

HOW TO SET UP A PRIVATE LIMITED COMPANY IN ENGLAND AND WALES

This brief overview is intended to provide a general and practical introduction to the establishment of a permanent business presence in England and Wales and, more specifically, of a private limited company (hereinafter also referred to as “Ltd”).

Grande Stevens International’s team of English solicitors and Italian lawyers has the expertise and experience to advise you on the structure that best suits your needs.

ESTABLISHING A BUSINESS PRESENCE IN THE UNITED KINGDOM

There are a number of options available to individuals or companies who wish to trade or do business in the United Kingdom through a permanent establishment. These include, but are not limited to:

- carrying out business as a sole trader (for individuals),
- entering into a partnership agreement or setting up a limited liability partnership (LLP),
- incorporating a private limited company, or
- setting up a public limited company.

The decision concerning the most suitable business structure will depend on a series of factors, such as the degree of liability of the individuals involved, the resources available and tax considerations.

As mentioned above, this guide will focus on the incorporation of private limited companies in England and Wales (the rules are slightly different in Scotland and Northern Ireland), and more specifically on private companies limited by shares, where the shareholders’ liability is limited to the unpaid amount of the subscribed and unpaid shares.

BENEFITS

Ltds are legal entities separate from their promoters that can carry out business of any kind. The company’s scope (or purpose) is completely unrestricted, unless a specific provision to the contrary is included in the articles of association (see below).

A few of the benefits of setting up a Ltd include:

- ease of incorporation, with very few formalities and limited costs (the entire process can usually be completed in 24 hours);
- minimum share capital £1;
- low tax rates: currently corporation tax is 19%; and
- favourable Value Added Tax (“VAT”) regime: Ltds are not required to apply VAT (20%) if they expect to have an annual turnover of not more than £85,000.

FORMALITIES

Any person of at least 18 years of age can set up a private company, which can be incorporated with just one shareholder (either an individual or a legal entity) and one director. It is advisable to appoint a company secretary, although this is not a legal requirement.

In order to incorporate a Ltd in England and Wales, its promoter(s) must subscribe their name(s) to a memorandum of association and comply with the requirements for registration with Companies House (<https://www.gov.uk/topic/company-registration-filing/starting-company>), and most importantly file the application for registration, known as Form IN01, and pay the appropriate incorporation fee (<https://www.gov.uk/limited-company-formation/register-your-company>).

The **memorandum of association** simply indicates that the company is limited by shares, states its name, and lists the name of the subscribers (with the respective signatures), confirming that each subscriber to the document wishes to form a company under the Companies Act 2006 (Act of the Parliament of the United Kingdom which forms the primary source of UK company law) and agrees to become a member of the company and to take at least one share. For a template of a memorandum of association of Ltds please see:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/372504/pro_forma_of_ca_2006_memorandum_for_a_company_with_a_share_capital.pdf

Besides the memorandum of association, the subscribers also need to adopt and file with Companies House the company's **articles of association**, which are the constitution of the Ltd. Although a set of Model Articles (<https://www.gov.uk/guidance/model-articles-of-association-for-limited-companies>) can be adopted by the company, often the promoters prefer tailor-made articles of association, which meet their specific requirements concerning the governance and management of the Ltd. Bespoke articles of association should be drafted with the help of a solicitor to avoid any pitfalls and to make sure no aspect of the management of the company is left out.

The articles of association include (but are not limited to) provisions on the directors' duties and responsibilities, the directors' decision-making powers and the rules of their appointment, the shares (including their transferability), and the distribution of dividends as well as the decision-making process by the shareholders.

As mentioned above, in addition to the memorandum and articles of association, the most significant document in the process of incorporating a company is the **application for registration**, Form IN01, which includes:

- the proposed name of the company. The company's name must include the word "limited" (or the abbreviation "Ltd"). In general, the company's name must not be identical to the name of another existing company and must not contain offensive terms nor constitute – in the opinion of the Secretary of State – a criminal offence. Other restrictions on the terms that can be used in the company's name apply. For more guidance of the company name please see: <https://www.gov.uk/government/publications/incorporation-and-names>;
- the proposed location of the company's registered office (England, Wales, Scotland or Northern Ireland);
- whether the liability of the members is to be limited (by shares or by guarantee);
- whether the company is private or public;

- the principal business activity;
- a statement of share capital (number of shares, class of shares, nominal value, and aggregate nominal value) and initial shareholdings;
- a statement of the company’s proposed officers (directors and, if appointed, company secretary);
- a statement of the intended address of the company’s registered office;
- a statement about persons with significant control of the company;
- a statement of compliance.

Form IN01 can be downloaded here:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/534915/IN01_V7.pdf

The statement about the individuals with significant control over the company, aims to achieve transparency concerning the individuals who ultimately control the Ltd. In particular, and as far as this overview is concerned, such individuals are those who:

- directly or indirectly hold more than 25% of the company’s issued share capital;
- directly or indirectly hold more than 25% of the company’s voting rights;
- directly or indirectly hold the right to appoint or remove a majority of the board of directors; or
- have the right to exercise, or actually exercise considerable influence or control over the company.

All the above-mentioned documents must be sent – either by paper filing or electronic filing – to Companies House (the Registrar of Companies) together with the relevant fee, as follows:

	Paper filing	Electronic filing
Incorporation	£40	£12
Same-day incorporation	£100	£12

Upon receipt of the complete documentation and payment of the relevant fee, Companies House (which carries out a formal verification of the documents provided) issues the company’s **certificate of incorporation** and assigns the Ltd a unique registration number. The Ltd comes into existence on the date of issue of the certificate of incorporation.

HOW TO OPEN A BANK ACCOUNT FOR A LTD

Although it is relatively straightforward to create a Ltd in England and Wales, it may not be quite so easy to open a business bank account for a company, especially if its directors (and the people with significant control over the company or its shareholders) live abroad.

The Ltd will need to provide the bank with various details and information, the most relevant of which include:

- a description the type and the size of the Ltd’s business;
- details about the company’s organisation;
- ID documents of the directors of the company;
- information about the persons with significant control over the company;
- a business plan;

- a description of how the company procures its customers, how it advertises its business, and where its customers are (whether in the United Kingdom or abroad);
- the company's relations with foreign countries, if any;
- the sources of any funds the company relies on to carry out its business activities.

Of course, each bank or credit institution may require different and/or additional information to open a business account in the company's name. We therefore suggest you get in touch with the bank of your choice and collect the necessary information before starting the application process.

* * *

For more detailed guidance, further professional advice should be sought. If you would like further information, please contact Mr Vincenzo Lanni on +44 (0)20 3862 2900 or at v.lanni@grandestevensint.co.uk.

This note is intended for general guidance only and should not be taken as advice in relation to any specific circumstances. As such, we recommend that you seek professional advice before taking any action. No liability can be accepted by Grande Stevens International LLP for any action taken or not taken as a result of the information contained in this note. The law is as stated at August 2017.

GRANDE STEVENS INTERNATIONAL LLP
registered office: 28-29 Dover Street, W1S 4NA
LONDON
T +44 (0)20 3862 2900 – F +44 (0)20 3862 2913
info@grandestevensint.co.uk – www.grandestevensint.co.uk

Grande Stevens International LLP is a limited liability partnership registered in England and Wales, registered number OC398830, and is authorised and regulated by the Solicitors Regulation Authority, authorisation number 627955. Any reference to a partner in relation to Grande Stevens International LLP is to a member of Grande Stevens International LLP.