

FORMING A COMPANY

Formation is achieved by filing various forms at Companies House in Cardiff. This is normally done on your behalf by your accountant or his agent.

To set the company up you will need to specify :

1. The company name - this must not be too similar to an existing company. There is a useful online company name checking service at <http://www.companies-house.gov.uk>. It is often sensible to check for availability of a domain name at the same time.
2. Registered office - this is where official tax papers and Companies House papers are sent and is normally your home or your accountants office. Garbetts offer a free registered office service to PSC clients on our comprehensive service (£25 on entry level service).
3. Accounting reference date - this is the companies year end, although the first "year" may be more or less than 365 days. A year end of 31 March annually is the simplest to use as it ties in with the fiscal tax year, 6 April to 5 April (for practical purposes, HMRC normally regard 31 March as being the same as 5 April, provided a consistent date is used for drawing up accounts and returns).
4. Directors - these are the individuals responsible for running the company, and there must be at least one, normally the contractor. A director is responsible for running the company on the shareholders behalf, and also has legal responsibilities for making sure the company does not trade whilst insolvent, pays its taxes and files returns and accounts at Companies House.
5. Company secretary - every company must have a company secretary. The company secretary can also be a director, but must not be the sole director, i.e. there must be at least two people involved. Normally for a PSC, the contractor is director and their spouse, or a family member, secretary. The company secretary's responsibilities are not so onerous - essentially they are considered to be an assistant to the directors, rather than taking direct responsibility themselves. Garbetts offer a free nominee company secretary service if required.
6. Authorised and issued share capital - the authorised share capital is the maximum number of shares the company can issue. It is somewhat of an anachronism and the Government is considering abolishing the concept. The issued share capital is, not surprisingly, the number of shares actually issued. Normally a contractors company will have 1,000 authorised shares and 100 issued shares. The size of the authorised capital is not significant for a PSC. The size of the issued capital is more important as it defines the flexibility for nominating share holdings - eg if two shares are in issue then the holdings can only be 50% or 100%, whereas if 100 shares are in issue then there are permeations from 1% to 100%.
7. Shareholders - these are the owners of the issued shares, and normally will be the same as the directors. There is no reason why a contractor cannot put a proportion of their shares into their spouses name if the spouse is not working or is paying tax at a lower rate. Shares can, in theory, be put into the names of other family members, but there are pitfalls here, and the situation needs to be reviewed on a case by case basis. Generally it is only worthwhile skewing the allocation of shares if your contract income is outside of IR35.

FORMING A COMPANY *continued*

Once registered, Companies House will issue a Certificate of Incorporation, which is the company's birth certificate.

The person forming the company will provide you with the Memorandum and Articles of Association. The Memorandum of Association sets out key facts about the company, and the Articles of Association form the company's rule book for matters like share transfers, appointment of directors, etc. The Articles of Association are normally based on Table A, which is a standard set of Articles set out in the Companies Act 1985.

To assist with company formations there is a downloadable form on our www site –

- www.garbetts.com/download/formationquestionnaire.xls

Garbetts normally deals with formations by transferring a shelf company to you. A shelf company is one formed by a formation agent – normally a lawyer or an accountant and held “on the shelf” until wanted. Normally it will be up to three months old. Shelf Companies are used in preference to bespoke formations purely because they are quicker and easier to administer – eg each formation needs to have an oath sworn with it, so it's easier to form 20 shelf companies and swear 20 oaths together than do 20 different formations over a month, etc.

Garbetts charge £100 plus vat to form a company plus £10 to change its name. Please note “kit companies” can be purchased from around £30 upwards from formation agents but require you to do a lot of the work – we charge for a comprehensive service rather than merely supplying a kit.