

Types of Company

A company can be formed in a number of ways:

(a) By Royal Charter (Chartered Companies)

Formed by grant of a charter by the Crown.

Promoters of the company petition the Privy Council attaching draft of proposed charter to the petition.

Still used to incorporate learned societies and professional bodies.

No longer used to incorporate trading companies.

(b) By Act of Parliament (Statutory Companies)

Formed by private Act of Parliament.

Formerly used to incorporate public utilities such as gas, electricity and railways.

(The privatized public utilities have been incorporated as registered companies).

(c) By Registration (Registered Companies)

Formed by registration under the Companies Act 1985 (as amended) or one of the preceding Companies Acts.

Registration is the most commonly used means of forming a company and virtually the only method now used to form a trading company.

CA 1985, s.1(1): "Any two or more persons associated for a lawful purpose may, by subscribing their names to a memorandum of association and otherwise complying with the requirements of this Act in respect of registration, form an incorporated company, with or without limited liability."

Classification of Registered Companies

Important Note

"Limited Liability" - this refers to the liability of the members, not the liability of the company. The company will always be liable to the full extent of its debts.

The liability of the members, whether limited or unlimited, is to the company, not to the individual creditors of the company.

(a) Unlimited Companies

(i) Members have unlimited liability (If company is being wound up, members can be made to contribute to the company's assets without limit to enable it to pay its debts.)

(ii) Cannot be public companies.

(iii) Can be set up with or without a share capital.

(iv) Not subject to the same restrictions on alteration of capital as other types of company, and do not normally have to file annual accounts.

(b) Companies Limited by Guarantee

(i) Members agree to contribute a specified amount to the company's assets in the event of the company being wound up. (Total amount payable by all members is called the "guarantee fund")

(ii) Members do not have to pay anything as long as company is a going concern - so company has no contributed capital.

(iii) Companies limited by guarantee are not usually formed for business ventures.

(iv) Prior to 1980, a company could be registered as a company limited by guarantee, but also have a share capital - these are called "hybrid companies".

(c) Companies Limited by Shares

(i) The most common kind of registered company.

(ii) Members of the company take shares issued by the company. Each share is assigned a nominal value - the amount that must be paid to the company for the share. Members may also agree to pay an extra amount - called a premium.

(iii) When the company is registered, its memorandum must state the total nominal value of all the shares it is going to issue (called the registered capital, or nominal capital or authorised share capital).

The memorandum also states the number of shares to be issued:
e.g. 10,000 shares of £1 each = registered capital of £10,000.

(iv) Liability of a member (shareholder), when the company is wound up is limited to the amount, if any, of the nominal value of his shares which has not been paid.

(Shareholder is also contractually bound to pay any premium which has not been paid).

(v) Shares are normally partly or fully paid for when issued, so company will have a contributed capital.

Companies Limited by Shares may be Public or Private

(i) Public Companies

CA 1985, s.1(3): "a company limited by shares which has a memorandum stating that it is to be a public company and which complies with the requirements of the Act for registration as a public company."

Main requirements:

- A company cannot be registered as a public company unless it has a minimum allotted share capital of £50,000, at least one quarter of which has actually been paid.
- A public company must have at least two shareholders and at least two directors.

(ii) Private Companies

CA 1985 defines a private company as "any company that is not a public company".

Private companies have no authorised minimum share capital.

A private company is only required to have one director and, since 1992, it can be formed with only one member.

Only Public Companies can have their shares listed on the Stock Exchange - but Public Companies are regulated much more strictly than Private Companies.