

BUSINESS IN THE UK **A ROUTE MAP**





chapter 03

**HOW TO SET UP
A BUSINESS
ENTITY IN THE UK**

HOW TO SET UP A BUSINESS ENTITY IN THE UK

In the UK, businesses take various different legal forms, and there are many factors to consider when deciding what legal identity a business should take, for example, taxation considerations. In this decision-making process, the advantages and disadvantages of the relevant business model must be examined carefully.

WHICH ENTITY?

Whilst there are many legal forms, and advice should be sought to obtain the right structure for your business, the three most common are:

- A private (or public) limited company limited by shares
- An unlimited company
- A company limited by guarantee and having no share capital.

Of these three types, by far the most commonly used as a trading entity in the UK is a private company limited by shares. However, there are two distinct classifications of company within this type: public companies limited by shares, along with ones generally used for specialised purposes.

Other structures include unincorporated businesses, partnerships, Limited Liability Partnerships, Trusts and social business organisations such as Community Investment Companies. Some organisations are regulated by other bodies and legislation either in addition to, or separate to, UK Company Law depending on the activities they undertake and their legal structure.

COMPANIES

PRIVATE LIMITED COMPANIES

A private limited company (Ltd) is a legal entity - a separate 'person' under UK law. This basic principle means that a company can hold assets in its own right, conduct business, employ people, sue and be sued, and, importantly, it can outlive its directors and shareholders.

The shareholding of a limited company determines its ownership and the business can be transferred in part or in whole to other owners by a simple transfer of shares. This represents a significant advantage over a sole trader or traditional partnership.

Another major benefit to individuals conducting business through a limited company is the principle of limited liability. This means that the personal assets of the shareholders/owners of the limited company are not at risk should the company fail and enter administration. Limited liability restricts the ability of an administrator to recover any shortfall from a company's shareholders to the limit of the value of shares registered in a shareholder's name that are unpaid at the time of entering administration.

Key points:

- Private limited company with shares – minimum one share, maximum unlimited
- Suitable for any normal commercial trading purposes
- Suitable for the vast majority of businesses in the UK
- Can undertake any nature of business
- Can operate anywhere in the world
- Must file annual Confirmation Statements and Annual Accounts with Companies House
- Members have limited liability
- Can have a sole director and sole shareholder
- Limited companies are often advantageous for their shareholders regarding taxation.

PUBLIC LIMITED COMPANY

Many private companies choose to become public limited companies once they have become well established. A public limited company (plc) differs from a private limited company, primarily in that it can sell its shares to the public. However, many plcs are effectively privately owned until they become listed on either the London Stock Exchange or the Alternative Investment Market (AIM).

There is no obligation for a plc to offer its shares to the public or, indeed, to become a listed company. It is also possible to convert a private company to a public company, and vice versa. Many companies that have become listed plcs started life as private limited companies.

SPECIAL CONDITIONS

- A plc must have a minimum issued capital of £50,000
- At least 25% (£12,500) of this minimum must be fully paid up before the Registrar of Companies can issue a Certificate of Commencement of Trading (this Certificate must be issued before the company commences any business transactions)
- A plc must have at least two directors
- A plc must have a Company Secretary who has the necessary professional qualification.

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Key points:

- A plc is the only type of company that can offer its shares to the public
- Can be listed on the Stock Exchange
- Can undertake any nature of business
- Can operate anywhere in the world
- Shareholders have limited liability
- High initial capital commitment
- Must file annual Confirmation Statements and Annual Accounts with Companies House.

A US-based international oilfield services company with interests in North America, South America, Africa and Southeast Asia, aspired to increase growth by expanding into new geographical markets.

With no presence in the UK, the company had little knowledge of UK company legislation and initially wanted to set-up a hub and finance company. The company established two private limited companies. BDO advised that they should instead establish a UK holding company. The company has continued to require advice on UK statutory requirements and on-going changes to legislation.

Read about [BDO's company formation and secretarial services](#).

PRIVATE COMPANY LIMITED BY GUARANTEE

A company limited by guarantee is an alternative type of incorporation used mainly for non-profit organisations that require corporate status. A guarantee company does not have a share capital, but has members who become guarantors instead of shareholders. The guarantors give an undertaking defined in the company's Articles of Association to contribute a nominal amount towards the winding up of the company in the event of a shortfall upon cessation of business.

A guarantee company cannot distribute its profits to its members, and is therefore eligible to apply for charitable status. Common uses of guarantee companies include clubs, membership organisations, sports associations and charities.

Key points:

- Non-profit corporate entity – assets or financial surplus cannot be distributed to members
- A guarantee company is not owned by its members and cannot be transferred by its members for value – it has no share capital
- Suitable for clubs, membership organisations, sports associations, etc
- Can apply for charitable status

- Must file annual Confirmation Statements and Annual Accounts with Companies House
- Members have limited liability
- Some input required from client to establish main objects if required, or objects can be unrestricted.

UNLIMITED COMPANY

It is possible to create an unlimited company, with or without a share capital, which operates in a similar way to a limited company, without filing a set of accounts. However, the key difference is that the company members or shareholders have a joint and several obligation to meet any shortfall in the assets of the company to meet its debts (in much the same way as a general partnership). This has clear disadvantages for owners. In addition, an unlimited company is not required to file accounts.

LEGAL REQUIREMENTS FOR COMPANIES

Companies are incorporated under the Companies Act 2006. The Act is overseen and administered by Companies House in Cardiff, Wales.

The most important company documents that need to be drafted are the Memorandum and Articles of Association ('Memo' and 'Articles'). The Memo sets out basic information about the company, including the subscribers' wish to form a company, where the company is to have a share capital, and to take at least one

share each. The Articles set out the rules for the running and regulation of the company's internal affairs including placing restrictions on the scope of its activities if appropriate.

In addition, officers (or directors) of the company must be appointed, and the owners must subscribe and pay for shares in the company if it is to be limited by shares.

An accounting reference date must be set for the company, and accounts must be prepared based on the results and financial position of the company up to each accounting reference date.



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These accounts need to be audited by a qualified independent accountant, and need to be filed within 6 months of the financial year end.

A Confirmation Statement must also be filed at least once every 12 months and must include details of any changes to shareholder information, changes to share capital, and changes to the company's SIC code (which defines its business activities). The first Confirmation Statement must include details about 'persons with significant control' (PSC). Companies are now required to maintain a PSC Register. We recommend specialist advice is sought regarding this requirement. You can find out more in the section on the financial reporting and audit requirements.

An annual general meeting (AGM) must be held each year by public companies. Although many private companies also hold an AGM, this is not a legal obligation and they can opt to deal with many matters by written resolution instead. However, a meeting would still need to be called to dismiss a director or remove an auditor before the end of its term of office. There are many other rules governing the way UK companies are administered (set out in the Companies Act 2006).

BRANCH OR PLACE OF BUSINESS IN THE UK (UK ESTABLISHMENT)

An overseas company planning to expand into the UK may choose to set up a branch or place of business through which to carry on business (a 'UK establishment'). Since a UK establishment is the same legal entity as the overseas parent company, the overseas parent will be directly responsible for liabilities incurred by its UK establishment.

The Companies Act 2006 (together with associated regulations) is the main piece of legislation governing UK establishments of overseas companies. Under the regulations, a foreign company must, within one month of opening a UK establishment, register prescribed particulars of the foreign company and the UK establishment with the Registrar of Companies (who has the authority for the administration of UK companies) including:

- A certified copy of the foreign (parent) company's constitutional documents (with a certified translation if they are not in English)
- Details of the directors and secretary of the foreign company, and
- The name and address of every person resident in the UK who is authorised to accept service of documents on behalf of the foreign company in respect of the establishment.

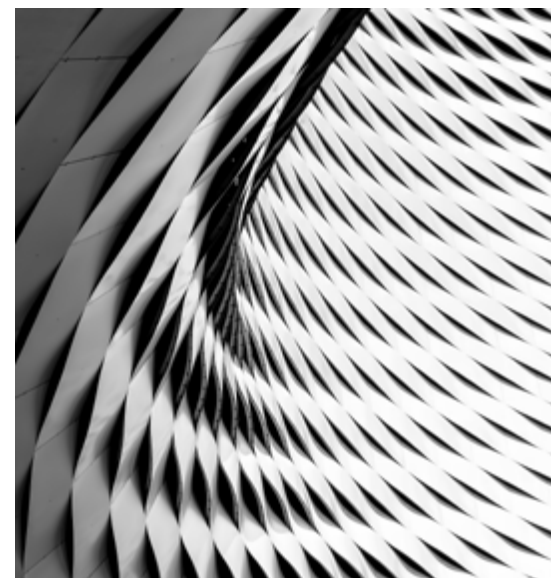
A UK Establishment has two distinct appointments other than the officers of the overseas company:

- Permanent representative (mandatory but doesn't need to be in the UK)
- Person authorised to accept service (discretionary but does need to be in the UK).

Read about [BDO's company formation and secretarial services](#).

An internationally-focused company, headquartered in the United States offers logistical support services in many remote and complex environments throughout the world. The company currently does not have any presence in the UK.

The business required assistance with the initial company formation formalities including the provision of statutory registers, dealing with share allotments and the issuing of certificates.



WHERE – does a non-UK company have to file annual accounting documents?

In most cases, the foreign company is required to file accounting documents with the UK Registrar of Companies for each financial period. The specific filing requirements vary, depending on factors such as whether the foreign company is required to prepare and disclose accounts under its parent law, whether it is a credit or financial institution, and whether it is incorporated in a state in the European Economic Area (EEA).

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PUBLIC LISTING

Companies seeking admission to a public market in the UK have several choices of market depending on their size, stage of development, complexity of the securities being offered, business objectives, proposed investor type, and eligibility for the particular market.

London Stock Exchange plc is one of the world's oldest stock exchanges and the most international with around 2,500 companies from 70 countries admitted to trading on its markets, approximately a quarter of them being international companies. Other exchanges operating in the UK include NEX Exchange Main Board and NEX Exchange Growth Market, which are smaller and not covered in this article.

THE LONDON STOCK EXCHANGE'S MARKETS

The London Stock Exchange offers the following markets:

	SECURITIES ADMITTED TO OFFICIAL LIST	SECURITIES NOT ADMITTED TO THE OFFICIAL LIST	
EU-Regulated Markets	Main Market - Premium listing Main Market - Standard listing	Main Market - High Growth Segment	Specialist Fund Market
Exchange-regulated markets	Professional Services Market	AIM	

When applicable, responsibility for the approval of prospectuses and admission of companies to the Official List lies with UK Listing Authority (UKLA). The Exchange is then responsible for the admission to trading of companies to the relevant markets.

Markets are designated as 'EU-regulated markets' or 'Exchange-regulated markets'. The rules that apply to EU-regulated markets are heavily influenced by EU Regulations and Directives, whereas exchange-regulated markets operate in a lighter regulatory environment with a greater emphasis on rules imposed by the exchanges themselves.

The Main Market is London's flagship EU-regulated market for larger, more established companies:

- The Premium Segment is only open to equity shares issued by trading companies and closed and open-ended investment entities. Issuers with a Premium listing are required to meet the UK's 'super-

equivalent' rules (including strict eligibility requirements) which are higher than the EU minimum requirements. A Premium Listing means the company is expected to meet the UK's highest standards of regulation and corporate governance and, as a consequence, it may achieve a lower cost of capital through greater transparency and enhanced investor confidence

- The Standard Segment is open to issuance of equity shares, Global Depositary Receipts, debt and securitised derivatives, with issuers required to comply with EU minimum requirements. A Standard Listing allows issuers to access the Main Market by meeting EU harmonised standards only rather than the UK 'super-equivalent' requirements
- The High Growth Segment (HGS) is designed specifically for high growth, revenue generating businesses which are incorporated in an EEA state and that, over time, are aspiring to join the Premium Segment. HGS has EU-regulated market status but sits outside the UK's Listing Regime. HGS companies would, therefore, be subject to London Stock Exchange's HGS Rulebook and existing Admission and Disclosure Standards. In addition, as an EU-regulated market, the relevant EU Directives (including the Prospectus Directive, Transparency Directive and the Market Abuse Directive) apply.

The Specialist Fund Segment (SFS) is a segment of London Stock Exchange's regulated Main Market and is designed for highly specialised investment entities that wish to target institutional, highly knowledgeable investors or professionally advised investors only. The SFS appeals to a variety of different types of investment managers, including those managing large hedge funds, private equity funds, and certain emerging market and specialist property funds, seeking admission to a public market in London.

The Professional Securities Market (PSM) is a specialised market designed to suit the specific needs of issuers. It facilitates the raising of capital through the issue of specialist debt securities or depositary receipts to professional investors. As an exchange-regulated market, the PSM enables issuers to enjoy the benefits of a flexible and pragmatic approach to regulatory requirements. For example, issuers are allowed to report historical financial information under domestic accounting standards, rather than IFRSs, in both listing documents and annual accounts.

AIM is an exchange-regulated market for smaller, growing companies and is one of the most successful growth markets in the world. It offers the benefits of a balanced approach to regulation, which is suited to smaller and emerging companies.

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Regulation of financial markets is a key element of the negotiations leading to the UK's formally exit from the European Union. The UK Government will seek to maintain the strength of the UK financial sector and access to, and for, European businesses so it is possible that common standards will need to be maintained to achieve this.

Read about [BDO's capital markets services](#).

WHAT – Types of advisers will we need to 'float' in the UK?

Completing a successful flotation process typically involves using investment banks, lawyers, accountants, public relations and investor relations firms. The importance of planning and preparing a company for flotation cannot be over-emphasised: BDO can guide businesses through the process.

PARTNERSHIPS

After companies, partnerships are the most commonly used business structure in the UK: there are three main types of legal partnership.

GENERAL PARTNERSHIP

Where two or more persons (including non-natural persons) carry on a business to generate a profit as co-owners this will be treated as a partnership. If there is no written partnership deed setting out respective rights and obligations, the default position is that all partners share profits and liabilities equally and have authority to act as agent for the partnership. This gives little legal protection for the participants but is easy to create and each partner returns their share of the income on their own tax return.

LIMITED PARTNERSHIP

Here the partnership is formed with one or more general partners and one or more limited partners. Limited partners share in the partnership's profits but do not take part in the active management of the Limited Partnership, which is conducted by the general partner(s) on their behalf. However, a limited partner's personal liability is limited to the capital they contribute to the partnership: so these are commonly used for short term investment projects. In contrast, Scottish

limited partnerships (SLPs) have a separate legal personality which means that the SLP itself can own assets, enter into contracts and sue or be sued, etc. However, they are now subject to new transparency rules (see Trusts below) as the Government suspects that many have been used for illegal activity.

LIMITED LIABILITY PARTNERSHIP

The UK Limited Liability Partnership (LLP) structure gives its owners the benefit of limited liability whilst retaining many of the characteristics of a traditional business partnership. Generally speaking, an LLP is taxed in much the same way as non-limited trading partnerships, and maintains a very similar structure to a partnership. Unlike a limited company, an LLP has no Articles of Association, but is usually governed by a Partnership Agreement which determines how the business structure works, sets out responsibilities of those involved, and provides dispute resolution and exit strategies.

Like a limited company and SLP, the LLP is a separate legal entity. Whilst the LLP itself is responsible for its assets and liabilities, the liability of its members is limited and the members' assets are protected in the event of winding up the business. As with limited companies, however, legal action may be taken against individual members who are found to be negligent or fraudulent in their dealings.

Any firm consisting of two or more members engaged in a profit-making venture may become an LLP. The LLP must be formally incorporated and register its members with Companies House. This can be done by completing an application form which is returned to Companies House along with a fee. The LLP must have at least two designated members who have more responsibilities than ordinary members. These responsibilities include registering the partnership with HMRC for income tax and VAT purposes, appointing auditors, keeping accounting records and sending accounts and Confirmation Statements to Companies House.

Many of the regulations written into the Companies Act 2006 apply equally to LLPs as well as to limited companies, including the rules relating to the name of the LLP, and many of the requirements for filing of information at Companies House.

As with any business partnership, it is vital that the partners draw up a suitable written agreement to determine issues such as control, division of revenue and exit strategies.

Key points:

- LLPs are suitable for new and existing partnerships wishing to obtain limited liability status, and are aimed particularly at professional partnerships such as accountancy and solicitors' firms
- Maintains tax status of a partnership
- Members have limited liability
- Suitable for many commercial business activities where the owners wish to maintain elements of trading as a traditional partnership
- Must file Confirmation Statements and Annual Accounts with Companies House
- Professional advice on tax matters must be sought before making decisions.

Read about [BDO's partnerships tax services](#).

TRUSTS

UK law allows an individual to create a relationship under which one or more persons (the trustees) hold and manage that individual's property subject to certain duties, ie to use and protect it for the benefit of the individual and/or others. Such 'trusts' can take many forms and are used for many purposes which can include holding shares in a family company or other business or pension scheme assets.

Many business structures, particularly family businesses, include a trust to protect the business assets and ensure continuity down the generations. In the past, trusts have also been used to ensure business ownership privacy. However, recent UK laws on transparency now mean that 'persons with significant control' over a UK company or LLP (or SLP) must be disclosed on the public register maintained by Companies House. These rules look through trusts and an individual who has significant influence or control' over a trust (eg has a right to direct and or replace the trustees) must be disclosed as a 'person with significant control' where the trust controls a UK company.



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