

Incorporating a Limited Company in Europe

A country by country summary



Commercial Law Group

Commercial Law Group

www.clglaw.eu

CONTENTS

Introduction

Austria

Cyprus

England and Wales

Germany

Greece

Italy

Malta

Netherlands

Portugal

Scotland

Spain

Introduction

This guide is a brief introduction to incorporating private limited companies in various European countries. Each of the countries has a register of incorporated limited companies which is kept by a public authority. This guide should not be relied on as being complete and exhaustive, and as the law constantly changes throughout the European countries in respect of incorporating limited companies we recommend you obtain legal advice from a law firm in the relevant country before proceeding. The contact details for our member firms are given in each country's section.

This guide states the law as at 30th November 2014.

AUSTRIA

1. *What is the correct name in the native language for a private limited company?*

"Gesellschaft mit beschränkter Haftung"

2. *Approximately how long does it take to incorporate a private limited company?*

Usually it takes two weeks to one month to register the company. The duration of the whole process of establishing the company depends on how fast shareholders agree to its constitution.

3. *Is there a minimum amount of share capital required by law?*

The minimum share capital is EUR 35.000,00, half of which has to be paid in. During the first 10 years after registration the company is entitled to exercise the so-called founding privilege, which would reduce the minimum share capital requirement for such period to EUR 10.000,00, half of which (EUR 5.000,00) has to be paid in.

4. *Is a constitution or articles of association required?*

Yes, articles of association, in the form of a notarial deed.

5. *Is there any government control regarding incorporating a company, and/or the directors and/or the articles of association?*

The firm register ("Firmenbuch") registers the limited liability company, if all legal requirements including compliance of the articles of association with the provisions of the Act on Limited Liabilities are fulfilled. There is no further governmental control.

6. *Can a company be a director of the company?*

No, the director has to be a natural person.

7. *How is the first director appointed?*

The first director is appointed by the shareholders. The same applies to any other director.

8. *Is there a minimum number of directors required?*

There has to be at least one director.

9. *Do annual accounts have to be filed with any public authority?*

Yes, annual accounts have to be filed with the Firm Register.

10. *And if so whose responsibility is it to lodge these?*

The managing directors are responsible in regard of this matter.

11. *Is the company allowed to carry on business before it is formally incorporated?*

The company does not exist before it is formally incorporated by registration in the Firm Register. If the carrying out of the business requires a filing under trade law ("Gewerbeordnung"; either notification or approval requirement to achieve a trade licence), at the time of filing of such application, the company must be in existence, i.e. registered in the firm register. In cases where no trade application is required, e.g. for companies holding real estate or participations, acts prior to formal incorporation of the company can result in personal liability of the persons acting on behalf of the not yet registered company.

12. *Do shareholders have any liability or responsibility apart from paying for their shares?*

Yes, there are several duties of the shareholders, especially in regard of maintenance of capital, adopting the annual account etc.

13. *Are there any circumstances where the directors can be liable for the debts of the company or for claims from third parties?*

Yes, if a director settles payments or incurs liability after company became insolvent.

14. *Approximately how much does it cost to incorporate a company?*

About EUR 2.500,00.

15. *Any additional comments? None*

Member Details:-

Firm Name	Law Offices of Johann Pichler
Person to Contact	Johann Pichler
Email	lawoffice@ra-pichler.at
Phone Number	+43 1 587 84 86

CYPRUS

1. *What is the correct name in the native language for a private limited company?*
«ιδιωτική εταιρεία περιορισμένης ευθύνης»
2. *Approximately how long does it take to incorporate a private limited company? It takes about 5-7 working days if application is made with express service*
3. *Is there a minimum amount of share capital required by law? There is no minimum amount requirement*
4. *Is a constitution or articles of association required? A company must have a Memorandum and Articles of Association*
5. *Is there any government control regarding incorporating a company, and/or the directors and/or the articles of association? The incorporation, governance and activities of a limited liability company is governed by the Cyprus Companies Law – Cap 113. No governmental approval is required for the incorporation of a company. Companies that provide licensed activities such as investment firms, insurance companies, funds etc must obtain relevant authorisation from competent authorities.*
6. *Can a company be a director of the company? yes this is possible.*
7. *How is the first director appointed? The first directors of the company are appointed by the subscribers of the company.*
8. *Is there a minimum number of directors required? A private company must have at least one director*
9. *Do annual accounts have to be filed with any public authority? Every year, a private company must prepare audited accounts that must be filed with the tax authorities and the Registrar of companies*
10. *And if so whose responsibility is it to lodge these? The directors of the company are responsible for the preparation of the audited accounts*
11. *Is the company allowed to carry on business before it is formally incorporated? Effectively no. Any contract signed on behalf of the company prior to its incorporation will not bind the company until after the date of incorporation of the company.*
12. *Do shareholders have any liability or responsibility apart from paying for their shares? They are responsible up the nominal value of their shares*
13. *Are there any circumstances where the directors can be liable for the debts of the company or for claims from third parties? Only if they act negligently or commit criminal actions*
14. *Approximately how much does it cost to incorporate a company? approximately €1,500*
15. *Any additional comments? None*

Member Details

Firm Name KINANIS LLC

Person to Contact Andri Michael

Email corporate3@kinanis.com

Phone Number + 357 22 558888

ENGLAND

1. *What is the correct name in the native language for a private limited company?*

A private limited company should have the word 'Limited' at the end of its name. Companies House specify that, unless specific authority is sought for the word 'Limited' not to be included in the company name, either 'Limited' or 'Ltd' must be chosen as the ending to the new company name on incorporation. Only companies limited by guarantee, that is to say without a share capital, that comply with certain strict legal requirements can incorporate without using the word "Limited" or "Ltd".

2. *Approximately how long does it take to incorporate a private limited company?*

It is possible to set up a company by same day incorporation provided that the incorporation documents:

- Companies House Form IN01
- Memorandum of Association
- Articles of Association

are submitted to Companies House by no later than 3pm. The cost of a same day incorporation is £100.

Alternatively, a standard incorporation can be completed using a paper form IN01 or using the Companies House Electronic Webfiling service.

Companies House advice that a standard incorporation using a paper form IN01 will take approximately 8 to 10 days. In reality this is often much quicker. The cost for a standard paper incorporation is £40.

A standard incorporation using the Companies House Electronic Webfiling service costs £15 and take considerably shorter than a paper incorporation. There is, however, no time limit guaranteed by Companies House.

3. *Is there a minimum amount of share capital required by law?*

A company must be incorporated with a minimum of 1 share in issue, and that share must have a fixed nominal value.

4. *Is a constitution or articles of association required?*

A company must adopt articles of association on its incorporation. It is worth noting that when a company is incorporated using the Companies House Electronic Webfiling service, the new company must adopt the Model Articles of Association as stated in The Companies (Model Articles) Regulations 2008. Therefore, if bespoke articles of association are required, this will need to be done by way of paper filing.

5. *Is there any government control regarding incorporating a company, and/or the directors and/or the articles of association?*

Only in so far as governed by the requirements of the Companies Act 2006. HM Revenue & Customs ("HMRC") will, however, be notified when a company is incorporated and will send out a form to the new company's registered office for the directors to complete and return for the purposes of Corporation Tax.

6. *Can a company be a director of the company?*

A company can be a director of a company but, if this is the case, there must be at least one natural person also as a director of the new company because each company must have at least one natural person as a director.

7. *How is the first director appointed?*

The first director is appointed on incorporation of the new company when they sign the IN01 incorporation form (or answer a series of personal questions to act in place of this signature when incorporation is completed by way of Companies House Electronic Webfiling).

8. *Is there a minimum number of directors required?*

A company must have at least one director and that one director must be a natural person. (I.e. a company cannot have only one director who is a corporate director).

9. *Do annual accounts have to be filed with any public authority?*

A company must file annual accounts with Companies House and with HMRC.

10. *And if so whose responsibility is it to lodge these?*

It is the responsibility of the directors of the company to ensure that these are lodged and are lodged within the timescales specified by Companies House and HMRC.

11. *Is the company allowed to carry on business before it is formally incorporated?*

A company cannot carry on business before it is formally incorporated because it does not take on separate legal personality until incorporated. If a business is commenced prior to incorporation and it is intended that the business form part of the company's business it is advised that this should be formally transferred by way of a Business Transfer Agreement.

12. *Do shareholders have any liability or responsibility apart from paying for their shares?*

Subject to the answer to Q13 below, shareholders are only liable up to the value of the shares which they have paid for in the company.

13. *Are there any circumstances where the directors can be liable for the debts of the company or for claims from third parties?*

In the case of fraud or negligence on the part of the directors the director may become personally liable to the company or for the debts of the company or for losses incurred by third parties.

14. *Approximately how much does it cost to incorporate a company?*

Same day paper form incorporation: £100

Standard paper form incorporation: £40

Companies House Electronic Webfiling Incorporation Service: £15.

There will be additional costs if incorporation agents/solicitors are appointed to complete the formalities of incorporation.

15. *Any additional comments?*

Directors should be made aware of the duties they take on when they take a directorship in a company. Broadly the duties are owed to the company are set out in Companies Act 2006 sections 171-177 and are as follows:

1. Duty to act within powers (set out in the Articles of Association);
2. Duty to promote the success of the company;
3. Duty to exercise independent judgment;
4. Duty to exercise reasonable care, skill and diligence;
5. Duty to avoid conflicts of interest;
6. Duty not to accept benefits from third parties; and
7. Duty to declare interest in proposed transaction or arrangement.

Member Details

Firm Name	Kidd Rapinet LLP
Person to Contact	Chris Henniker
Email	chenniker@kidrapinet.co.uk
Phone Number	(+44) 20 7265 5462

GERMANY

1. *What is the correct name in the native language for a private limited company?*
"Gesellschaft mit beschränkter Haftung"
2. *Approximately how long does it take to incorporate a private limited company?*
Usually it takes two weeks to one month to register the company. The duration of the whole process of establishing depends on how fast shareholders agree to ITS constitution.
3. *Is there a minimum amount of share capital required by law?*
The minimum share capital is EUR 25.000,00.
4. *Is a constitution or articles of association required?*
Yes.
5. *Is there any government control regarding incorporating a company, and/or the directors and/or the articles of association?*
There is only a kind of control when registering the company or amending the constitution, especially in regard of the minimum share capital. Beyond this point, there is no government control. Directors ought to be controlled by the shareholders.
6. *Can a company be a director of the company?*
No, the director has to be a natural person.
7. *How is the first director appointed?*
The first director is appointed by the shareholders. Same applies to any other director.
8. *Is there a minimum number of directors required?*
There has to be at least one.
9. *Do annual accounts have to be filed with any public authority?*
Yes, annual accounts have to be filed to the Commercial Register, and published (Bundesanzeiger).
10. *And if so whose responsibility is it to lodge these?*
The director/s is/are responsible in regard of this matter.
11. *Is the company allowed to carry on business before it is formally incorporated?*
The company does not exist before it has been formally incorporated by registration in the Commercial Register. If the future shareholders carry on business before registration, there is no limitation of liability.
12. *Do shareholders have any liability or responsibility apart from paying for their shares?*
Yes, there are several duties of the shareholders, especially in regard of maintenance of capital, adopting the annual accounts etc.
13. *Are there any circumstances where the directors can be liable for the debts of the company or for claims from third parties?*
Yes, if a director settles payments or incurs liability after the company became insolvent, or if they take out the share capital.
14. *Approximately how much does it cost to incorporate a company?*

About EUR 2.500,00.

15. *Any additional comments?*

There is a legal obligation to be a member of the chamber of industry and commerce, which costs between 250 and 5000€ per year (annual subscription), depending on the location and the balance sheet of the company.

Registering the company does not safeguard the company against any competition of the name. This should be checked separately, and depending on the area of doing business in Germany, Europe or worldwide will cost another 2.500 € (for Germany) to 10.000€ or more (worldwide).

If shareholders give loans to the company, and the company pays them back, then the shareholders have to reimburse the company (i.e. pay again!!), if the company becomes insolvent within two years after the loan was repaid.

For any potential insolvency situation: insolvency has to be declared by the directors within three weeks after over-indebtedness, or when the company is unable to pay its outstanding debts in due time for a certain period. Otherwise the director(s) will be liable personally to all creditors. In addition, directors will become personally liable for all VAT, salary taxes and social insurance obligations of the company.

The two German member firms' details:-

Firm Name:	<u>Schmid, von Buttlar & Partner</u>	Firm Name:	<u>Kanzei Dr Reuter</u>
Contact	Florian Behensky	Contact:	Michael Reuter
Email	<u>f.behensky@colaw.de</u>	Email	info@reuter-law.com
Phone	0049 89 55 222 0	Phone	0049 203 370063

GREECE

1. *What is the correct name in the native language for a private limited company?* A.E. (Anonimi Etairia)
2. *Approximately how long does it take to incorporate a private limited company?* 3 days
3. *Is there a minimum amount of share capital required by law?* The minimum share capital required by law is 24,000€
4. *Is a constitution or articles of association required?* Yes
5. *Is there any government control regarding incorporating a company, and/or the directors and/or the articles of association?* The Articles of Association shall be checked and ratified by the local chamber of commerce and the relevant tax and district authorities.
6. *Can a company be a director of the company?* No
7. *How is the first director appointed?* The first director can be appointed either by an express clause of the Articles of Association or in the first Board Meeting of the Company.
8. *Is there a minimum number of directors required?* Yes, there must 3 directors.
9. *Do annual accounts have to be filed with any public authority?* Provided that the company maintains a website where it can publish its annual accounts, it is not obliged to file these with any public authority; otherwise it will have to publish its annual accounts in the Government's Gazette.
10. *And if so whose responsibility is it to lodge these?* The Board of Directors is responsible for lodging this information.
11. *Is the company allowed to carry on business before it is formally incorporated?* Yes, but it must ratify all decisions taken in the course of carrying business within three months from the date of incorporation.
12. *Do shareholders have any liability or responsibility apart from paying for their shares?* No
13. *Are there any circumstances where the directors can be liable for the debts of the company or for claims from third parties?* Directors cannot be held liable for the private debts of company, but they may be held liable for the debts of the company against the State. Moreover, they may be held liable for tort claims from third parties arising from the signing of bank cheques.
14. *Approximately how much does it cost to incorporate a company?* 1,500€
15. *Any additional comments?* No

Member Details:-

Firm Name	FOUTSIS AND PARTNERS LAW FIRM
Person to Contact	Dimitris Foutsis
Email	<u>d.foutsis@foutsislaw.gr</u>
Phone Number	+30 210 38 37 459

ITALY

1. What is the correct name in the native language for a private limited company?

The *Società a responsabilità limitata*, (SRL), is a company limited by shares. It is the type commonly used by small and medium size companies. The *Società per azioni* (SPA) is a limited company whose shares can be traded to the public, but can also be privately held. Compared to SRLs, privately held SPAs require a higher amount of share capital and a more complex governance system.

The current notes refer to SRLs only.

2. Approximately how long does it take to incorporate a private limited company?

The time necessary for the incorporation itself (notarial deed of constitution, registration, opening of tax position) is about 2-3 weeks. Preparation (drafting of the articles of association, powers of attorney for the notarial deed, tax registration for shareholders and directors, etc.) may need 1-2 months before.

3. Is there a minimum amount of share capital required by law?

In principle 10,000 euros, but it can be lower (as little as 1 euro) under certain conditions.

4. Is a constitution or articles of association required?

Yes, the constitution has to be made by notarial deed and include the articles of association. A unilateral constitution is possible.

5. Is there any government control regarding incorporating a company, and/or the directors and/or the articles of association?

For some regulated activities an authorisation by public authorities is necessary.

6. Can a company be a director of the company?

No, directors must be natural persons.

7. How is the first director appointed?

In the notarial deed of constitution.

8. Is there a minimum number of directors required?

No, a sole director is possible.

9. Do annual accounts have to be filed with any public authority?

Accounts have to be filed and published by the Business Register (*Registro delle Imprese*).

10. And if so whose responsibility is it to lodge these?

The directors.

11. Is the company allowed to carry on business before it is formally incorporated?

Any activity carried out in the name of the company before its registration involves unlimited liability of those who have acted, and of the shareholders who have authorised such activity.

12. Do shareholders have any liability or responsibility apart from paying for their shares?

If the shares belong to a sole shareholder, he is liable for company obligations in the event of insolvency and whenever a) shares were not fully paid and b) the share transfer was not regularly published.

13. Are there any circumstances where the directors can be liable for the debts of the company or for claims from third parties?

If the directors have not fulfilled their duties, they are jointly liable for damages to the company, single shareholders or third parties. Shareholders who have decided or authorised operations which are harmful for the company are jointly liable with the directors.

14. Approximately how much does it cost to incorporate a company?

About 3,000-3,500 euros should be considered for the notary and taxes. Lawyer's fees for the preparation phase are to be added.

15. Any additional comments?

All companies which are legally controlled by another company (e.g. because they are part of a group of companies) have to declare the controlling entity in the Business Register and indicate it in the letterhead of the company. Directors who omit such publicity are liable to shareholders or third parties for possible damages deriving from ignoring such control.

Member Details

Firm Name	CLG Italia
Person to Contact	Patrizio Tumietto
Email	patrizio.tumietto@clgitalia.it
Phone Number	0039-02-6202201

MALTA

1. What is the correct name in the native language for a private limited company?
Private Limited Liability Company.
2. Approximately how long does it take to incorporate a private limited company? 24 hours, provided all documentation is correct.
3. Is there a minimum amount of share capital required by law? For private limited liability companies, €1,165 but only 20% need to be paid up prior to incorporation. The 80% need to be paid whenever the directors make a call for payment. Share capital can either be paid in cash or in kind.
4. Is a constitution or articles of association required? Yes – the Memorandum and Articles of Association (M&AA) must be submitted to the Registry of Companies in order to incorporate a company and such must be subscribed by the shareholders (or an attorney in case of a Power of Attorney).
5. Is there any government control regarding incorporating a company, and/or the directors and/or the articles of association? Not effectively, but the Registrar of Companies shall examine if the provisions of Memorandum and Articles of Association of the company comply with the law and also and may request information on shareholders in case of non-Europeans. The provision of certain Financial Services (investment, banking etc), Fiduciary and Remote Gaming activities necessitate a license and hence, the Registrar of Companies will not accept the incorporation of such a company before a license thereof has been granted.
6. Can a company be a director of the company? Yes. However, there are licensing implications for persons to act as directors who are resident or operate from Malta. Secretary of the company must be a physical person.
7. How is the first director appointed? First director is appointed on incorporation as indicated in the M&AA.
8. Is there a minimum number of directors required? One.
9. Do annual accounts have to be filed with any public authority? Yes, audited financial statements must be submitted to the Registrar of Companies.
10. And if so whose responsibility is it to lodge these? The Directors.
11. Is the company allowed to carry on business before it is formally incorporated?
No. If there are activities before the company is formally incorporated, these will constitute premature trading and all persons entering into such agreements on behalf of a company that is not formally incorporated will be jointly and personally liable.
12. Do shareholders have any liability or responsibility apart from paying for their shares? They are only liable up the amount of their shares.
13. Are there any circumstances where the directors can be liable for the debts of the company or for claims from third parties? Yes, directors are personally, jointly and severally bound to satisfy the debts of the company in respect of any taxation,

national insurances and VAT. Also, in the case of fraudulent or wrongful trading, the directors are likewise jointly and personally liable.

14. Approximately how much does it cost to incorporate a company?

15. Any additional comments? Malta offers an attractive tax regime via a system of tax refunds available to the shareholders of the Maltese company. Hence, this reduces the effective corporate tax rate to as low as 5% for trading activities, making it the lowest corporate tax rate in the EU. In the case of 'holding structures', one may benefit from a total Malta tax exemption on any income derived by the Malta company.

Member Details

Firm Name Kinanis Fiduciaries Limited

Person to Contact Dr Francesco Sultana

Email malta@kinanis.com

Phone Number +356 2754 0024 / +356 7954 0024

THE NETHERLANDS

1. What is the correct name in the native language for a private limited company?

The correct name is: "besloten vennootschap met beperkte aansprakelijkheid".

The correct abbreviation is: "B.V.".

2. Approximately how long does it take to incorporate a private limited company?

If all required documentation is available, and if a standard draft is used for the text of the articles of association, between one and three hours (including the registration and lodging of the notarial deed with the Trade Register ("*handelsregister*") of the Chamber of Commerce ("*Kamer van Koophandel*").

3. Is there a minimum amount of share capital required by law?

No; the capital may even be in a foreign denomination.

4. Is a constitution or articles of association required?

Yes, articles of association are required.

5. Is there any government control regarding incorporating a company, and/or the directors and/or the articles of association?

That has been abolished. However, the civil law notary who issues the deed of incorporation is responsible for due observance of legal requirements, e.g. filing of the articles as referred to in 9. below.

6. Can a company be a director of the company?

Yes, if it is an executive managing director ("*bestuurder*"), but not if it is a supervisory director ("*commissaris*").

7. How is the first director appointed?

That is done upon incorporation of the company and set out in the deed, (issued by a Dutch civil law notary,) which contains the record of the incorporation.

8. Is there a minimum number of directors required?

No.

9. Do annual accounts have to be filed with any public authority?

Yes, annual accounts – although only in the form of an extract – have to be filed with the Trade Register of the Chamber of Commerce.

10. And if so whose responsibility is it to lodge these?

The board of executive managing directors ("*bestuur*") of the company is responsible for lodging these.

11. Is the company allowed to carry on business before it is formally incorporated?

Yes, but before its incorporation, the company is not yet a body corporate/legal entity, and thus it might cause liabilities for the “management/incorporators-to-be”. However, it is possible to formally bind the company retrospectively. Due care should thus be taken. (Given the fact that the incorporation may be effected at shortest notice, the use of a “B.V.i.o.” (“besloten vennootschap met beperkte aansprakelijkheid in oprichting”) is not recommended).

12. Do shareholders have any liability or responsibility apart from paying for their shares?

Generally, no. However, apart from the fact that the articles of association may impose certain obligations on shareholders, there are administrative obligations to be observed. In rare cases, shareholders may acquire certain liability.

13. Are there any circumstances where the directors can be liable for the debts of the company or for claims from third parties?

Yes, e.g. if company books are not kept, or if the annual accounts have not been filed in due time, or if a director is found to have acted recklessly or negligently, or otherwise in a manner that justifies a claim in tort.

14. Approximately how much does it cost to incorporate a company?

From about Euro 850 upwards, depending on the complexity and the work involved.

15. Any additional comments?

Please do contact our Netherlands member (details below) for information and guidance before becoming active in public or e.g. doing business through a “B.V. i.o.”. This saves much time and money upfront.

Member Details

Firm Name	Vink & Partners
Person to Contact	Peter J. Fresacher
Email	pfresacher@vinkenpartners.nl
Phone Number	+ 31 (0) 20 – 723.21.21

PORTUGAL

1. What is the correct name in the native language for a private limited company?

Sociedade comercial por quotas.

2. Approximately how long does it take to incorporate a private limited company?

Usually, in the standard procedure, incorporation/registration of a local company would take roughly five (5) working days to be completed. If you choose to incorporate online or on the spot, the procedure may take up to between a couple of hours and one (1) working day to conclude. The difference between the standard procedure and the two simpler ones is that in the first the shareholders may choose the corporate denomination/by-laws, whilst in the two simpler procedures, that choice is limited to pre-proposed names/by-laws templates.

3. Is there a minimum amount of share capital required by law?

Yes. 1 Euro per each shareholder.

4. Is a constitution or articles of association required?

Yes

5. Is there any government control regarding incorporating a company, and/or the directors and/or the articles of association?

Yes – through the registration of incorporation with the Commercial Registry Department. The articles of association are registered at the time of the company's incorporation. Registration with the Commercial Registry Department is a condition for the existence of the company. The register of the directors with the Commercial Registry Department is a condition for the effectiveness of that appointment vis-à-vis third party.

6. Can a company be a director of the company?

Not in this type of company.

7. How is the first director appointed?

Through a resolution of the shareholders, or the by-laws.

8. Is there a minimum number of directors required?

No.

9. Do annual accounts have to be filed with any public authority?

Yes – with the Integrated Company Information System - IES (automatically with the Commercial Registry Department).

10. And if so whose responsibility is it to lodge these?

The Directors of the company.

11. Is the company allowed to carry on business before it is formally incorporated?

Yes, though not benefiting of the limited liability of the company. The business will have to be taken up by the company once incorporated if it is to be effective vis-à-vis the company.

12. Do shareholders have any liability or responsibility apart from paying for their shares?

No. There are, however, certain situations in which the Portuguese Commercial Corporate Code foresees the concept of piercing of the corporate veil when dealing with a wholly owned subsidiary (or, though initially 100% holding, has not fallen below a 90% holding threshold).

Within certain conditions, shareholders who may appoint or dismiss a director are jointly responsible with that person whenever that person is liable in relation to the company or shareholders. This is also applicable in relation to members of the statutory corporate body (which is only mandatory in relation to this type of company if certain thresholds have been met).

13. Are there any circumstances where the directors can be liable for the debts of the company or for claims from third parties?

The directors may be liable for tax and social security debts of the company on subsidiary basis, within certain conditions. Within certain conditions, the directors may also be liable for company debts when, as a result of misconduct, the company's assets and belongings become insufficient. On a general basis, directors are also liable to third parties for direct damages caused when exercising their functions.

14. Approximately how much does it cost to incorporate a company?

This will depend on the type of procedure followed. Online, the administrative costs are € 220. On the spot, the administrative costs correspond to about € 220 - € 360, (depending if adopting or not a pre-approved by-laws template). In the standard procedure, the administrative costs are about € 400.

15. Any additional comments? No

SCOTLAND

1. What is the correct name in the native language for a private limited company?

A private limited company should have the word 'Limited' at the end of its name. Companies House specify that, unless specific authority is sought for the word 'Limited' not to be included in the company name, either 'Limited' or 'Ltd' must be chosen as the ending to the new company name on incorporation. Only companies limited by guarantee, that is to say without a share capital, that comply with certain strict legal requirements can incorporate without using the word "Limited" or "Ltd".

2. Approximately how long does it take to incorporate a private limited company?

It is possible to set up a company by same day incorporation provided that the incorporation documents:

- Companies House Form IN01
- Memorandum of Association
- Articles of Association

are submitted to Companies House by no later than 3pm. The cost of a same day incorporation is £100.

Alternatively, a standard incorporation can be completed using a paper form IN01 or using the Companies House Electronic Webfiling service.

Companies House advice that a standard incorporation using a paper form IN01 will take approximately 8 to 10 days. In reality this is often much quicker. The cost for a standard paper incorporation is £40.

A standard incorporation using the Companies House Electronic Webfiling service costs £15 and take considerably shorter than a paper incorporation. There is, however, no time limit guaranteed by Companies House.

3. Is there a minimum amount of share capital required by law?

A company must be incorporated with a minimum of 1 share in issue and that share must have a fixed nominal value.

4. Is a constitution or articles of association required?

A company must adopt articles of association on its incorporation. It is worth noting that when a company is incorporated using the Companies House Electronic Webfiling service, the new company must adopt the Model Articles of Association as stated in The Companies (Model Articles) Regulations 2008. Therefore, if bespoke articles of association are required, this will need to be done by way of paper filing.

5. Is there any government control regarding incorporating a company, and/or the directors and/or the articles of association?

Only in so far as governed by the requirements of the Companies Act 2006. HM Revenue & Customs ("HMRC") will, however, be notified when a company is

incorporated and will send out a form to the new company's registered office for the directors to complete and return for the purposes of Corporation Tax.

6. Can a company be a director of the company?

A company can be a director of a company but, if this is the case, there must be at least one natural person also as a director of the new company because each company must have at least one natural person as a director.

7. How is the first director appointed?

The first director is appointed on incorporation of the new company when they sign the IN01 incorporation form (or answer a series of personal questions to act in place of this signature when incorporation is completed by way of Companies House Electronic Webfiling).

8. Is there a minimum number of directors required?

A company must have at least one director and that one director must be a natural person. (I.e. a company cannot have only one director who is a corporate director).

9. Do annual accounts have to be filed with any public authority?

A company must file annual accounts with Companies House and with HMRC.

10. And if so whose responsibility is it to lodge these?

It is the responsibility of the directors of the company to ensure that these are lodged and are lodged within the timescales specified by Companies House and HMRC.

11. Is the company allowed to carry on business before it is formally incorporated?

A company cannot carry on business before it is formally incorporated because it does not take on separate legal personality until incorporated. If a business is commenced prior to incorporation and it is intended that the business form part of the company's business it is advised that this should be formally transferred by way of a Business Transfer Agreement.

12. Do shareholders have any liability or responsibility apart from paying for their shares?

Subject to the answer to Q13 below, shareholders are only liable up to the value of the shares which they have paid for in the company.

13. Are there any circumstances where the directors can be liable for the debts of the company or for claims from third parties?

In the case of fraud or negligence on the part of the directors the director may become personally liable to the company or for the debts of the company or for losses incurred by third parties.

14. Approximately how much does it cost to incorporate a company?

Same day paper form incorporation: £100

Standard paper form incorporation: £40

Companies House Electronic Webfiling Incorporation Service: £15.

There will be additional costs if incorporation agents/solicitors are appointed to complete the formalities of incorporation.

15. Any additional comments?

Directors should be made aware of the duties they take on when they take a directorship in a company. Broadly the duties are owed to the company are set out in Companies Act 2006 sections 171-177 and are as follows:

8. Duty to act within powers (set out in the Articles of Association);
9. Duty to promote the success of the company;
10. Duty to exercise independent judgment;
11. Duty to exercise reasonable care, skill and diligence;
12. Duty to avoid conflicts of interest;
13. Duty not to accept benefits from third parties; and
14. Duty to declare interest in proposed transaction or arrangement.

SPAIN

1. What is the correct name in the native language for a private limited company?

In Spain, a private limited company can be incorporated either under a Sociedad Anónima (abbreviated "S.A.") or a Sociedad de Responsabilidad Limitada (abbreviated, "S.R.L." or "S.L."), both regulated as Corporate Enterprises and therefore, ruled by the Spanish Corporate Enterprises Act, approved by Royal legislative Decree 1/2010, of 2 July.

2. Approximately how long does it take to incorporate a private limited company?

It takes around one week to fully incorporate a Private Limited Company in Spain, although, depending on some facts such as time required for the name of the Company to be granted (normally a maximum of three days), or in the event the grantors are foreigners, more time is required to apply and be granted with a NIE (Número de Identificación de Extranjero, as explained in the last point).

3. Is there a minimum amount of share capital required by law?

Yes, in general, in Spain a minimum amount to incorporate a Private Limited Company is required. For a Sociedad Anónima, the minimum amount is 60.000€ and for a Sociedad Limitada the minimum amount is 3.000€. The amount of the share capital can be contributed with cash or non-cash (real or movable property, loans, and companies, among others). Nevertheless, specifically for Sociedades Limitadas, according to the new released Law 14/2013, it is also possible to incorporate a Company of subsequent formation, with no minimum amount of share capital, but the shareholders will have some additional obligations until the minimum amount of 3.000€ of share capital is paid.

4. Is a constitution or articles of association required?

Yes, a constitution of the Company is required to be granted before a Notary Public and the articles of association of the Company must be included in the incorporation deed of the Company.

5. Is there any government control regarding incorporating a company, and/or the directors and/or the articles of association?

In Spain, to incorporate a Private Limited Company it is compulsory to grant a Public Deed before a Notary Public, and to file it before the Companies Registry. The incorporation of the Company, any amendment to the articles of association, appointment and cessation of Directors, general powers of attorney, among others, must be granted in a Public Deed and filed before the Companies Registry. Exceptions are the transfers of shares, which need to be formalised in a Notary Public Deed but do not need to be filed before the Companies Registry.

In case of a foreign investment or disinvestment is made in a Company, it is also compulsory to notify it to the Ministry of Economy and Competitiveness through the form D1-A and D1-B, but only for administrative, statistical or economic purposes.

6. Can a Company be a director of the company?

Yes, a physical person or another Company can be a director. However, in this latter case, a single natural person must be permanently designated to fulfil the duties incumbent upon the position.

7. How is the first director appointed?

The first director is appointed in the company's incorporation deed. The subsequent directors must be appointed by the General Shareholder's Meeting by the majority legally or statutory established.

8. Is there a minimum number of directors required?

In Spain, Private Limited Companies can be directed either by a Sole Director, two or more Directors acting jointly, or jointly and severally, or by a Board of Directors (with a minimum of three members and a maximum of twelve members, for *Sociedades Limitadas*)

9. Do annual accounts have to be filed with any public authority?

Annual accounts must be filed with the Companies Registry every year. They have to be drawn up by the Directors during the three months after the end of the financial year. During the following three months they have to be approved by the General Shareholder's Meeting. They have to be filed at the Companies Registry during the following month.

10. And if so whose responsibility is it to lodge these?

If the annual accounts are not filed in time, there are two results: denial of registration of company-related documents (exceptions are dismissal or resignation of directors, managers, directors general or liquidators, the withdrawal or waiver of powers, Company dissolution and appointment of liquidators, among others), and the imposition of an administrative penalty.

11. Is the Company allowed to carry on business before it is formally incorporated?

The Company can only carry on business when it has been formally incorporated (duly registered at the Companies Registry). Nevertheless, after the incorporation of the Company and before the registration, the Company can perform what is necessary in order to obtain the full registration of the Company, and those faculties obtained by the Directors during the incorporation Deed. For other acts and agreements, the person who perform these acts is liable jointly and severally for any consequences of such acts and agreements, although this person is released from liability when these acts and agreements have been expressly or tacitly accepted by the General Shareholder's Meeting during the three months after the registration in the Companies Registry.

12. Do shareholders have any liability or responsibility apart from paying for their shares?

The liability of the shareholders in a Private Limited Company is limited to the share capital of the Company, so the shareholders are not personally liable for the debts of the Company.

However, the shareholders can be liable if there is a Shadow Director or if the shareholders have endorsed the Company.

13. Are there any circumstances where the directors can be liable for the debts of the Company or for claims from third parties?

The Directors must answer to the Company, its shareholders and creditors for:

- Damages caused by their acts or omissions where contrary to Law or the articles of association, or by any act performed or omitted in breach of the duties inherent in their position
- Damages caused by their acts to the shareholders and to third parties that is directly detrimental to their interests
- Damages caused for not winding up the Company in some winding-up/conclusion situations established by Law: such as blockage of the Company or if the losses have reduced its equity to an amount lower than one half of the share capital, among others

14. Approximately how much does it cost to incorporate a company?

In Spain, the Notary Public and Companies Registry fees are around 500 €. Nevertheless, it is highly advisable to hire a competent Legal Advisor to incorporate a Company.

15. Any additional comments?

The incorporation of a Company is currently exempt from paying the incorporation tax. However, after the incorporation, the Company has to apply for its Spanish Tax Number (CIF) in the Public Finances office (this is a prerequisite to file the incorporation Deed before the Company's Registry).

Besides, if a foreigner wants to be a shareholder or Director of a Spanish Private Limited Company, he/she needs to apply for a Foreign Identification Tax Number (NIE). If the shareholder or Director is a foreign Company, it also has to apply for a Tax Identification Number (NIF).

Member Details:-

Firm Name: MONEREO MEYER MARINEL-LO

Person to Contact: David Grasa

Email: dgrasa@mmmm.es

Phone Number: + 34 934 875 894