

## Company Formation

The information contained in this document serves as a guide only. Please do not act on this information in isolation and ensure that you always seek professional legal advice regarding your particular situation before taking any action. On the other hand, you may wish to call us for a free - no obligation meeting and we can arrange to undertake a comprehensive evaluation and discuss ways to improve your particular situation

1.1: It is important to make the right decision about the most suitable structure for your business- be it sole trader, partnership or limited company, because this significantly affects your net income. As a contractor, your structure is particularly important due to the administrative burden of dealing with invoices, tax returns, IR35, professional indemnity and other issues such as MSC- The Managed Service Company Legislation

***Sole traders:*** This is one of the simplest options, and you will only be required to inform HMRC of your self-employed status and conduct annual self assessment procedures.

***Limited company:*** This is a tax-efficient way of working and there are quite a few benefits:

1. Tax liabilities- Operating through a private limited company may mean that you will pay lower personal taxes than a sole trader. However, profits will be taxed at 21% (Corporation tax). Directors and shareholders may however decide to pay themselves a small salary and have little or no PAYE or NIC liabilities. As dividends are taxed separately, they would receive the majority of their income as dividends.
2. The Limited Liability Advantage – Directors will not be held personally liable for the debts of the company. There may be exceptions if a director deliberately continues to trade if a business becomes insolvent, or if a personal guarantee was given.
3. Protection: Your company name, once registered is legally protected and cannot be used by any other business.
4. Transfer of ownership- As a limited company, you will be able to issue shares and sell company stakes, or transfer ownership of shares when necessary.
5. Pension payments- A limited company can fund executive pensions as a justifiable business expense, instead of paying out of tax-free earnings.

1.2: Many clients would rather deal with a limited company or a private company for 5 main reasons:

1. Distinct Entity- Clients acknowledge that with this structure, bank accounts, assets, tenders, contracts, expenses and liabilities are distinct from the interests of the members of the company, and that these will be dealt with prudently and with recourse to existing regulations. In the event of a dispute, a company can also sue or be used as a separate legal entity.
2. Access To Funding – It is considerably easier for limited companies to secure funding than sole traders. Banks, VCs and other funding agents are more open to requests from incorporated businesses than any other type of business structure. Clients would therefore want some reassurance that if the need arises, a service provider would be in a good position to obtain funding.
3. Professionalism- Clients and prospects take comfort in the professional image that a limited company presents and the legal backing that it provides. Some clients would only deal with limited companies.

4. A sign of commitment – A company is usually regarded as having a perpetual life span, referred to as 'going concern'. Many clients and prospects regard incorporation as a sign of commitment to the longer term rather than a sole trader arrangement.
5. Transparency and Reporting. It is relatively easy to find out independent information about registered companies than about a person due to data protection regulations.

#### 1.3: IR35:

The Intermediaries legislation was introduced in April 2000 to eliminate the avoidance of tax and National Insurance Contributions (NICs) through the use of intermediaries, such as Personal Service Companies or partnerships, in circumstances where an individual worker would otherwise be regarded as an employee of the client (Other conditions apply, please visit the HMRC website)

#### 1.4: MSC:

In April 2007, the Managed Service Company ("MSC") Legislation, was introduced, and this affects individuals providing their services through intermediaries which meet the definition of a Managed Service Company. An intermediary must consider whether the MSC Legislation applies before considering IR35. Intermediaries that do not meet the definition of an MSC must continue to consider IR35. (<http://www.hmrc.gov.uk/ir35/> )

#### 1.5: Umbrella Companies:

Many freelancers and contractors now work through umbrella companies to reduce the administrative burden that comes with having a limited company, and maximise their earnings. An umbrella company provides an all-embracing employment contract that eliminates the need for the contractor to deal with IR35, insurance and many legal issues. An umbrella company would usually deal with all VAT, PAYE and NI liabilities. Compare individual offers at <http://www.umbrellacompanies.org/>

#### 1.6: Obligations:

Limited liability companies have certain obligations including:

- Compulsory registration at 'Companies House'
- Annual filing of accounts
- Payment of employee national insurance (NI) and income tax.
- Submission of annual returns to update 'Companies House'.
- Declaration of profits or taxable income to HMRC in financial year.
- Sending corporation tax payments within nine months of its year end and complete an annual HMRC corporation tax return

#### 1.7: Risks and Insurance:

No two businesses are exactly the same and there is no single cover that suits all the insurance needs that exists, even though there may be comprehensive products with multiple covers . You are more aware than anybody else about the exposure your business faces and professionals would usually be advised to buy as much cover as they can realistically afford.

1. The risk of making a mistake- **Professional Indemnity**
2. The risk of injury to visitors: **Public Liability**
3. The risk of injury to your staff when working- **Employer's Liability**
4. The risk of injury to you or your staff at any time- **Personal Accident**
5. The risk of damage or loss to office equipment – **Office Insurance**

1.8: Service providers:

Insurance	Accountants	Formation agents	Solicitor	Umbrella companies
<p><b><u>Employers' Liability</u></b> insurance up to £1,000,000. You may expect to pay a monthly premium of about £12.00 (i.e. £147 p/a) and an excess of £250 if your turnover is about £50,000</p> <p><b><u>Public Liability</u></b> up to £1,000,000 (rates are similar to EL above for the same amount and similar conditions)</p> <p><b><u>Professional Indemnity</u></b> insurance limit of 250,000., you may expect to pay monthly premiums of £21.00 as a chartered accountant with fee income of approx £100,000.</p> <p>You may try:</p> <p style="padding-left: 40px;">Hiscox Uk</p> <p style="padding-left: 40px;">Simply business</p>	<p>N/A</p>	<p><b>Well-known company formation agents include:</b></p> <p>www.ukcorporator.co.uk</p> <p>www.quickformations.com</p> <p>www.completeformations.co.uk</p> <p>www.sfsgo.com</p> <p>www.companiesmadesimple.com</p> <p>www.simpleformations.com</p>	<p><b>You may try</b></p> <p>Peninsula</p>	<p><b><u>www.umbrellacompanies.org</u></b></p> <p>Here you will find recommended providers and information about using umbrella companies.</p>

**1.9: Documents to be submitted:** You will be required to submit the following documents to Companies House, and these can be purchased from a law/legal stationers or formation agent. An intermediary would usually prepare these documents and make the submission on your behalf:

- Memorandum of Association: Consisting of major company details
- Articles of Association: Outlines the rights and powers of directors and shareholders
- Form IN01 (previously Form 10 & Form 12 before 1/10/2009): Showing the details of the company's registered office, secretary, directors, shares and subscribers.

For help with business plans, and support in business reorganization, you may visit [www.efm.uk.com](http://www.efm.uk.com) or [www.imtb.uk.com](http://www.imtb.uk.com)