VENTURE ADVENTURES

the business startup one stop shop

forming a company

why use a limited company?

Operating as a company means extra admin, but there are advantages, and it's worth it for most growing businesses. As well as limited liability and the ability to offer shares, it's a sign of serious intent and improves credibility with partners, customers and investors. You may be able to buy an existing company, but usually you will need to set up a new one.

LIMITED LIABILITY

If your business owes a debt or causes someone physical or financial harm, your company's liability is limited to what assets it has. Your personal assets are safe. If you don't use a company structure, your business debts and liabilities are yours personally: your house or other personal assets may need to be used to meet payments.

OFFER SHARES IN YOUR BUSINESS

Without a company, it's difficult to sell part of your business but ensure all your business assets (equipment, stock, IP rights) stay under common control. With a company, you can give others (eg investors) ownership of some shares in your business but the company continues to own all its assets and remains the contracting party with suppliers, customers and so on.

shareholders & directors

Shareholders and directors each have an essential part to play in a company but they are very different roles, with different rights and duties. One or the other may be more appropriate for the various people you involve in your business, although you can be both.

shareholders

- Own a % share of the business (assets and liabilities)
- Shares privately owned or (if PLC) publicly traded
- Vote at Annual General Meeting and any Extraordinary Meetings (AGM/EGM)
- May receive dividends (pay out from profits)
- Usually > 50% shareholding votes needed to approve company actions (eg remove directors), sometimes > 75% (eg change name or 'Articles')
- Different classes of shares possible:

common shares

More say in company decisions / Less guarantee of dividends return or recovering investment if the company fails

preferred shares

Less say in company decisions / Higher potential dividends return or chance of recovering investment if the company fails

directors

- Make day to day decisions about running the company
- Regular board meetings
- Don't own any part of the company (unless also a shareholder)
- Receive pay/options/shares via Director's Service Agreement
- Duty to act in the best interests of the company, not their own
- Duty to avoid and declare any conflict of interest
- Duty of confidentiality to company
- Other duties and possible liabilities eg health and safety
- Potential fines and even prison for breach of duties

basic steps

1 choose name

Choose a name

- Available at Company House
- Trade mark available?
- Domain name available?

2 initial shareholders

- Who will own shares at the start?
- What % shareholding or number of shares will each person have?
- Create enough shares for future employees and investors

3 initial directors

- Who will be a director?
- Specific roles for each? eg Chief Executive / Marketing / Technology Officer
- Company secretary to manage formal admin?

4 register at Company House

- Name directors
- Name shareholders and number/types of shares
- Memorandum of Association (agreement to form company)
- Articles of Association (rules for running company and voting on decisions)

5 key agreements

- Shareholders' Agreement between all shareholders or just key investors
- Founders' Agreement
- Service Agreements (eg for directors)

6 regular admin

Company House:

- Any change in directors or shareholders
- Confirmation statement and annual accounts

HMRC:

Corporation Tax

Insurance:

- Employer's / public product / public liability
- Litigation etc.

investors

There are different ways an investor can be involved:

- Loan or equity (shares). Could be via options, warrants or convertible loan notes (turning into shares at a later date if certain conditions are met)
- Capital investment (funding) or 'sweat' equity (providing necessary service eg develop app)
- Type of shares may vary: preferred shares may be appropriate
- Be careful of amount of control given away with shares, for example if an investor takes > 25% or even > 50% of the shares or votes.
- May not need to be a director as well

shareholders' agreement

All shareholders or key investors may want to agree on what rights they have. For example:

- % voting rights needed for key decisions
- Information rights in relation to the company's technology or business plans and operations
- Tag-along / drag-along rights to ensure they will have the right to be involved, or to involve others, in the sale of shares.
- When will each shareholder be able to sell their shares?

founders

Clarify the roles each founder will perform. Who will lead overall (Chief Executive)? Who will manage marketing and business development (Chief Marketing Officer)? Who will lead product or technology development (Chief Technology Officer)? What contributions will you each make? This could be capital or transferring ownership of key intellectual property to the company. What % shareholding or number of shares will each have? When will they vest? What salary will each receive, and when?

founders' agreement

also think about

• Trading Structure • Records, Tax & Reporting
• Risks & Insurance • Buying or Selling a Company
• Funding • Intellectual Property • Contracts

To find more information or request help or advice:

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