

20

Formation of a company

A

Incorporation

Jamie Anderson, a partner in the commercial department of a law firm, is discussing the formation of a company in the UK with an overseas client.

‘The regulations for **incorporation**, that is, forming a company, are set out in the Companies Act 1985. There are a number of steps to be followed in this procedure. We offer this service to clients, as do accountants and other private sector **formation**, or **registration, agents**. Firstly, it’s necessary to choose a name for the company which is legally acceptable. The name to be registered isn’t necessarily the same as the **trading name**. The application for **registration** will be rejected if the name can’t be distinguished easily from a company which already exists as a **registered company**. The use of certain words, for example ‘British’, ‘International’ and ‘European’, may require prior approval before they can be used in a company name. Form 10, which gives the names of the **directors** and **Company Secretary** (see Unit 23), and form 12, are submitted to the **Registrar of Companies** at Companies House in the respective jurisdiction¹. On completion of registration, the new company will be given a **company number**, also known as a **registered number**, which remains constant throughout its life, and Companies House will issue a **Certificate of Incorporation**. In fact, it’s possible to begin trading as a company by purchasing a **shelf company**, which is already registered, and having its **shares transferred**. This is a route chosen by clients where speed is a prerequisite.

A company must have an office in the jurisdiction at which it can be served with any legal process. The **statutory books**, or official company registers, must also be kept there and be available for inspection. Details of any registered company – its **registered office**, company number, **accounting reference date**, date of its financial year end, and history of previous names – can be found free of charge at Companies House.’

¹For companies registered in England or Wales – Companies House in Cardiff. For companies registered in Scotland – Companies House in Edinburgh.

B

Memorandum and Articles of Association

‘When a company is incorporated, it must adopt **Memorandum and Articles of Association**, also known as the ‘Mem and Arts’. The Memorandum sets out the Company’s **objects**, or purposes, and it’s important to ensure that these properly reflect the company’s intentions, for example the ability to **mortgage** company property for the purpose of raising finance. The Articles set out the relationship between the company and its shareholders. The requirements for directors’ and shareholders’ meetings are also set out here, as are restrictions on share transfer and **allotment of new shares**, and regulations concerning directors’ powers and duties. Most companies are **limited** companies with the **liability** of members limited to the nominal value of the shares they hold or, less commonly, the amount they guarantee to contribute to the company’s liability on **liquidation** – if the company is closed and its assets sold. A company must have a stated number of **shares issued** to properly identified **shareholders**. Any company will have a maximum amount of **share capital** which can be issued, known as the **authorised share capital**. A company need not issue all its authorised share capital.’

BrE: Articles of Association; AmE: Bylaws

BrE: Memorandum of Articles of Association; AmE: Articles of Incorporation

Note: For more information about shares, see Unit 21.