



QUORUM CORPORATE SERVICES LIMITED

A Brief Guide for New Companies

67 High Street
Chobham
Surrey GU24 8AF

Tel: 01276 855007
Fax: 01276 855488
enquiries@quocorp.co.uk
www.quocorp.co.uk

*A company registered in England and Wales
Company No. 4065553
Registered office address as above*



A GUIDANCE BOOKLET FOR COMPANIES

FORMING A NEW COMPANY

Once the decision has been made to start up in business, the options available are numerous. Should you carry on as a sole trader? If you have a business partner, should you start a partnership or perhaps you should think about a limited liability partnership. Or perhaps it's best to start up a limited company. There are many issues to consider and before proceeding, it is always advisable to consult a professional adviser, particularly a tax practitioner or accountant who will advise on future wealth or profit distribution geared toward the type of business you are in and the likely trading conditions. Once the decision has been made Quorum's experts are on hand to deal with the myriad forms, paperwork and legal documentation to get you started, whichever way to wish to proceed. We have particular expertise in the formation of the following:

- ❖ Private limited companies
- ❖ Public limited companies
- ❖ Limited liability partnerships
- ❖ Charitable Companies
- ❖ Right to Manage ("RTM") companies
- ❖ Flat Management companies
- ❖ UK Establishments (as a branch of an overseas company)

The most common route for start-ups is the formation of a limited liability company and the following is a brief guide as to why it is beneficial to seek our advice or the advice of any professional before you incorporate a new company.

The Articles of Association

This is a legal document which sets out the internal "management" rules of the company and governs the relationship between the owners of the business (ie the shareholders) and the managers (ie the directors). The most commonly covered items in the Articles are the rights of the shareholders, the rights attaching to the shares and any different classes of shares (eg voting/non-voting), procedures on transfer of shares, the appointment, removal and powers of the directors and how any meetings may be conducted. Additionally, sometimes, in order to protect the individual shareholders, it is desirable to have "pre-emption clauses" inserted into the Articles. These clauses require that before any shares are allotted or transferred to any other person(s), they are first offered to existing members in proportion to their existing holdings. In this way, the existing members' shareholding in the company is not "diluted" by the allotment of further shares. This is an important issue, particularly given the weighting of voting rights at shareholders meetings and who will have ultimate control of the company.

Again, the Articles is an extremely important document and the law relating to it can be complex. Accordingly, we believe that it is imperative that this document is written by specialists, ideally with a legal background, who can identify and pre-empt any potential pitfalls. Otherwise, the administration of the company may run into severe difficulties in the future, possibly resulting in Court proceedings or even the winding up of the company.

Quorum Corporate Services Limited's Articles are professionally drafted and are tailored to the specific needs of the company at that time. We delve deeper into the basic model Articles in order to create a more watertight document and so potentially a more secure future for your company. It is also worthwhile to remember that the Articles of Association of the company is a public document and consequently can be accessed by anyone with an interest in the company. Since Quorum Corporate Services Limited's Articles have been drafted by the country's leading practitioners in company law, they are less likely to portray an image of an unfocused and unambitious business. Indeed, our articles are used by some of the country's leading organisations as well as larger professional accountancy and legal practices.

What Happens Following Incorporation of the Company?

Quorum Corporate Services Limited incorporates companies electronically, which means that we can usually incorporate on the day of instruction with your chosen company name already in place. This is particularly important if you are about to commence business immediately and need the company number fairly quickly. This also speeds up the VAT application process as you need to disclose your company number to HM Revenue and Customs. Once your company has been formed, the directors should have their first board meeting at which the "post incorporation" matters are finalised. For example, if not already dealt with when the company was incorporated, decisions must be made as to who will be allotted shares and other administrative matters need to be addressed eg where the registered office is to be or whether the company's year end should fall at a particular time, perhaps in line with VAT periods.

Quorum Corporate Services Limited will give you guidance on the post incorporation issues and deal with all such matters for you. We will prepare the first board minutes, deal with the transfer and/or allotment of shares, the payment of any stamp duty due to the Inland Revenue, send to the Registrar of Companies all the documents required to effect the changes and produce the company's statutory registers and share certificates.



The Statutory Registers

What are the Statutory Registers?

The Companies Act requires that every company must maintain the following registers:-

- ❖ Register of members (ie shareholders)
- ❖ Register of any allotments of shares
- ❖ Register of any transfers of shares
- ❖ Minute books (records of all board and shareholder meetings)
- ❖ Register of directors and secretaries
- ❖ Register of directors' interests and debentures
- ❖ Register of mortgages and charges (if any)
- ❖ Register of directors' residential addresses

On occasion, such registers are eligible for inspection by some third parties who may have an interest in the company, shareholders and auditors and the company is obliged to keep these registers up to date at all times. In some situations companies have been taken to Court or struck off by the Registrar of Companies as a result of these registers not being properly maintained.

Quorum Corporate Services Limited provides specialist software especially for this purpose, as a result of which the company's registers can be set up and maintained electronically, with the additional option of being produced in hard copy as well. However, some companies prefer registers to be printed only when required for inspection. Forms, share certificates and other statutory documentation can also be generated automatically and electronically using our company secretarial software.

Additionally, Quorum Corporate Services Limited legal and company secretarial practitioners are highly experienced in drafting and maintaining minute books and can provide you with expert guidance in the law surrounding the conduct of meetings. For example a meeting must be properly convened in accordance with the Companies Act and/or the company's Articles of Association and those entitled to attend and vote must have been notified of the meeting according to the set procedure. Otherwise any business conducted at a meeting at which the proper procedures have not been followed could be declared void, with disastrous results.



THE COMPANY SECRETARY

Company Secretarial Services

Why use a Professional Company Secretary?

All companies have to start somewhere and even the largest multinational organisations had to start off with a certificate of incorporation possibly a company secretary, first directors and first shareholders (subscribers). It is our view that **every** company should be regarded as a potential multi-million pound organisation and it is important to regard each new company in this light.

So how can the company secretary contribute?

The law states that a private limited company can choose to have a company secretary. However many people do not realise the significance of the role, a so sometimes a family member or non-professional appointed to take office, or a secretary is not appointed at all, usually in order to save costs. Using a non professional as a company secretary would never be advocated by **any** of the professions eg solicitors, accountants or chartered secretaries. Usually, the unwitting new director and the even more unwitting family member does not realise that the company secretary, alongside the directors, can be liable to criminal prosecution for failure to comply with the Companies Act in certain circumstances. Ignorance of the law will not be regarded by the Court as any kind of defence. Many directors and company secretaries in the past have been disqualified and criminally prosecuted for the acts or omissions of the other officers.

We at Quorum Corporate Services value you as a client and we wish to provide top quality company secretarial services to you. We have recognised that, with most start up companies, money is tight and is usually allotted for other things conducive to the setting up of the business and its infrastructure. Accordingly we have three packages in place for you to choose from, should you wish to use our professional services.

What is included in the Start Up Company Secretarial Fee

Our fees schedule (attached) indicates what is required in each package. However the mid range package, or most popular, covers the following activities:

- ◆ **FREE** provision of the registered office facility which includes scrutinising, recording and forwarding statutory mail in accordance with instructions
- ◆ The creation, updating and maintenance of the statutory registers using our specialist company secretarial software. The registers are also kept in hard copy format ready for inspection by auditors or other permitted parties at reasonable notice. We will also liaise with the accountants or auditors on the company's behalf with regard to information requested from the registers. **REMEMBER THESE REGISTERS ARE REQUIRED BY LAW**
- ◆ Preparation and filing of the company's Annual Return at Companies House.
- ◆ Post incorporation share transfers (ie transfers in the first year of trading), including stock transfer forms, board minutes, pre-emption requirements (if any required under the Articles), share certificates (any stamp duty applicable is charged as an additional disbursement).
- ◆ Post incorporation allotments (ie in the first year of trading) including letters of application, board minutes, pre-emption requirements (if any), filing of forms at Companies House, share certificates
- ◆ Monitoring of statutory filing deadlines
REMEMBER IT IS A CRIMINAL OFFENCE TO FILE ACCOUNTS AND ANNUAL RETURNS LATE
- ◆ Alteration of the accounting reference date as required
- ◆ Electronic or manual filing of forms at Companies House (any Companies House fees are charged additionally)



BEING A COMPANY DIRECTOR

Congratulations! – You're a New Director.....What does that mean?

THE FUNDAMENTALS

Directors are entrusted with the task of managing the company. A company must have at least one director and at least one of the directors must be a natural person (corporate directors are not permitted to be sole director). The minimum and maximum number is usually set out in the Articles of Association but this can be changed.

The following summaries set out some of the statutory responsibilities faced by the director and, although responsibility lies ultimately with the directors, it is usually the role of the company secretary to ensure the following duties are carried out within the requirements of the law and the company's constitution. It is always wise to recruit the services of a professional company secretary and it is becoming common practice to outsource this function to a specialist who will be aware of the latest legal requirements and also have specialist software at their disposal.

STATUTORY DUTIES

The governing law for companies is essentially the Companies Act 2006, which came fully into effect in October 2009. The Act imposes a range of statutory tasks upon the directors.

NB Disqualification, fines or imprisonment act can be imposed as penalties for failures of the directors. These statutory duties include, but are not limited to those set out below. The company secretary has an important role to play in assisting the directors fulfil the following requirements:-

❖ Statutory Registers

The Act makes directors responsible for keeping a variety of statutory registers. The company secretary is the person entrusted to keep these records up to date and in good order. The company secretary will also liaise with the company's stakeholders with regard to inspection of the registers.

❖ Statutory Accounting Requirements

Directors are responsible for keeping the company's accounting records and preparing the annual accounts and directors' report. They also have a duty to file the accounts with the Registrar of Companies within the timescale laid down by the Act. A professional company secretary can liaise with the company's auditors or accountants regarding the preparation of the accounts, the convening of the board meeting to approve the accounts, the satisfaction of obligations with regard to the shareholders' copies of the accounts and the filing of the accounts with the Registrar of Companies.

❖ Interest in contracts (ss. 182-187 CA 2006)

A director must disclose to the company any direct or indirect interest in any contract with the company. This Companies Act requirement also extends to any member of the director's family who may hold shares in the company or its subsidiaries.

❖ Directors Duties (ss. 172-177 CA 2006)

One of the many company law changes made by the Companies Act 2006 is to define, for the first time in legislation, directors' duties. Among the new statutory requirements under the Act are duties to:

- promote the success of the company
- exercise independent judgement
- exercise reasonable care, skill and diligence.

Many of the new duties are similar to the current common law duties. There is one significant change, however, which is the duty to promote the success of the company (section 172). In doing so, the director must consider a number of factors, including:

- the likely consequences of any decision in the long term
- the interests of the company's employees
- the need to foster the business relationships of the company with suppliers, customers and other organisations
- the impact of the company's operations on the community and the environment
- the desirability of the company maintaining a reputation for high standards of business conduct
- the need to act fairly as between members of the company.

Coupled with the duties to exercise independent judgement and take reasonable care, many directors have been left wondering how they can meet their obligations and what risks they run if they get it wrong. Simply passing the handling of the company's statutory obligations to a qualified professional company secretary will greatly assist the directors in fulfilling these duties and will indicate to the global business world the serious intent of the company and commitment of its directors.

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A WORD OF WARNING

There are abundant opportunities for directors to commit breaches of the Companies Act and related legislation and, if rigorously pursued, the consequences can be severe.

It is impossible to list all of the potential offences or their penalties. It is not even possible to say what steps a director must take to avoid personal responsibility since the burden of proof changes depending upon the specific provisions involved.

Civil Action

The consequences of a breach (or threatened breach) of the director's duties are as provided under common law, which means that a failure to follow the obligations set out in the Companies Act could mean the issue of Court proceedings against the director personally.

Criminal Liabilities

The Registrar of Companies can prosecute directors who fail to comply with the statutory filing of accounts and other statutory documents. Penalties are more severe for serious breaches involving an element of fraud or non-disclosure.

Liquidations leave the directors open to a particularly formidable set of criminal penalties mainly in connection with concealment or alteration of documents or information.

Suffice it to say that, with a professional company secretary, the directors and shareholders can have peace of mind, safe in the knowledge that the company's statutory requirements are being attended to, to enable the entrepreneurs to create and pursue business opportunities.

QUORUM'S COMMITMENT TO YOU

As a firm we always put our clients first. We strongly believe that you should employ Quorum Corporate Services for professional company secretarial services in view of the efficiency of our company secretarial team and the knowledge that all of your regulatory issues on the UK company secretarial side are being taken care of. Our team of professional and highly qualified advisors are always on hand to provide support and advice. If nothing else, a major reason for considering Quorum Corporate Services is the utmost value for money provided by our reasonable prices compared to other service providers. By holding the company's registers in our custody we are in an excellent position to be able to provide full company profiles for whatever reason at very little notice to your banks, accountants and corporate finance advisors – whoever you choose to deal with your other affairs for you – we understand what information is required and can send it to the practitioner, removing the stress for you. Our service has the merit of releasing you to pursue entrepreneurial activities and allowing the staff in your company to undertake the work which is their primary responsibility rather than having to worry about the increasingly technical side of the retention and updating of the company's books and dealing with the vagaries of Companies House – it can be a minefield.

The company secretarial service is also available to established companies seeking to recruit the guidance and support of a professional company secretary.

Please do not hesitate to call us if you would like to subscribe to our company secretarial service or if you would like to receive further information about any of our corporate legal and compliance services.

**IF YOU FOUND THIS GUIDE HELPFUL PLEASE CALL US.....
WE WOULD BE VERY HAPPY TO ASSIST YOU**

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