Partnership
- UK branch

Non-incorporated entities

- Partnership
- Limited Partnership
- Sole trader

Private Limited Company

A Private Limited Company is run by a board of directors, and is owned by its shareholders. Should the company become insolvent, any shareholder is only liable to the extent that there is any unpaid share capital or share premium in respect to the amount which they have agreed to pay for the shares.

Directors are not liable for the losses of a company unless the company has traded whilst technically insolvent, or unless there have been financial irregularities.

A Private Limited Company requires at least one director but can be set up with as little as £1 of ordinary share capital.

Public Limited Company

A Public Limited Company offers the same protections to shareholders and directors as Private Limited Company.

The most common reason for establishing a public limited company is either to raise capital by offering the company's shares on a stock market or to increase the prestige of the company. There is no requirement for a public limited company's shares to be admitted to trading on any stock market, although there are additional reporting requirements.

To form a public limited company it is a requirement to have at least 2 directors, a company secretary and a minimum of £50,000 nominal share capital, of which a minimum of a quarter must be paid up.

All limited companies are required to file annual accounts and statutory records with Companies House, which can be accessed by the public.

Limited Liability Partnership (LLP)

With a Limited Liability Partnership all of the partners (normally referred to as the members) have limited liability and their personal assets outside of the limited liability partnership are protected.

To form an LLP it requires a minimum of at least two members but only nominal capital.

UK branch of an overseas company

Please see Form 2 (Branch vs. Subsidiary information).

Traditional Partnership

A Traditional partnership is not, in contrast to a limited company, a separate legal entity from the partners. Any debts and obligations are jointly and severally the responsibility of the partners and personal assets are also at risk.

The partnership structures are not available for not-for-profit organisations.

Limited Partnership

A Limited Partnership must have at least one General Partner and any number of Limited Partners.

General partners are jointly and severally liable for all the partnership's debts, whereas the limited partners risk is limited to the amount initially invested in the business. Limited Partners cannot be involved in the management of the partnership business.

Limited partnerships do not pay tax on their profits, which is described as being tax transparent. Instead the partners pay their own tax on their share of profits, making them ideal for passive non-resident investors.

They are commonly used in fund structures.

Sole trader

A sole trader is the simplest form of structure for an individual starting a business. Like a Partnership a sole trader is liable for all the debts of a business.

A sole trader needs to register with HM Revenue & Customs when the business activity starts and to file annual tax returns but there is no requirement to file accounts at Companies House and very little statutory regulation.

SPECIFIC TAX CONCERNS RELATED TO ESTABLISHING A COMPANY

The first thing to consider and decide upon when setting up a business in the UK is whether you want to set up an incorporated entity which is a separate legal entity, with limited liability but where accounts are available to the public, or to set up a non-incorporated entity where accounts are private but you are subject to unlimited liability.

LEGAL ISSUES RELATED TO ESTABLISHING A COMPANY

An association of persons formed for the persons of carrying on a trade or business. The principal characteristic of a company is its separate identity from the persons who combine to form it.

Such structures allow for Members and Shareholders to have a separate legal personality from the limited company, meaning personal assets are separate from company assets. This also means that the company can enter into legal contracts in its own name.

Non-incorporated entities are not a separate legal personality from the owner, meaning that personal assets of the owner are at risk should the business fail.

CULTURAL CONCERNS RELATED TO ESTABLISHING A COMPANY

The UK also has no restrictions on the persons setting up a business nor any requirements regarding local Partners, Directors or Shareholders.

OTHER COUNTRY-SPECIFIC ISSUES RELATED TO ESTABLISHING A COMPANY

Forming any business structure in the UK can be very quick and simple. A company can be formed within 24 hours and other unincorporated structures can be formed equally quickly once the relevant documentation (normally a Deed) has been agreed between the individuals setting up the business. All businesses need to register with HM Revenue & Customs, but not all businesses need to register with Companies House. Only those which need to be incorporated which include Limited Companies, Public Limited Companies, Limited Liability Partnerships and UK branches of an overseas company.

PERMANENT ESTABLISHMENT IN THE UNITED KINGDOM: BRANCH OR SUBSIDIARY?

DEFINITION OF A PERMANENT ESTABLISHMENT

An overseas company is considered to have a permanent establishment in the UK if the overseas company has a fixed place of business in the UK through which the business of the company is wholly or partially carried on.

DEFINITION AND MAIN DIFFERENCES BETWEEN A BRANCH AND A SUBSIDIARY

A company can either trade through a branch or set up a subsidiary through which to trade.

Branch: A branch is in reality the company itself, and the results of the branch will be incorporated into the company's own accounts filed in the company's country of residence.

Subsidiary Company: A subsidiary company is a separate legal entity and has limited liability, which means its liability can be separated from other companies in the group. Please read more in Form 1, under 'Private Limited Companies.'

The main reason for choosing one or the other depends on the tax position of the parent company.

TAX AND ACCOUNTING OBLIGATIONS

A branch is required to file a Profit & Loss Account of the parent company at Companies House. It is also subject to UK corporation tax on its activities in the UK.

Since the Subsidiary is a Limited Company it is required to file its own financial statements at Companies House. It is also subject to UK corporation tax on all its activities worldwide.

REGISTRATION FORMALITIES

To set up a place of business in the UK, you must register an overseas company with Companies House within 1 month of opening for business.

The process of setting up a Subsidiary Company in the UK is the same as for a UK Limited company.

Both a branch and a subsidiary must register itself with HM Revenue & Customs and comply with UK reporting obligations to Companies House.

STANDARD LEGAL OBLIGATIONS AND FORMALITIES FOR A BRANCH

If a branch is unsuccessful, it may be closed with no formal notice.

If a subsidiary is unsuccessful, a formal closure procedure is required.

HOW TO HIRE MY FIRST EMPLOYEE IN THE UNITED KINGDOM

MAIN LEGAL STEPS TO FOLLOW TO HIRE A FIRST EMPLOYEE

When hiring an employee in the UK the following needs to be considered:

1. A contract of employment should be prepared which sets out the key terms and conditions of the employment. This should include at the minimum; the salary, any bonuses and benefits, holiday entitlement, a job description, and other matters that should be included are set out below.
2. The employment contract must also be drafted in accordance with UK employment law, and should be provided within 2 months of the employee's start date.
3. The UK has National Minimum Wage legislation. You can find more about the UK National Minimum Wage at <https://www.gov.uk/national-minimum-wage>.
4. The employer must check that the employee has the legal right to work in the UK: <https://www.gov.uk/legal-right-work-uk>.
5. If the employee is going to work with young or vulnerable people or within the security sector the employer will need to apply for a Disclosure and Barring Service (DBS) check. (Previously known as a CRB Check).
6. As an employer your business will need employers' liability insurance.
7. Your business must register with HMRC as an employer and must account for payroll tax deductions on the employee's salary and any bonuses as they are paid. All payroll tax processing must be done online and any tax due paid over by the 19th day of the following month in which the salary or bonus is paid.

There are also reporting requirements to HM Revenue & Customs when an employee is first taken on and when an employee leaves.

DESIGN AND CONTENTS OF AN EMPLOYMENT CONTRACT

Other details which should be included within the employment contract include:

- The business's name
- The employee's name, job title or a description of work and start date
- If a previous job counts towards a period of continuous employment, the date the period started
- How much, when and by how an employee will be paid
- Hours of work (and if employees will have to work Sundays, nights and/or overtime)
- Holiday entitlement (and if that includes public holidays)

- Where an employee will be working and whether they might have to relocate;
- If an employee works in different places, where these will be and what the employer's address is
- If it is a temporary employment, how long the temporary employment is expected to last
- If a fixed-term contract, the end date of the fixed term contract
- Notice periods
- Any collective agreements
- Any entitlement to pensions (the UK has auto enrolment legislation which requires all employers to offer a minimum pension to employees)

Sick pay and procedures, grievance and disciplinary procedures do not need to form part of the contract of employment but the contract should state where they can find such information (e.g. in an Employee Handbook).

If in doubt, always follow the guidelines provided at www.acas.org.uk.

EMPLOYMENT OR SELF EMPLOYMENT

Where the business offers a contract of service, the individual is an employee and the business must apply the rules and regulations for employees.

Where the business offers a contract for services and the supplier of those services is an unincorporated business, they would normally be able to offer these services independently and would not need to be classified as an employee.

It is up to the employer to satisfy themselves that the contractual arrangement with the individual or the incorporated business is not that of an employment. However HM Revenue and Customs have the right to challenge all arrangements if not satisfied.

HM Revenue & Customs have an online status indicator which can be used to help ascertain whether the individual is an employee or not.

Employment Status Indicator Test: <http://tools.hmrc.gov.uk/esi/screen/ESI/en-GB/summary?user=guest>

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