

COMPANY LIMITED BY GUARANTEE AND COMPANY LIMITED BY SHARES

Currently there are over 3.5 million limited companies (Public, private and third sector) registered in the UK with 500,000 new companies being incorporated annually. In Scotland company registrations are carried out in Edinburgh. Companies can be limited by guarantee or can be limited by shares. It depends of the needs of the organisation as to which kind of limited company is incorporated (see section 1.10 for information on how to incorporate a company).

Companies Limited by Guarantee are often incorporated by Voluntary Organisations and write the intention to be 'not for profit' into their Articles of Association. The Directors are the only members and would usually have their liability for the company limited to £1. A Company Limited by Guarantee can apply to OSCR for Charitable status if desired.

Companies Limited by Shares are different due to the organisation being able to raise funds through the sale of shares. In this case both the Directors and the Shareholders are members of the Company. This model is not eligible for Charitable Status with OSCR due to the private gain that can be made by shareholders through dividends. Often existing incorporated charities when looking to open a trading arm will use a Company Limited by Shares with the main charitable body as the sole shareholder in order to have complete control of the trading arm as Directors and Shareholders. This also allows for any profit to be reinvested back into the main shareholding charity.

The key characteristics of Companies Limited by Guarantee and by Shares can be found in the table below.

| Key characteristics of Company registered with Companies house | |
|--|---|
| <i>Is this legal structure incorporated?</i> | Yes. |
| <i>Can this legal structure be a charity?</i> | A Company Limited by Guarantee can apply for charitable status, however a Company Limited by Shares cannot apply for charitable status |
| <i>Who are the regulators?</i> | Companies House and if a Company Limited by Guarantee with charitable status, the Office of the Scottish Charity Regulator (OSCR). |
| <i>What is the key legislation?</i> | The Companies Act 2006. If a Company Limited by Guarantee with charitable status, the Charities and Trustee Investment (Scotland) Act 2005 also applies. |
| <i>Is there a registration fee?</i> | Yes there is a registration fee of £12 to register online or a charge of £40 to register by post. |
| <i>What type of governing document is required</i> | Memorandum and Articles of Association |
| <i>What is the membership structure?</i> | Directors are the sole members of Companies Limited by Guarantee, in Company Limited by Shares, shareholders are also members. |
| <i>What are the annual reporting requirements?</i> | Companies are required to provide an Annual Confirmation statement. If a Company Limited by Guarantee with charitable status, it must submit to OSCR a Trustees' Annual Report, completed Annual Return form and externally scrutinised accounts. |
| <i>What are the accounting requirements?</i> | Companies must provide annual accrued accounts. This section of the Companies House website covers the requirements based on the type and size of Company. |
| <i>Are there any specific duties or requirements?</i> | This will depend on the type of Company that is chosen for incorporation. |