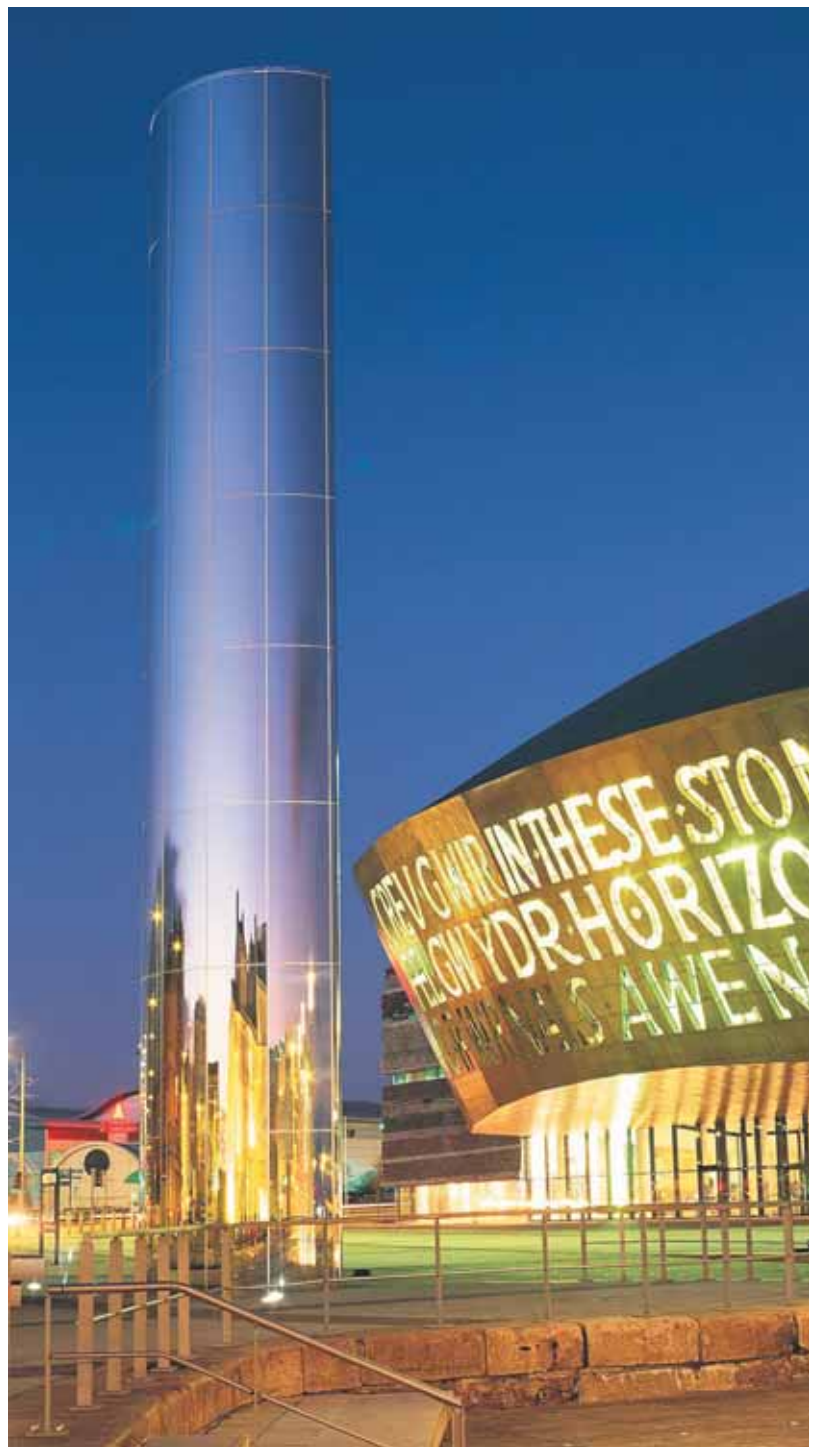


A guide to investing in Wales

Appendix 9 – Choice of business entity



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1. Principal forms of doing business

Business organisations in the UK usually take one of four forms: partnership, branch, private limited company or public limited company. Private limited companies may not invite the public to subscribe for shares or bonds; public limited companies may. Public companies may choose to be quoted on the stock exchange or to be unlisted. A listing on an exchange in the EU entitles a company to be listed on any other EU exchange. Other organisational forms exist (such as limited partnerships) but are not widely used.

Most foreign-owned companies organise their affiliates as private limited companies; otherwise, they establish branches. Particular tax considerations can influence the choice. For example, operating as a subsidiary in the UK may mean that the profits of the subsidiary are subject only to UK corporation tax; operating as a branch of a non-UK company may mean that these profits (or losses) may also be taxable (or deductible) where the company resides. The tax treatment for a non-UK company varies from country to country.

Requirements of public and private limited companies

Capital. Public: Companies must have capital of at least £50,000, 25% of which must be paid up on each share. Capital may be supplied in non-cash forms (e.g. machinery, patents or know-how), but non-cash contributions must be independently valued. No legal reserves are required. Private: Same requirements, except there is no minimum for private limited companies and non-cash contributions do not need to be independently valued.

Founders, shareholders. Public: Public limited companies must have at least two shareholders. There are no nationality or residence requirements. Private: Same requirements, except they may have only one shareholder.

Board of directors. Public: There must be only one board with at least two directors. There are no nationality or residence requirements. A director may be chairman. Any changes to the board must be reported to Companies House within 14 days. Private: Same requirements, except that the minimum number of directors is one.

Management. Public: Managers need not be shareholders or directors. Every company must have a company secretary, who may be a director as long as there is more than one director. There are some qualification requirements. Private: A private company is not required to have a secretary.

Disclosure. Public: An outside auditor is appointed at the annual general meeting. Annual accounts, together with many additional details, must be filed with Companies House (www.companieshouse.gov.uk) where they are publicly available. Unless the company is small or medium-sized, the accounts will include a profit and loss account, a balance sheet signed by a director, an auditors' report signed by the auditor, a directors' report signed by a director or the company secretary, and notes to the accounts. Alternatively, a company may prepare its accounts in accordance with international accounting standards. No public company, regardless of its size, can qualify as a small- or medium-sized enterprise (SME) for these purposes. Private: Same requirements, except for special provisions applicable to SMEs. A company qualifies as an SME in relation to its first financial year if the qualifying conditions are met in that year. A company is treated as a qualifying SME in relation to a subsequent year:

- i. if the qualifying conditions are met in that year and the preceding financial year;
- ii. if the qualifying conditions are met in the current year and the company qualified as small in relation to the preceding financial year; or
- iii. if the qualifying conditions were met in the preceding financial year and the company qualified as small in that year.

The qualifying conditions are met by a company in a year in which it does not exceed two or more of the following criteria:

	Annual turnover	Balance sheet total	Employees
Small	£6,500,000	£3,260,000	50
Medium	£25,900,000	£12,900,000	250

Small companies may submit a shortened balance sheet and notes, and a special auditors' report (unless claiming audit exemption – see below).

Medium-sized companies may submit as a minimum an abbreviated profit and loss account, a full balance sheet, special auditors' report, directors' report and notes to the accounts. Shareholders, however, must continue to receive a full set of accounts. Small companies need not be audited.

Types of shares. Public: Ordinary, preference and cumulative preference shares, and straight and convertible bonds are the common forms in which corporate securities are issued. Multiple classes of ordinary share with differing voting rights or no voting rights are prevalent in many large companies, particularly those in which families with minority equity holdings control public firms. A company must maintain a register of its shareholders. Although UK companies cannot issue bearer shares as such, they can issue warrants entitling the bearer to the shares specified in the warrant. Private: It is a criminal offence for private companies to offer their shares or debentures to the public.

Control. Public and private: A majority (more than 50%) is required for ordinary resolutions (unless bylaws stipulate otherwise); for changing articles and liquidation, 75% of shareholders' votes are required. If a bid is made for the entire equity of a company (and the bidder obtains 90% of equity), the bidder can compel the remaining shareholders to sell. If the bidder owned shares before the bid, compulsory acquisition can take place only if the bidder acquires 90% of the shares that were not previously held.

2. Establishing a branch

If a foreign limited liability company establishes a branch in Great Britain (England, Scotland or Wales) and the company is required under the law of the country in which it is incorporated to prepare, have audited and disclose financial statements, the company must file for public inspection in Great Britain all accounting documents that are disclosed under that foreign law. If the foreign company is not a limited liability company or is not required to prepare such accounts, accounts must be prepared as though it were a UK company (with various modifications) and filed for public inspection. Similar rules apply in Northern Ireland.

Within a month of establishing a branch, a foreign limited liability company must file various particulars and documents that can be viewed by the public, such as the names and addresses in the UK of persons authorised to accept legal notices served by the authorities; the name of the company, its legal form, its country of registration, company number, details of its directors and secretary; and the address of the branch, when it was opened and its business. Additional disclosures are required for non-EU companies. Slightly less disclosure is required from unlimited liability companies. In all cases, it must also file copies of its constitution (translated into English). At every place of business, and on every letter and invoice, the branch must provide details of the company of which it is a branch, such as its registered name, the country of incorporation and whether its members have limited liability.

3. Setting up a company

Every company must be registered with the Registrar of Companies. The registration application should set out the scope of the intended corporate activities and must be submitted with a memorandum. If the company's activities diverge from the goals stated in the memorandum, the transaction can be judged to be outside the company's authority. The company must also submit the articles of association, which detail the rights of the shareholders, borrowing powers and the duties of directors.

Public companies must include the words "public limited company" or the abbreviation "plc" as an integral part of the company name, to be used on all official documents, general stationery and nameplates. Private limited companies use the word "Limited" or the abbreviation "Ltd".

The Company Law 2006 substantially changes company law, making it easier to understand and more flexible, especially for small businesses. It is possible to set up a European Company (*Societas Europaea* – SE) in the UK. An SE is subject to the laws of the country where it is registered.

A private limited company can be registered in the UK within 24 hours of application to the Registrar of Companies. The application would include the filing of a number of documents, including constitution, registration of officers, share capital etc. The current standard registration fee payable to Companies House is £20, or £50 for a same day incorporation.

A company would typically incur additional costs associated with the process of registration, including the drafting of constitution and minutes, registration of first officers and shares, writing up of statutory book etc. The level of these additional costs is very much dependent on the proposed structure of the company and any complexities identified. A company could budget for additional costs in the region of £1,000.

An application for registration would include a form declaring compliance with company legislation, to be signed before an authorised person such as a solicitor or commissioner for oaths. This document is typically arranged by formation agents and is included in the budgeted costs noted above.

Corporate and business names

It should be stressed that there are a number of restrictions on the use of corporate names. The Registrar will not allow a company to be incorporated with a name identical to one already on the register. In some cases, specific permission is required from a relevant authority and, in others, justification must be provided to the Registrar for the use of a restricted word.

The following are just a few examples of such restrictions:

- words that imply royal or governmental connection (e.g. "Royal", "Prince");
- words that imply national pre-eminence (e.g. "National", "British");
- words that imply connection with certain regulated fields (e.g. "Pharmaceutical"); and
- words that imply a particular corporate form or structure (e.g. "International", "Group" or "Holdings").

These restrictions apply equally to Branches and Places of Business as to limited companies, and also apply to trading names, where the trading name is different to the corporate name.

It is recommended that advice be taken on whether a particular proposed corporate name is likely to be accepted for registration by the Registrar, before any documents are submitted to Companies House.

Contact:

Sarah Delaney

Manager – Tax

Deloitte LLP

Telephone: +44 (0) 29 2026 4424

Mobile Phone: +44 (0) 7795 617559

E-Mail: sadelaney@deloitte.co.uk

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