



32 High Street • Andover • Hampshire SP10 1NT
Telephone: 0800 3765055 • Facsimile: 01264 356549 • Email: info@bsi.co.uk • www. bsandi.co.uk • DX: 90303 ANDOVER

COMPANY FORMATION AND FINANCE

When each new business is formed a decision must be made as to the structure within which to operate. It could be:

1. SOLE TRADER

An individual trading on his or her account using his own or a business name. There is unlimited liability in respect of losses made by such a business. There is also considerable flexibility and no requirement to publish accounts.

2. PARTNERSHIP

A partnership is an association of more than one individual running a business on terms which are agreed and should be recorded in writing. Once again there is the advantage of privacy but all partners' assets, in the majority of cases, are available to satisfy the debts of the firm. There will be rights of indemnity and contribution between partners but on the face of it there is unlimited liability to the extent of the firm's debts.

3. LIMITED LIABILITY COMPANY

A separate legal entity is formed, a private company limited by shares. The liability of members is limited to the amount, if any, that may be left unpaid in respect of the shares. This is a business medium favoured by many businesses particularly where the risks associated with the business are high or not capable of being quantified.

A private company may be limited by shares or by guarantee not having any share capital. There are requirements as to filing notification of company officers, registered office and other financial material including accounts at Companies House. Limited liability companies enjoy a degree of status and credibility which unincorporated businesses do not.

The separation of ownership and management in a Limited Company can often mean that they are attractive to outside investors who will subscribe for shares and the companies will issue a share by way of part ownership.

Limited companies are able to create "floating charges" over some or all of their assets in order to offer banks and other lenders security.

Pension planning is often more easy for a Limited Company than for a Sole Trader or Partnership.

If sale or re-organisation is envisaged then it is possible for either the shares in the company to be transferred to a purchaser or, alternatively, for the company itself to transfer its assets to a purchaser.

Incorporating a company does not give exclusive right to use any particular name but the name is a matter of public record in a way that the names operated by Sole Traders or partnerships are not.

A Limited Company can have one or more members. It can have one Director provided it has a separate Secretary. Accounts have to be filed but with companies where there is a small turnover the requirements for accounts are less stringent than with larger companies.

When deciding what business structure to utilise it is important to look at the proposed business, nature of the concern, risks, contracts and all other relevant considerations.

A public company is one whose Memorandum contains a statement that the company is to be public. Once again, the liability of members of a public company is limited to the amount, if any, unpaid on the shares. A Public company can offer its shares or Debentures to the public, which a private company is prevented from doing.

When companies are formed regard should be had for the identity of company officers, Directors and Secretary. A registered office must be chosen. An accounting reference date must be selected. Decisions must be made as to the number and class of shares to be issued and a Memorandum and Articles of Association must be drafted.

COMPANY SECRETARIAL SERVICES

For the purposes of good company management it is important that all company records are kept up to date, Minutes of all meetings maintained and all Resolutions properly recorded. Company Books must be kept fully written up at all times.

FINANCE

The Principal Legislation relating to Limited Liability Companies is the Companies Act, 1985. Companies may raise money by issuing shares in return for cash or other assets. Alternatively loans may be taken out where the company issues a Debenture over its assets (if any) to secure the loan.

A Limited Company is a separate entity in law from the Directors who run it and the Share Holders who own it although, in practice, those people may often, in small concerns, be the same people.

As a Limited Company expands and develops it may wish to raise more capital or re-organise and sell all or part of its shares or its assets. Regard should be had to control the company in terms of different classes of shares which can be issued which may or may not have voting rights attached to them.

COMPANY MANAGEMENT

Management of a company is increasingly important and there is a clear duty on Directors and officers to act in a proper manner at all times. Certain people are not allowed to be Directors of

companies and there is now legislation to enable persons who have been Directors of companies which have failed to be disqualified if it is felt by the Court that they are unsuitable to continue to act as company Directors. All Directors and officers of the company should at all times be aware of the rights and obligations attached to the position they hold.

THE FUTURE

A properly drafted Memorandum and Articles of Association will cater for future needs of the company and its members. Pre-emption rights are often added to the Articles of Association to protect ownership and control from passing out of the hands of shareholders.

The Courts always have the power to protect the interests of minority share holding groups. Although control of a company is exercised by the holders of 51% (or in some cases 75%) of the issued share capital, the rights of the smaller shareholder will be protected.

For all persons involved in the ownership and/or running of a company, large or small, knowledge or and compliance with the law in relation to corporate matters is of particular importance and professional advice from both Solicitor and Accountant should be obtained and acted upon throughout the life of the company.

For further information contact

Freefone 0800 376 5055