

COMPANY TYPES & REGISTERS

# Unlimited Companies: Flexibility, Privacy and Unlimited Liability

How an unlimited company differs from a limited one, what it gains in flexibility and privacy, and why the members' liability needs a clear-eyed decision.

## What an unlimited company is

An unlimited company is a separate legal entity, like any other company, but its members have no limit on their liability for its debts (Companies Act 2006, s.3). An unlimited company may or may not have share capital. Where it does, the members are shareholders. The difference is that, if the company cannot pay its debts, the members can be required to contribute whatever is needed to meet them.

The claim is made through the liquidator, not directly by creditors in the ordinary course. Former members can also be called on for a limited period after they leave. That exposure is the central fact about the structure and the reason most businesses choose a limited company instead.

## Why anyone chooses one

The usual reason is privacy. An unlimited company is generally exempt from filing its annual accounts at Companies House (s.448), so the public cannot see its figures. The other reason is flexibility. An unlimited company is not bound by the rules that protect the creditors of a limited company in the same way, and so can often organise its capital and its dealings between members more freely.

It suits a close family group, a company owned by a few trusting members who accept the liability, and some holding or investment structures where the exposure is understood and the members' assets and the company's are closely aligned.

## When the exemption is lost

The accounts exemption is not automatic. It is lost if the company was, at any time in the relevant period, a subsidiary of a limited undertaking, had a limited undertaking as a parent, or had a limited company or similar body among its members, along with certain other cases. A company that qualifies for the exemption must still keep proper accounting records and prepare accounts. The exemption removes the filing, not the preparation.

### Key points

- Members' liability has no limit.
- The company is still a separate legal person.
- Accounts are generally not filed, but may still have to be prepared.
- The accounts exemption is lost where a limited company is involved in the ownership.
- Moving to limited status is possible; the reverse needs every member to agree.
- Take advice before any member's personal position is exposed.

## Liability in practice

If an unlimited company becomes insolvent, the liquidator can call on the members to contribute to the assets, in proportion to what the articles and the law provide. A member's personal assets are therefore at risk to the full extent of the shortfall. Where members are themselves companies or trusts, the exposure passes up the chain.

Some members protect themselves by holding through a limited company, though that can lose the accounts exemption. Insurance, careful borrowing and a clear understanding of the company's commitments all matter more than they do in a limited company.

## Changing status

A limited company can become unlimited by re-registration, which needs the agreement of all its members, because each is giving up a protection (Part 7 of the Act). An unlimited company can become limited by shares or by guarantee by re-registration, with the members' consent and the new articles. Our re-registration guide covers the process. A change to limited status does not remove liabilities that already exist.

## Filings and records

An unlimited company keeps a register of members, holds its general meetings, files a confirmation statement and keeps its registered information up to date at Companies House. The rules on people with significant control and the identity verification requirements apply to it in the same way as to a limited company.

## Comparing the types

| TYPE                 | MEMBER LIABILITY     | ACCOUNTS AT COMPANIES HOUSE |
|----------------------|----------------------|-----------------------------|
| Limited by shares    | Unpaid share capital | Filed                       |
| Limited by guarantee | The guarantee        | Filed                       |
| Unlimited            | Unlimited            | Often not filed             |

### Questions to ask the client

- Do all the members understand the liability?
- Is privacy the reason, and will the exemption hold?
- Is any member a limited company or a trust?
- Is a limited structure acceptable instead?
- Is there borrowing or a guarantee that changes the risk?
- Will the structure change in future?

### How MTM can help

0161 835 2080  
[client@mtmlp.co.uk](mailto:client@mtmlp.co.uk)

We form unlimited companies, advise on re-registration in either direction, and maintain the registers and filings afterwards. A decision to take on unlimited liability should always be taken with proper advice for the members concerned.