

The process of forming a company

Once you have an agreed organisational structure and constitution - which for a company is called a 'Memorandum & Articles of Association' - usually abbreviated to 'Mem&Arts' - the process of forming a company is fairly straightforward. Companies House, the government department that deals with company registration and administration, publishes a booklet called *Company Formation* which describes the process, and which is available free by post or can be downloaded from www.companieshouse.gov.uk.

In addition to the Mem&Arts you will also need at least 2 forms to register the company - known as Company Forms 10 and 12 - which can also easily be downloaded from the Companies House website. Form 12 is a 'statutory declaration' and must be witnessed by a solicitor or one of the other officials listed on the form.

The following are the steps you need to take to form the company:

1. Decide on the name for your company. Normally this must end in the word 'Limited' or the abbreviation 'Ltd' (you must choose one or the other of these and use it consistently throughout the Mem&Arts and Forms 10 and 12). It is possible *for guarantee companies* to omit Limited/Ltd from the name but to do this you will have to complete another statutory declaration - Form 30(5)(a) - and write a covering letter setting out why you needn't have 'Limited' or 'Ltd' in the name. Also note that there are some words you cannot use in company names, or for which you need permission. Again you can download a free leaflet called *Company Names* from the Companies House website explaining all this.
2. Check that the name is available. First check the name online at the Companies House website - just click through to the 'WebCheck' area and type your proposed name in the box. The search engine will take you through to the relevant part of the companies register. If the name is already on the register you will have to think again. Although only a slight variation may be required for company registration purposes, there are other legal risks around using a name that is very similar to another organisation - whether they are a company or some other kind of body such as a partnership. It is therefore wise in addition to the company register to look in other directories - one easy way is to type your proposed name into the 'yellow pages' search engine at www.yell.com.
3. Decide on at least one person - preferably 2 people - who will be the first director(s). We do not recommend more than 2 directors at this stage - it is easier to appoint the other directors (if any) once the company is registered.
4. Decide on who will be the company secretary. Often this role is taken by one of the first directors - but note that if there is only one first director s/he cannot also be the secretary.¹ To complete Companies Form 10 you will need the basic details of the director(s) and secretary - names, addresses, dates of birth, etc.

¹ More information on the roles of director and secretary can be found in the SFUK guide *The Extra Elements* by Geof Cox, which can be downloaded from www.socialfirms.co.uk.

5. Decide on the 'registered office' and get the full address. If you do not yet have premises it is quite usual to use some other convenient location for the registered office such as the home address of one of the directors or the secretary. The main consideration is that it is a safe and convenient place to receive important letters.
6. Print the finalised version of the Mem&Arts, including now your company name, sign both the Memorandum and the Articles in front of a witness, and fill in the other details in the relevant spaces - the witness also signs and fills in their details. The 'subscribers' who sign the Mem&Arts will be the company's first members, and we advise only 2 people to do this - further members can be admitted as soon as the company registration is complete, but it is usually inconvenient for a large group to sign at the registration stage.
 - 6.a If the company is to be a subsidiary of an already established company – ie. if the established company is to be the only member of the new company – an authorised signatory such as the chair must sign *for and on behalf of* the organisation. Put the organisation's name and address in the relevant places.²
 - 6.b If the company is a share company the subscribers must also agree to take at least one share each, and also note this in the relevant places.
7. Fill in Form 10 - this is where you need the personal details of the first director(s) and secretary and also the registered office address. Again our advice is that only 2 people sign - usually the same as sign the Mem&Arts, but this time they are signing as *directors* rather than *members*. Note that the subscribers to the Mem&Arts also sign Form 10 at the end whether or not they are the same people as the first directors. Make sure you read the notes on Form 10 and fill it in accurately. One question that often catches people out, for example, is on 'other directorships' - if any of the first directors are already directors of other companies they need to list them here, but if they are not they must write the word 'none' here - if it's just left blank the form will be regarded as not completed, and it will be sent back to you to finish off.
8. One of those who have signed as a director or secretary then fills in the company name and their own name and address at the top of Form 12, *but does not sign it yet*. They take this Form and the other registration documents to a solicitor (or one of the other officials listed on Form 12) and signs it in front of them - the solicitor fills in the rest. The formality of this 'statutory declaration' procedure varies, and there may be a very small charge (often, we find, £5).
9. Photocopy all of the signed documents - this is important as you will have to pay to get copies once they go off to Companies House.
10. Send all of the documents along with a cheque for the registration fee (currently £20) to Companies House (in Cardiff if the registered office is to be in England or Wales, or Edinburgh if in Scotland - the addresses are on the Forms - or again just look at the website, where indeed it might be wise to check the current registration fee anyway as it does change from time to time.
11. In a week or two you should receive back your registration certificate and the company is formally in existence. You'll also receive further information about what to do next in terms of running the company.

Geof Cox

geofcox@ukfsn.org

² Note it is also possible (though not usually advisable) to have corporate directors and secretaries, in which case this procedure might apply to Form 10 as well.