

COMPANY INCORPORATION INFORMATION SHEET

Hegarty LLP Solicitors was formed in 1974 and is now a major regional player in the law marketplace, serving clients both locally and across the UK. Our rapid growth is as a result of offering a top quality service, backed by an innovative approach to the law. We have been first with many services and marketing initiatives, and continually drive to exceed client expectations.

If you want help regarding forming a company and the legal implications of this please contact Andrew Heeler on 01733 295661 or email: andrew.heeler@hegarty.co.uk.

The following information explains more about the formalities of company formation to help guide you through the process.

What you need to know:

1 Appointments

A company must consist of two types of “officer”, i.e. a director (or directors) and a secretary. The company must also have at least one shareholder. These people need not be employees and one person may have more than one role. A description of the roles are below:

1.1 Directors

These are the people who run the company on a day to day basis. The company can (if permitted by the Articles of Association) have one director – a sole director – who will have sole responsibility for day to day operation of the company, or many directors who will run the company through the board of directors in board meetings. Decisions of a board of directors are normally taken on a “one person, one vote” basis and carried by a majority vote.

Certain people are disqualified from being company directors, (for example, an undischarged bankrupt) and after the appointment of a director form 288(a) must be filed at Companies House. The director's name must also be entered in the company's statutory register. The director may have to notify the company of any interest he has, for example under contracts or because of shares he holds. Hegarty LLP can advise you as to the proper procedure for this.

In a strict legal sense, directors are not employees of the company and are not entitled to a salary. The equivalent to a contract of employment for a director is a directors service agreement. However, there are many extra issues that must be considered. At Hegarty LLP we can help you consider all the issues and come up with the best solution for your business.

1.2 Secretary

The company secretary is the person who is responsible for making sure that any necessary forms are filed at Companies House, calling shareholder meetings and other administrative roles. If the company only has one director then that person cannot also be the company secretary. Otherwise, there is no restriction on who can be the secretary. The secretary is not a member of the board of directors and does not have a vote in a board meeting or shareholders meeting. While the secretary will usually attend both types of meeting, he/she doesn't have to.

1.3 Auditors

It is compulsory for large companies to have their accounts audited by qualified auditors. For small companies there is no requirement, but many people prefer to have their accounts audited anyway. Many auditors will also be willing to act as company secretary.

1.4 Bankers

The company must also appoint bankers. All the high street banks have business advisors and it is a matter of choosing the right bank for you.

2 Limited Liability

One of the main reasons for choosing to incorporate a company is limited liability. As a general rule, the liability of a company will only extend to the amount of its share capital, and so long as the shares have been issued fully paid up (i.e. if you have 100 £1 shares you have paid £100 for them) there will be no reason for the shareholders to have to pay further money.

It is possible to lose the protection of limited liability, for example continuing to trade when you know that there is a good chance that the company will not be able to afford to pay its debts. Also, in the case of small companies, it is common for banks to ask for personal guarantees from individual directors to cover a particular loan, or indeed all of the indebtedness of the company.

3 Registered Office

The registered office is the company's address for all formal correspondence (such as notice of court proceedings). It is also the address where the statutory register must be kept. Whilst it need not be the trading address, it should be an address where you can receive correspondence. The address of the registered office must be sent to Companies House. It will then be available to anybody through the Companies House website.

3 Shares

3.1 Decide on authorised share capital

Any limited company will have a share capital. This is the maximum value of shares that they are allowed to issue and it will be split into shares of a set price. For example, a company could have an authorised share capital of £100 split into 100 £1 shares. The share capital is the maximum

amount that the company can issue, but there is no requirement to issue all of the share capital. The shares held by shareholders form the issued share capital. Details of all share issues must be sent to Companies House.

3.2 Shareholders

The people who hold shares in a company are the owners of the company and are referred to as “shareholders” or “members of the company”. Shareholders give a company its general direction and make general policy decisions whilst the directors make day to day decisions. There are certain things that the company cannot do without the consent of the shareholders. Shareholders vote on matters at an annual general meeting (“AGM”) or between AGM’s at an extra-ordinary general meeting (“EGM”). Unless specifically agreed otherwise, shareholders are free to sell their shares to anybody who wishes to buy them.

It is common to have a shareholders agreement to regulate the transfer of shares. All shareholders must be sent a share certificate detailing their shareholding.

3.4 Shareholders Agreements

Certain business of the company cannot be completed without the shareholders consent. For this reason it is common to have a shareholders agreement in which the shareholders agree how they will vote or who they will sell their shares too. Much of this information could be contained in the articles of association (which are sent to Companies House) instead, but a shareholders agreement has the advantage of being a private document. At Hegarty LLP we have vast experience of making shareholders agreements to cover all different situations.

4 Choice of name

The company name must be registered at Companies House. In principle, a company may choose to register under any name it wishes as long as it has not been registered by another company. The choice is also subject to the Companies Act 1985 and the Business Names Act 1985. Hegarty LLP can help you to choose the best name to comply with the statutes and suit your company’s needs. The name must also be displayed outside the company’s registered office and on its stationary.

Having incorporated your company you may wish to use a different name. Because a company is identified by its registered number, with the shareholders consent the company can simply change its name. Alternatively, you can keep the original name and have a separate trading name. This is very common for companies that run a franchise.

5 Memorandum and Articles

The company must file its Memorandum and Articles of Association at Company’s House. The Companies Act requires that the Memorandum of

Association sets out exactly what the company can do (for example borrowing money, buying and selling property etc) as well as details such as the name and registered office of the company. The Articles of Association set out how the company will operate internally, such as how many directors it can have, calling meetings etc. Hegarty LLP has a wealth of experience drafting Memoranda and Articles of Association to suit your individual needs.

6 Accounts/Tax

All companies have to file annual accounts at Company's House. There are detailed rules about exactly what different companies must file, but the general rule is the bigger the company, the more detailed the accounts filed at Company's House need to be. Your accountant will be able to give you more detailed information.

Also remember that once a company reaches a turnover of £60,000.00 it must register for VAT and will thereafter have to file a VAT return with Customs & Excise.

7 Insurance

It is essential to think about what insurance you will need for your new business. Any property and other assets obviously need to be insured, but you may also need Public Liability Insurance, Professional Indemnity Insurance, and if you will have employees, Employers Liability insurance.

8 Statutory Register

The company must keep detailed records of, amongst other things, all its directors, shareholders, secretaries and directors interests, mortgages, and also keep a record of all board meetings, resolutions and share transfers. These details must be kept in the statutory registers to be kept at the registered office and made available to anybody who wishes to see them. The company will also be required to keep certain documents, for example share transfer agreements, and most importantly the certificate of incorporation. It is helpful to keep these with the statutory books.

Hegarty LLP can make sure that you have all the records that you need and can make sure that the books are completely up to date.

9 Stationery

All companies must make sure all their business stationery contains certain information such as the company name and registered office. Extra information must also be included in certain situations. Hegarty LLP can tell you exactly what information you need to provide for your situation.

The contents of this information sheet is for information only. You should never act on the contents of the information sheet alone, and should always seek professional legal advice regarding your particular situation before taking any action. For more information about this, or any other aspect of company law, please ring Andrew Heeler on 01733 295661 or email: andrew.heeler@hegarty.co.uk. (Last updated May 2006).