

Chapter 3 Incorporation

Here, basic guidance to the end-of-chapter questions will be provided.

1. Define the following terms:

- **unregistered company;**
- **royal charter;**
- **trading certificate;**
- **off the shelf company;**
- **market capitalisation;**
- **overseas company.**

Term	Definition
unregistered company	A company that was not incorporated by registration (e.g. a company incorporated by royal charter or Act or Parliament)
royal charter	A document issued by, or on behalf of, the monarch that grants certain rights to a person, place or body
trading certificate	A certificate, issues by Companies House to a public company, that allows the company to commence business and to exercise borrowing powers (see s 761 of the CA 2006)
off the shelf company	A company that is created (usually by an incorporation or company formation agent) with a view to later being sold to someone who does not wish to create their own company
market capitalisation	The amount of shares a company has issued multiplied by its current share price
overseas company	A company incorporated outside the UK (CA 2006, s 1044)

2. State whether each of the following statements is true or false and, if false, explain why:

- **the CA 2006 only generally applies to registered companies;**
- **the application to register a company must be submitted electronically;**
- **a company cannot be bound by a contract entered into before it was incorporated;**
- **a public company must be limited and must have a share capital;**
- **a listed company is also a quoted company;**
- **the largest 250 companies, in terms of market capitalisation, are known as the FTSE 250;**
- **a company limited by guarantee cannot re-register as a company limited by shares.**

- **The CA 2006 only generally applies to registered companies:** This statement is true. However, significant parts of the CA 2006 have been extended to cover unregistered companies via the passing of subordinate legislation.

- **The application to register a company must be submitted electronically:** This statement is, at the time of writing, false. An application to register a company can be submitted in hard copy, but Companies House does intend to go fully paperless.
- **A company cannot be bound by a contract entered into before it was incorporated:** This statement is true. A contract entered into before a company is incorporated will not bind the company. However, the company can be made party to the contract if it is novated after the company is incorporated.
- **A public company must be limited and must have a share capital:** This statement is true.
- **A listed company is also a quoted company:** This statement is false. Whilst most listed companies will also be quoted, there are examples of companies that will be listed, but not quoted (e.g. a company with debt securities on the official list and no share capital on the official list).
- **The largest 250 companies, in terms of market capitalisation, are known as the FTSE 250:** This statement is false. The FTSE 250 does indeed measure companies in terms of market capitalisation, but it covers the 101st – 350th companies.
- **A company limited by guarantee cannot re-register as a company limited by shares:** This statement is true.

3. **'The process for incorporating a company is complex, expensive, and is not designed to be accessible for laypersons.'** Do you agree with this quote? Provide reasons for your answer.

Introduction

- Every essay should begin with a succinct introduction that demonstrates that you understand the essay question. Briefly explain what the essay is about and set out what the essay will discuss and how it will be structured.
- This essay requires you to discuss the process of incorporating a company, and whether this process is complex, expensive and inaccessible.

Pre-registration considerations

- Even before a company can be incorporated, there will be issues for the promoters to consider. They will need to decide:
 - (a) what type of company to incorporate (e.g. public or private);
 - (b) will the liability of the members be limited or unlimited;
 - (c) will the company have a share capital and, if so, how will that share capital be structured;
 - (d) if the company is public, will that company's shares be offered on a stock exchange;
 - (e) what will the company's name be;
 - (f) will the promoters want to register their own articles.
- The above issues are not overly complex, but do require a serious layperson's knowledge about company types and the processes by which a company is run.

The registration process

- The registration process itself is not burdensome. All that a promoter need do is register the registration documents with Companies House, namely the memorandum of association, the application for registration, and the statement of compliance. The memorandum and statement of compliance are formalities that involve little substantial work, so it is the application for registration that is the key document here.
- The application for registration (or Form IN10 to give the Companies House designation) is relatively straightforward to complete and should not be too burdensome or inaccessible for most promoters.
- Once completed, the application for registration is sent to Companies House (either online or by hard copy). If all is well, the promoter pays the registration fee (which is extremely low if registering online or by software) and the company is issued with a certificate of incorporation.

Buying a company 'off the shelf'

- It should be noted that much of the above can be avoided if the person decides to buy a company off the shelf. This is a quick and inexpensive way of acquiring a company, but the company will likely not be suited to the needs of the business and so modifications will likely have to be made.

Conclusion

- Every essay should end with a conclusion. Briefly summarise the main points/arguments and, if possible, come to a conclusion regarding the essay topic (i.e. which of the opposing views has the stronger arguments).
- The likely conclusion will be that the process for creating a company is not especially complex and it is certainly not expensive.

4. Before Jane decides to incorporate her business, she seeks your advice regarding the following:

- She wants to know what are the advantages and disadvantages of conducting business through a company, as opposed to conducting business through a partnership.
- If she did decide to incorporate, she wants to know whether creating a company is a simple and inexpensive process.
- She unsure as to what type of company to create and seeks your advice on this. She has told you that she wishes to retain control of the company, but she is open to selling shares to others to raise capital in order to fund her expansion plan for the business (although she feels she will likely need to borrow capital too). Given her lack of experience of running a company, she is also keen to keep the administrative requirements placed upon the company to a minimum.

Advise Jane on the above matters.

- This question requires you to advise Jane on the merits of conducting her business through a company.
- Begin by discussing the advantages and disadvantages of conducting business through a company. The advantages of conducting business through a company include:
 - (a) the company will have corporate personality;
 - (b) the directors and members will not be liable for the debts and liabilities of the company;
 - (c) a company can enter into contracts;
 - (d) the company can own property, allowing for a clear separation between the company's assets and those of the directors/members;
 - (e) the company can issue shares;
 - (f) if a company is wronged, it can sue for redress;
 - (g) the liability of the members could be limited.
- The disadvantages of conducting business through a company include:
 - (a) companies are subject to significant amounts of regulation and formality that other business structures are not subject to;
 - (b) the directors are subject to a range of statutory duties;
 - (c) companies are subject to significant disclosure obligations, meaning that the business cannot be run with as much privacy as other business structures;
 - (d) if the company commits a wrong, it can be sued or convicted of a crime.
- Discuss the incorporation process. This is discussed in Question 3 above, and so will not be repeated here.
- Finally, advise Jane on which type of company would be most suitable for her. Looking at Jane's requirements, it is clear that a private company limited by shares would be the most suitable as:
 - (a) she could retain control of the company by holding a majority shareholding or by ensuring that only her shares were voting shares;
 - (b) she could sell shares to others, but could not offer them to the public at large (unless the company re-registered as public);
 - (c) the regulatory and administrative burdens placed upon private companies are less than those placed upon public companies. Further, regulatory exemptions will be available if the company is classified as small (which only private companies can be).