

Carter Lemon Camerons LLP

Solicitors



Corporate Department

Guide to running a company in the UK

It is relatively easy to set up and run a limited company in the UK, but it is essential that you take proper advice and you comply with relevant legislation when setting up and managing a company to limit problems arising in the future. This guide is aimed at those who wish to set up and run a private company either limited by guarantee or by shares.

Naming the company

As a first step, you should choose a company name. You can check whether the name you would like is already registered by accessing the Companies House website at: www.companieshouse.gov.uk. We would be happy to carry out a search of the register on your behalf.

There are certain requirements you need to be aware of when choosing your company name and Companies House will not register a company which has the same name as an existing company, or a name which is sufficiently similar so as to cause confusion.

You should also be careful that you do not use purported "sensitive words" in your company name. For example, you can't have offensive words in the name, or words that imply an erroneous association, such as 'Royal' or 'Chartered'.

There are many other words which are deemed to be "sensitive" and we would be happy to provide you with more information relating to these. As a limited company (limited by either shares or guarantee), your company name must end with 'Limited' or 'Ltd' or the Welsh equivalent where applicable.

The legal basics

Once you have chosen your name and made sure that it is available, you are then ready to incorporate your company. This is the process whereby companies are created as separate legal entities and a business cannot operate as a limited company until it has been incorporated at Companies House under the Companies Act 2006.

Once registered, you will receive a certificate of incorporation with your company number to show that your company has been incorporated together with your company's articles of association (the "Articles").

The Articles are a sort of internal rulebook for the company and describe how the company will be run, shareholders' rights, any restricted objects and details of what the directors may and may not do.

You can either choose to adopt "model" Articles, which contain certain default provisions for companies limited by shares or guarantee, or you can tailor your company's Articles to include specific provisions, for example, you may wish to have different classes of shares with different voting rights.

We can incorporate private companies limited by guarantee and limited by shares along with more specialised entities, such as community interest companies, and can draft bespoke articles of association to meet the specific needs of your company.

We would be happy to discuss your requirements in more detail and help you decide whether the model articles are appropriate for you or whether your business and your circumstances require a bespoke document to be prepared.

Officers of the company

All private limited companies must have at least one director. There are a number of qualifying criteria and restrictions regarding who can act as a director, for example, a director must be a minimum of 16 years of age and not be disqualified from being a director by a court. The director/s run the company on behalf of the shareholders and have a number of legal duties towards the company. These duties are contained in the Companies Act 2006 and include:

- a duty to promote the success of the company;
- a duty to act within powers;
- a duty to exercise independent judgment;
- a duty to exercise reasonable care, skill and diligence;
- a duty to avoid conflicts of interest;
- a duty not to accept benefits from third parties;
- a duty to declare an interest in a proposed transaction or arrangement.



Apart from making business decisions, the directors are responsible for preparing and delivering documents on behalf of the company to Companies House and HMRC, such as the company's accounts and the annual return.

A private UK company is not required to have a company secretary but can appoint one if it chooses. If a company has a secretary, the directors will usually delegate the responsibility of sending up-to-date information to Companies House to them. However, the ultimate responsibility for delivering the required documents remains with the company's directors. We can provide company secretarial services to UK companies and we would be happy to discuss this with you in further detail.

The role of the director is defined by case law and confirmed by the Companies Act 2006. Effectively a director should always act in good faith and in the interests of the company as a whole by declaring any conflicts of interest and not making personal profits at the expense of the company. If in doubt, you should take professional advice, as acting outside the scope of applicable legislation can lead to fines, disqualification from acting as a director, personal liability for the company's debts or even, in some cases, a criminal conviction.

Registered office and record keeping

It is a requirement of the Companies Act 2006 for every company to have a registered office at all times and this must be a physical location where notices and letters can be sent to the company. A company must detail the address of its registered office on its business letters, order forms and on the company website.

The company's records that are required for inspection are to be held at the registered office and typically these include any register, index, accounting records, agreement, memorandum, minutes and other documents such as (but not exhaustively) director's service contracts, director's indemnities, details of dividend allocations and payments, details of company share ownership, register of debenture holders, instruments creating charges and register of charges. This information will usually be detailed in the statutory books of the company which you would usually acquire when the company is first incorporated and the directors are required to ensure these statutory books are kept up-to-date.

Employing staff

If you are going to be employing staff, you will need to be aware of the relevant law in relation to their employment. This will cover not only their rights whilst employed, but also during the recruitment process and after their employment has ended. Some of the areas which you should consider are:

- Recruitment and employment contracts
- The National Minimum Wage (NMW)
- PAYE and National Insurance Contributions (NIC)
- Statutory Sick Pay (SSP) rights
- Pregnancy, maternity and paternity rights
- Diversity and discrimination legislation
- Rights of agency workers
- Dismissals and redundancies
- Transfer of Undertakings

We can work with you to ensure you are aware of your responsibilities and obligations as an employer and to ensure you have the appropriate documentation and procedures in place in what can be a very complex area.

Insurances

Insurance is a legal requirement for most businesses and is vital to protect you against claims made by staff and members of the public. The three main insurances which you may need are:

- Employers' Liability Insurance
- Public Liability Insurance
- Professional Indemnity Insurance

Employers' Liability Insurance protects you against claims made by employees if they believe that an accident or illness they have suffered has been caused as a direct result of their work. It is a legal requirement to have cover of at least £5m and you could be fined if you do not have sufficient insurance in place.

Public Liability Insurance protects you against claims brought by members of the general public or customers who claim to be injured or have their property damaged while on your premises. It also protects you if you are working on the premises or sites of your customers or not in your customary place of work.

In some professions, you are required to have Professional Indemnity Insurance. For example if you sell your knowledge or skills as a dentist, Professional Indemnity Insurance will cover you against claims for loss or damage made by a client or third party if you have been found to have been negligent in some or all of the services you provide.

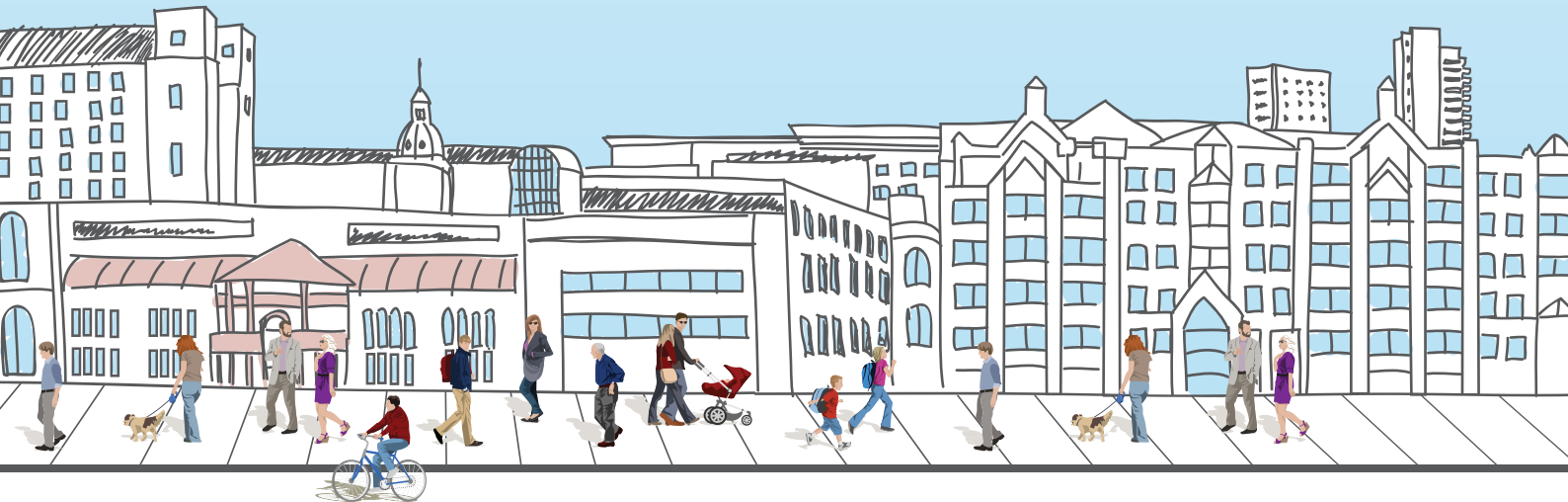
Many professions are required to have Professional Indemnity Insurance cover as a regulatory requirement, or as part of their professional authorisation. These include solicitors, accountants, architects, mortgage intermediaries, insurance brokers and financial advisers. Many consultants, advertising and PR agencies, and designers also choose to have this type of insurance.

We would be happy to discuss your requirements in further detail and help you to decide which protections are suitable for your business.

Other legislation

Relatively new legislation which needs to be taken into account when setting up a new business is the Bribery Act 2010, which has been described as “one of the most significant pieces of legislation to affect businesses for a decade”. Under the Act, it is now a criminal offence for an individual or commercial organisation to offer or receive a bribe to bring about or reward the improper performance of a function or activity.

Official guidance explains that this includes bribing a foreign public official, even if that person has demanded a bribe. It is important for you to ensure that you have adequate procedures in place and can demonstrate this through record-keeping and audit practices. The areas you should concentrate on are procurement, sales, marketing, hospitality, cash or credit handling and charitable activity.



Contact Carter Lemon Camerons for advice

At Carter Lemon Camerons, we can advise you about how best to protect your business from infringing this important piece of recent legislation and help you avoid the damage to your business and the cost implications associated with an investigation and proceedings. For more information, please contact our company and commercial law specialists:



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This guide is not intended to be an exhaustive statement of the law and gives general information only. You should not rely on it as legal advice. We do not accept liability to anyone who does rely on its contents.

This guide was correct at time of publication and is not a substitute for legal advice.