

COMPANY TYPES & REGISTERS

Companies Limited by Guarantee: Structure, Members and Control

How a company limited by guarantee works, where it fits, and what the members, the articles and the filings need to get right.

What a guarantee company is

A company limited by guarantee has members, not shareholders. Each member promises to contribute a fixed amount, often a nominal sum, if the company is wound up while they are a member or within a year of leaving (Companies Act 2006, s.3). That promise is the limit of their liability. Because there are no shares, no one buys a stake in the company, and no one is paid a dividend for owning one.

A guarantee company cannot be formed with share capital. Control sits with the members under the articles, which usually give each member one vote. The directors run the company day to day and owe the same statutory duties as the directors of any other company.

Where it fits

The structure suits bodies that exist for a purpose rather than a return. Typical examples are trade and professional associations, clubs and societies, residential and commercial management companies, social enterprises and organisations that will later apply for charitable status. A right to manage company is a guarantee company with prescribed articles, covered in our guide on that subject.

It is a poor fit where the owners expect to share profit or to sell their interest. There is nothing to sell, and the articles normally forbid paying surplus to members.

Forming one

The application to Companies House must include a statement of guarantee, setting out the amount each member undertakes to contribute (s.11), together with the articles and the details of the first members and directors. The articles are where the real decisions are made: the objects, who can become a member, how members leave, how directors are appointed and removed, and what happens to any surplus on winding up.

Many guarantee companies are not-for-profit, so the articles often restrict the use of income to the company's objects and require any surplus assets on a winding up to go to a similar body. Where the articles contain those restrictions, the company may be allowed to omit "ltd" from its name, subject to the conditions in the Act (ss.60 to 62). That is a privilege to claim carefully, not a default.

Key points

- Members guarantee a fixed sum; there are no shares and no dividends.
- A guarantee company cannot be formed with share capital.
- The articles decide who can join, how members vote and where a surplus goes.
- Directors owe the usual statutory duties.
- It is not tax-exempt by type: corporation tax applies unless the company is a charity or otherwise relieved.
- A guarantee company can become a CIC or a charitable company, but each has its own regulator.

Members and control

Membership works through the articles, not through ownership. Most guarantee companies admit members by application and director approval, and set out how a membership can end, for example by resignation, by non-payment of a subscription or by removal for cause. The register of members must be kept, and each member's entry should show when they joined and when they left.

Members decide the matters reserved to them by the Act and the articles, including changes to the articles and, in most cases, the appointment of directors at a general meeting. Where the membership is large, quorum, notice and proxy rules matter. A company that cannot hold a valid meeting cannot easily change its own constitution.

Running it day to day

A guarantee company files annual accounts and a confirmation statement like any other company. It must keep its registered information at Companies House up to date and identify the people with significant control, using the rules on control that fit a company without shares. The identity verification requirements for directors and people with significant control apply in the same way as for other companies.

A guarantee company can trade and make a surplus. The surplus belongs to the company and is used for its objects. Tax follows the activities: trading profits are chargeable to corporation tax unless a relief applies.

Choosing between related structures

STRUCTURE	PROFIT TO OWNERS	REGULATOR	TYPICAL USE
Guarantee company	Not usually	Companies House	Associations, management companies
CIC	Capped, if it has shares	CIC Regulator	Social enterprise
Charitable company	None	Charity Commission	Charities

Getting it right

Most problems arise from articles copied from a template that does not match how the body actually operates, and from registers that are not kept. A short review of the articles against how decisions are really made usually finds the gaps.

Questions to ask the client

- Does anyone expect a return or a share of the surplus?
- Who should be able to join, and how do they leave?
- Who appoints and removes the directors?
- Is a "§" exemption wanted, and are the conditions met?
- Will it later seek charitable or CIC status?
- Who will keep the register of members?

How MTM can help

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We incorporate guarantee companies, draft articles to suit the body's purpose and membership, and take on the registers, confirmation statements and accounts filings afterwards. For a practice, we can carry out the formation and the ongoing company secretarial work in your client's name or white-label.