

Incorporations – 12 areas to consider

Elemental supports law firms with company incorporations and many of the team are ex-corporate lawyers. Elemental has created this guide to some areas to pay close attention to when incorporating a UK company.

Each incorporation is different, and these points are designed to prompt areas that may require further investigation, give us a call and our team will be happy to help on any of the points raised.

1.

Company Name

- The name cannot be similar to an existing company's name. Companies House has a [name checker](#).
- Sensitive words are restricted. For example, those that imply pre-eminence or authority such as 'British', 'International', 'Institute' or 'Charity'. For a full list visit [here](#).
- For a private limited company, the name must include 'Ltd' or 'limited' (or the Welsh equivalent).
- Certain types of companies will want to carry out a trademark check (and may want to secure a domain name).

2.

Articles of Association

- Confirm if you will use the Model Articles prescribed by statute, Freshfields' standard articles, Elemental's standard articles or if the client needs bespoke articles. The 'standard' articles can often be quite different and may not be appropriate for all clients.
- If using the Model Articles be sure to select the Model Articles for a private limited company as other types of Model Articles exist.
- Bespoke articles will be needed if the company is to have different share classes.

3.

Registered Office

- The registered office must match the country of incorporation e.g., for Scottish companies the registered office must be in Scotland. (Elemental can provide a London address with mail scanned and sent to the client).
- The address needs to be a physical address. PO Boxes are often rejected and should not be used.

4.

Domiciliation and Directors

- There is no requirement to have a UK director from a company law perspective, but if there are no UK directors there is a risk that the company could be considered tax resident in another jurisdiction.
- If domiciliation is important for tax purposes, there are additional steps that may need to be taken on top of a UK registered address such as appointing UK directors, providing office space and bookkeeping. Elemental can provide this support.

5.

PSC

- All UK companies and LLPs are required to maintain a register of people with significant control (PSC). In summary this is a person or entity that meets one of the following criteria:
 - Holds more than 25% of the shares in the company;
 - Holds more than 25% of the voting rights in the company;
 - Holds the right to appoint or remove a majority of the board
 - Has the right to exercise significant influence or control over the company; and
 - If a UK company (or a company listed on a relevant market) meets any of these conditions and is the first in the ownership chain, then it will be a Registrable Relevant Legal Entity (RRLE) and its details will need to be provided.
- The PSC legislation can be very complicated and care should be taken. However, the most common mistake we see is with a sole shareholder (either a single individual or a wholly owned subsidiary) and not all of the right conditions being included. For a sole PSC or RRLE, the conditions should be as follows:
 - Holds more than 75% of the shares in the company
 - Holds more than 75% of the voting rights in the company
 - Holds the right to appoint or remove a majority of the directors

6.

Personnel – Director, PSC, Shareholder

- You will need full names (not initials).
- You will need at least one director who is a ‘real or natural person’ over 16. Corporate Directors are expected to be banned, so we do not recommend their appointment.
- You will also need at least one shareholder, it can be the same person as the director.
- You will need to gather some personal information from the shareholder for security (see our *incorporation checklist* for more information).
- If a shareholder wishes to withhold their identity our nominee shareholder service may help, however this is subject to the PSC rules above.

7.

Privacy

- You will need to provide a correspondence address which will appear on the public register for each director, secretary and PSC of the company. Elemental’s address can be used. Although it is permissible, an individual’s residential address should not be used for this purpose as the information is publicly available. Residential addresses of directors are required to be submitted to Companies House but these are not published.

8.

Company Secretary

- A UK private company is not required to appoint a company secretary but many still choose to appoint one (or more). If no company secretary is appointed, the directors are still responsible for compliance with all company secretarial duties.

9.

Shares and Shareholders

- You will need to state how many shares to issue. A common mistake is to incorporate a company with needlessly large share capital. £1 per share is a common amount.

10. Prescribed Particulars

You will need to provide the 'Prescribed Particulars' for each class of shares in the new company. The Prescribed Particulars need to set out the following:

- Voting rights
- Rights to dividends
- Rights to capital (including on a winding up)
- Whether the shares are redeemable

If there is only one class of ordinary shares, then we will include standard prescribed particulars as part of the formation. You will not need to do anything. However, if there are different classes of shares with different rights, care will need to be taken over the prescribed particulars. Elemental can help with this if desired.

It is worth noting that where the share class rights are complex, it is permissible to refer to the rights as set out in the articles of association for further information. However, the prescribed particulars should still include a summary of these rights.

11. Timing

- Often timing is critical. We generally find that companies are formed within 24 hours of instruction. There is a same day service with a cut-off time of 3pm, so please send all information to us by 2pm. This same day service is not guaranteed by Companies House, but companies are almost always formed on the day the application is submitted. Care should be taken when discussing timelines with clients.

12. Group Companies

- It's not uncommon as part of a transaction to form multiple companies owned by each other e.g., parent and subsidiary. If this is the case, we cannot submit the incorporation for the subsidiary until the parent is formed. This can delay matters and if timing is particularly key there may be ways around this, please get in touch.

Need help?

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🖨 elementalcosec.com/Freshfields (for the latest documents)