

## YOUR OWN COMPANY

### **1. Forming and Registering a new Company**

#### ***I want to form a new Company. What do I need to do?***

Companies and other forms of commercial partnerships are formed by agreement between shareholders/members and must be registered at the Registry of Companies, which is housed at the MFSA offices in Notabile Road, Attard.

A limited liability company is one of the vehicles which may be chosen for conducting a business activity. Alternatively, one can also choose to trade in one's own name (as a sole trader) or else form a partnership *en nom collectif* or *en commandite*, with at least one other person.

An important advantage of the limited liability company is that the liability of the shareholders is limited to the amount which remains unpaid on their shares. Like the other types of partnerships, a company is a legal person distinct from its shareholders and the assets and liabilities of the company are separate from those of its shareholders.

A company may be formed by one shareholder only (single member company), who may also be the sole director and secretary of the company.

#### ***Can I name the company as I want?***

Unless the name chosen is the same or very similar to the name of an existing or reserved company, the forming members are free to choose the name they wish. However, the Registrar of Companies may refuse to register a name if it is considered offensive or otherwise undesirable.

#### ***Can I reserve the name of a company?***

Yes, you can search if a particular name is already being used by an existing company. If the name is not being used, you may request the Registrar to reserve the desired name for a period of three months.

#### ***What is the minimum capital?***

The minimum share capital of a private company is €1,165 of which at least 20% has to be paid up.

The minimum share capital of a public company is €46,588 of which at least 25% has to be paid up.

The money must be deposited in a bank account under the name of the company in formation. The deposit slip should then be presented to the Registry of Companies as proof of the deposit.

***What is the minimum and maximum number of directors needed in a company?***

The minimum number of directors in a private company is one while there is no maximum number.

The minimum number of directors in a public company is two while there is no maximum number.

***What is the minimum and maximum number of shareholders needed in a company?***

A private company may have a minimum of one shareholder (single member company) and a maximum of fifty shareholders.

Public companies must have at least two shareholders. There is no maximum number of shareholders in the case of public companies.

***What other documents do I need?***

The instrument of constitution of a company is called the Memorandum of Association. It must contain:

- Name of company
- Private or public status
- Registered address
- Details of subscribers
- Objects of the company
- Amount of authorised and issued share capital
- Number of shares taken up by each shareholder and the amount paid on each share
- Where shares are divided into different classes of shares, the rights attaching to the shares of each class
- Details of directors and company secretary
- Persons vested with the legal/judicial representation of the company
- Period, if any, fixed for duration of company

The memorandum may be accompanied by the Articles of Association, which is a document which governs the internal workings of the company. If no Articles of Association are registered, it is assumed that the model Articles of Association found in the First Schedule to the Companies Act has been adopted.

***What happens once I submit my complete application to the Registrar of Companies?***

If the Memorandum and Articles of Association (if any) are compliant with the Companies Act, they are registered and retained by Registrar of Companies, upon payment of the applicable registration fee.

The Registrar issues a certificate of registration which is an official document certifying the birth of a new legal person. This legal person is distinct from the company's members. It may enter into contracts, own property, bank accounts etc.

***Do I need special business stationery letters?***

Yes. All business letters and other company forms must show the following details since third parties need to know at all times who they are doing business with:

Company name

Type of company (private/public)

Registered office

Registration number

**2. Existing Companies**

***What are my obligations if I have a registered company?***

The registration of a company gives rise to the creation of a number of continuing obligations, the importance of which should not be underestimated. Some of these obligations include:

The obligation to file the appropriate forms and documentation whenever there is a change in the directors, shareholders, company secretary and the Memorandum or Articles of Association.

The obligation to file the annual return once a year, accompanied with the relative registration fee.

The obligation to file the company accounts once a year. These should be submitted within 10 months and 42 days from the end of the financial year.

***What happens if I do not submit these forms/documents on time?***

There are fines for late or non-submission of returns or/and documents.

***Do I have to hold any type of meetings?***

Yes, there are two main types of shareholders meeting that may be held, namely, the annual general meeting and the extraordinary general meeting. An Annual General Meeting must be held once a year.

Any other meeting which is held during the year is called an Extraordinary General Meeting. Such meetings may be convened by the directors, either upon

their own initiative, or following a request of the shareholders which hold at least 10% of the paid up share capital of the company.

The notice to hold these meetings must be given in writing to all shareholders at least 14 days before the established date, unless all members agree to a shorter notice.

The minutes of the proceedings of the general meeting must be kept at the company's registered office.

***Do I have to keep any other type of minutes?***

Yes, all directors' meetings must be recorded in writing and kept at the company's registered office.

### **3. Closing of a Registered Company**

***Can I decide to close an existing company?***

Yes, shareholders can decide to close (or wind up) a company.

***Can a company be obliged to cease operating ?***

Yes, a company may be obliged to close down (or wind up) by the Court in the circumstances laid down by the Companies Act.

***What do I need in order to close a company?***

The shareholders must take a resolution to dissolve and wind up the affairs of the company. This resolution is taken by the shareholders during a general meeting. A notice of dissolution must then be sent to Registrar.

***How much time do I have to register this notice of dissolution?***

The notice of dissolution must be delivered to the Registrar within 14 days after the date of dissolution.

***What else do I need to do?***

You have to appoint a liquidator, within 30 days at the latest, from the date of dissolution.

***What does the liquidator have to do?***

The liquidator is entrusted with winding up the affairs of the company and distributing the assets of the company.

#### **4. General Questions**

***Do I always have to come to the offices of the Registry of Companies whenever I require a service from the Registry?***

- The Registry of Companies has an online system that allows users to register a company and submit commonly used forms. Users may also search for public information on any commercial partnership. A search may be conducted either by company name or by company number.
- Company names may be reserved online.
- The online system works on a prepaid credit system.
- All the statutory forms and notices are available on the website free of charge.

***Disclaimer:*** - General information only. Persons seeking to set-up a company may need to seek professional help.