

# Setting Up a Business in England and Wales For Overseas Businesses





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**“ Overall communication was great. General pro-active approach and willingness to go the ‘extra mile’ was greatly appreciated. ”**

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## The United Kingdom remains a hub for trade and commerce around the world.

Many overseas companies choose to set up in business here to take advantage of the UK market as the world's fifth largest economy, with a respected and accessible legal and regulatory system, and (generally) no restrictions on foreign ownership of companies and property.

Within the UK, there are separate legal jurisdictions for England & Wales, Scotland and Northern Ireland. Devolved government in Scotland and Wales has increasing powers in relation to public services and taxation, which overseas companies also need to be aware of.

If you are looking to set up a business in England and Wales from overseas, it is important to choose the right structure to suit your operations and the relationship with any offshore owner. This includes considering the size of your business and its potential for growth, the liabilities of those owning and managing the business, the tax consequences of different structures and the regulatory frameworks applicable to the business.

### **This guide will help you:**

- choose the right structure for your business
- consider the key issues before setting up your business
- understand the process for setting up a company in England and Wales

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# What Structure Should I Choose?

## Sole Trader

This is one of the simplest forms of business structure.

- The business is **operated by an individual** without a separate legal entity (i.e. a company).
- All the assets and profits of the business belong to the individual and income tax is charged on those profits.
- The individual is **personally liable** for all the debts and liabilities of the business, subject to any available insurance cover.

## General Partnership

- The business is **operated wholly by the partners** who equally own all the assets and profits, unless they agree a different split.
- Each partner pays income tax on the profits they receive.
- The partners are generally **jointly and severally liable** for all the debts and liabilities of the business.

It is advisable to enter into a partnership agreement setting out the partners' rights and obligations - otherwise default provisions in the 1890 Partnership Act apply.

The partnership agreement is a private document. The partnership itself will be tax transparent and partners will be liable for income and capital gains tax on profits and disposals.

## Limited Liability Partnership

- The partnership has its **own legal identity**, including registration at Companies House.
- The LLP contracts with third parties and is responsible for its assets and liabilities.
- The members of the LLP are generally **not liable** for the obligations of the LLP.
- The LLP must submit annual returns and accounts (subject to turnover qualifications).

Most UK professional firms are now incorporated as LLPs, mainly because of the advantage of limiting personal liability. However, because of their tax transparency, combined with limitation of members' liability, they are highly flexible structures for investment, in the right circumstances.

## Branch of an Overseas Entity

- A **branch or place of business** is set up under the Overseas Companies Regulations 2009.
- This approach does not involve incorporating a separate company in England and Wales, but the overseas entity must register the branch and deliver annual accounts to Companies House (in effect for the branch and the entity in its home jurisdiction).

## Private Limited Company

- A company is a **separate legal entity** to those who own and manage it.
- Two-tier governance structure: the shareholders who own the company and the directors who manage its day to day activity.
- The company holds assets in its own name and generates its own income. It is responsible for all its debts and liabilities, meaning it **can sue and be sued**, which reduces the exposure of the individuals who own and manage the business.
- A company is **subject to greater regulation** and transparency. It must:
  - be registered at Companies House
  - submit annual returns on its governance and business

arrangements to the registrar (see pX)

- submit accounts, subject to turnover qualifications which give exemptions to smaller companies

- Two main types:

### - Company Limited by Shares

The shareholders' liability is limited to the nominal value of their shares.

This guide focuses on setting up a private company limited by shares.

### - Company Limited by Guarantee

The owners (or members) do not usually hold shares but contribute a set figure towards the liabilities of the company (typically £1 only). This is a common structure for charitable and non-profit companies.

Private Limited Companies are the most common structure when setting up a business in England & Wales, as their separate legal status (limited liability) offers the owners and managers protection from third party claims.

It is also easier to manage in a group of companies and can be established as a subsidiary of an overseas company. There are generally no restrictions on foreign ownership of shares.

# Private Company Limited by Shares

Overseas businesses looking to set up in England & Wales usually incorporate as a company limited by shares.

When first setting up a company, basic questions you will need to address are:

- What will be its name?
- Where will its registered office be?
- Who will be the directors, company secretary (if any), and shareholders?
- How many shares will be issued and what will be their value?

## Company Name

When you have chosen a name you will need to ensure that:

- it is not already in use or similar to another name registered at Companies House
- approval from the Secretary of State is obtained beforehand if it includes sensitive words. For examples, 'royal' or 'British' are considered sensitive words. If a business is operating in a regulated area, such as healthcare, there are many other potential restrictions to be aware of.
- it is not offensive
- it does not give the impression that it is linked to the government or a local authority

## Registered Office

A company which is incorporated in England and Wales must have a registered office located in either England or Wales.

The registered office is the location where any official correspondence from third parties can be delivered to, including letters from Companies House and the service of court documents.

## Secretary

Private companies can choose to appoint a Company Secretary, but it is not an obligatory requirement.

A Company Secretary will typically manage anything which is given, sent to or served on the company itself (eg official correspondence sent to the registered office as explained above).

Other responsibilities of the Company Secretary include:

- submitting documents to Companies House
- maintaining the company's statutory registers (see below)
- providing administrative support to the directors and shareholders (eg calling meetings)



## Shareholders and Directors

There are two levels of governance in a private company limited by shares:

- the shareholders, who **own the company**, are entitled to dividends (when the company has distributable reserves), decide on constitutional matters and the composition of the board
- the directors, who carry out the **day to day management** of the company and determine the overall business strategy

### Shareholders

The liability of a shareholder is limited to the value of the shares which they hold. If the company were to be wound up, the shareholders would **not be liable** for any sum over the unpaid nominal value of their shares.

The **number of shares** and their individual value needs to be determined before the

company is incorporated. This can be a nominal amount of one share valued at £1 each, or whatever amount may be appropriate for the company's capitalisation requirement.

The number and value of the shares is not fixed and can be amended after incorporation by the directors and shareholders.

### Directors

Directors owe **statutory and common law duties** to the companies they manage. The purpose of these duties is to ensure that directors act in a way that is in the **best interest of the company**.

The key duties of directors are set out in sections 171 to 177 of the *Companies Act 2006*, and include duties:

- **to act within their powers**

The purpose of the company and the powers of the directors will be set out in its articles of association (the company's constitution).

- **to promote the success of the company**

The directors should make decisions which are in the best interests of the company, taking into consideration the company's value to its shareholders.

- **to exercise independent judgement**

Directors should not be influenced by external factors and must make their own decisions based on the information available to them.

- **to exercise reasonable care, skill and diligence**

- **to avoid conflicts of interest**

Where an individual is a director of multiple companies, they must not allow their responsibilities to each organisation to conflict, and where it does, they must disclose such conflicts.

- **not to accept benefits from third parties**

- **to declare interests in proposed transaction or arrangement**

It is important that directors understand the role and duties they are taking on. The breach of any of these duties can result in **civil and even criminal actions** being brought against a director.

The directors should therefore be chosen carefully with the individuals having a full understanding of what their role will entail and the legal framework governing their actions. Whilst the company is operational and solvent, directors will always have to act in the best interests of the company.

In group company arrangements, it is common for a director of a holding company to also be a director of its subsidiary. This will allow some oversight by the shareholder in the operation of the subsidiary and bring prior knowledge and experience to the new company.

### Did You Know?

Directors need to take special care if the company is in danger of insolvency. In these circumstances, their duties to creditors can override duties to shareholders.

Although directors are not generally liable for the debts of a company, they can become personally liable to make contributions to assets in circumstances where they fail to take appropriate steps to protect creditors.

**Specialist legal advice needs to be taken in these situations.**

## Incorporation

Once the proposed arrangements for the company have been agreed, an application to Companies House will need to be completed to incorporate and register the company.

Companies House will then issue a certificate of incorporation with a registration number which will act as proof that the company has been created and registered.

Following registration, the company will have ongoing responsibilities to submit reports to Companies House and maintain statutory registers.

**Each year, the company will have to submit accounts to Companies House**, setting out the financial position of the company, and confirmation statements to update any changes to shareholders, directors persons with significant control etc.

The company is also **required to maintain the following registers and records** (statutory books) throughout its lifetime:

- register of members - this includes the names and contact details of the shareholders and the number of shares they hold
- register of Persons with Significant Control (PSCs) - these are people who have more than 25% of the company's voting shares or have significant control over the company (e.g. by way of appointing/removing directors). These are the UK regulations dealing with EU legislation on ultimate beneficial ownership registers.
- register of directors
- register of secretaries
- records of directors' meetings - companies are required to keep records of directors' meetings for 10 years from the date of the meeting
- records of members' resolutions and meetings - these are also required to be kept for a period of 10 years from the date of the resolution/meeting

Additional registers which companies usually keep are:

- register of allotment of shares
- register of transfers
- register of mortgages and charges
- register of debentures
- register of sealings and executions

**At VWV, we have our own company secretarial service where we can hold and maintain these as well as deal with the necessary Companies House submissions.**

**For more information, please visit [www.co.uk](http://www.co.uk)**



# England & Wales Establishment (Branch)

Some overseas companies choose not to set up a subsidiary to avoid the ongoing administrative costs of managing separate companies (for example), and decide to operate their business in England & Wales through the overseas company itself.

Particulars of the company establishing the branch will still need to be registered under The Overseas Companies Regulations 2009 (SI 2009/1801).

## What Is an 'England and Wales Establishment'?

An 'England and Wales establishment' is defined as 'a branch' or 'any place of business'. This generally means where a company regularly conducts business or where it may be contacted.

## What Are the Requirements?

An overseas company with an England and Wales establishment must register the following details at Companies House within one month of opening:

- the name of the company or the alternative name which the business will be operate in England & Wales
- whether the company is a credit or financial institution

- the company's incorporation details, such as the type of company (eg private limited), the country of incorporation and the company's registration number in that country
- its latest accounts
- its constitution
- its registered office
- particulars of its current Directors and Secretary
- its place of business, representative and person authorised to accept service of documents

There may also be requirements to **file annual accounts** of the overseas companies to Companies House. This may be a factor an overseas company has to consider, as it will have to disclose financial information (which will be **publicly available**) relating to its wider business, if it operates through an establishment (branch).

By contrast, if an overseas company sets up an England & Wales limited company, the requirement to submit accounts only applies to the business and operations of that England & Wales company.



# How We Can Help



At VWV, we have a long track record of advising overseas clients on setting up and organising their businesses and commercial assets in the UK, across a wide range of sectors.

A key part of our role is helping you hit the ground running when starting your business in the UK and to assist you in overcoming the legal and regulatory hurdles you may face.

We will work closely with your advisers in other countries to help deliver your objectives.

## Get in Touch Today

To discuss how we can help you set up your business in the UK, please contact David Emanuel at [demanuel@vwv.co.uk](mailto:demanuel@vwv.co.uk) or on +44 (0)20 7665 0848.



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