General business

Issues to consider when running your own business. Click on the links below to access the relevant information.

1.Bribery Act 2010

This factsheet gives an overview of the procedures you must put in place in relation to the Bribery Act 2010.

2.Company secretarial duties

This factsheet considers what company information has to be made available and looks at whether a company secretary needs to be appointed.

3.Criminal Finances Act 2017

The Criminal Finances Act makes companies and partnerships criminally liable for failing to prevent tax evasion. This factsheet considers the key aspects of the Act and the implications for your business.

4.Directors' responsibilities

Becoming a director carries with it potentially onerous duties. Make sure you know what those duties are. This factsheet gives guidance on directors' responsibilities.

5.Grants

We consider if your business is eligible for a grant.

6.Micro Entity Accounting

This factsheet considers the options available to micro entities when preparing their accounts. This factsheet considers the options available.

7.Preparing for your accountant

Whether we are producing your accounts or carrying out tax compliance work, being prepared for us will ensure our work is carried out smoothly and efficiently and with the minimum disruption to yourselves. This factsheet highlights many of the ways in which you can help.

8.Register of people with significant control

This factsheet summarises the requirements which place additional obligations on companies, their officers and the people with significant control over them.

9.Running a limited company

Running a limited company presents a range of unique challenges and responsibilities. Limited companies are subject to tight reporting and financial responsibilities and the directors of the limited company have their own duties and responsibilities.

10.Small Company Accounting

We consider the required format of statutory accounts for small companies. This factsheet considers the reporting requirements and their impact.

11.Valuing your business

There are many reasons why you may need to calculate the value of your business. This factsheet consider the range of methods available as well as some of the factors to consider during the process.

1. Bribery Act 2010

Under the Bribery Act 2010 it is an offence for organisations to 'fail to prevent bribery'. The defence against this offence is to ensure that your business has adequate procedures in place to prevent bribery. If your business is in the Nottinghamshire or surrounding areas we, at Franklyn & Co, can provide you with assistance or any additional information required.

The Bribery Act 2010 (the Act) applies across the UK and all businesses need to be aware of its requirements.

The Act includes a ‘corporate’ offence of ‘failure of commercial organisations to prevent bribery’. The defence against this offence is to ensure that your business has adequate procedures in place to prevent bribery. To help ensure this we recommend that you undertake a risk assessment for your own business and establish appropriate compliance procedures.

What action should you take?

familiarise yourself with the guidance issued by the Ministry of Justice

review the current activities of your business and assess the risk of bribery occurring

assess the strength of the measures that you currently have in place to prevent bribery

make any necessary updates to your staff handbooks: for example, your human resources manual

consider whether specific anti-bribery staff training is required

consider if changes are needed to other policies and procedures, for example, expenditure approval and monitoring processes

communicate the changes that you have made to your policies and procedures

consider if you need to undertake any due diligence procedures.

The Bribery Act 2010

The Act replaced, updated and extended previous UK law against bribery and corruption. It applies across the UK and all UK businesses and overseas businesses carrying on activities in the UK are affected.

The offences established by the Act are defined very broadly and the Act has significant extraterritorial reach in that it extends to acts or omissions which occur outside of the United Kingdom. Specific details about its jurisdiction can be found in the detailed guidance referred to under ‘Ministry of Justice guidance’ below, as well as in the Act itself.

What is bribery?

Bribery is a broad concept. In supplementary guidance published alongside the Act, it is very generally defined as ‘giving someone a financial or other advantage to encourage that person to perform their functions or activities improperly or to reward that person for having already done so. So this could cover seeking to influence a decision-maker by giving some kind of extra benefit to that decision-maker rather than by what can legitimately be offered as part of a tender process.’

The key offences

Under the Act there are two general offences:

1. Active bribery

Section one of the Act prohibits offering, promising or giving a financial or other advantage (a bribe) to a person with the intention of influencing a person to perform their duty improperly.

2. Passive bribery

Section two of the Act prohibits a person from requesting, agreeing to receive or accepting a bribe for a function or activity to be performed improperly.

In addition, there are two further offences that specifically address commercial bribery:

3. Bribery of foreign public officials (FPO)

Section six of the Act prohibits bribery of an FPO with the intention of influencing them in their official capacity and obtaining or retaining business or an advantage in the conduct of business.

4. Failure of commercial organisations to prevent bribery

Section seven of the Act introduces a strict liability offence that will be committed if:

bribery is committed by a person associated with a relevant commercial organisation

the person intends to secure a business advantage for the organisation

the bribery is either an active offence (section one of the Act) or bribery of an FPO (section six of the Act).

This means that a commercial organisation commits an offence if a person associated with it bribes another person for that organisation’s benefit. This ‘corporate’ offence is the most significant and controversial change to existing law and it is primarily this offence that you must now consider and prepare your business for as necessary.

It is important to note, however, that the Act also states that there is a defence available for commercial organisations against failing to prevent bribery if they have put in place ‘adequate procedures’ designed to prevent persons associated with them from bribing others on their behalf. The Secretary of State is required by the Act to publish guidance about such procedures.

Senior officers of an organisation can also be held personally liable under the Act for other bribery offences committed by the organisation, i.e. the active and passive bribery offences as well as the bribery of an FPO, where the offence is proved to have been committed with their ‘consent or connivance’.

‘Senior officer’ is widely defined in the Act to include directors, managers, company secretaries and other similar officers, as well as those purporting to act in such a capacity.

Key definitions and terminology

Inevitably, in order to fully understand the requirements of the Act, it is necessary to be familiar with a number of key definitions.

Relevant commercial organisation

The corporate offence can be committed by a ‘relevant commercial organisation’, which broadly includes:

any body which carries on a business and is incorporated under, or is a partnership which is formed under, any UK law, regardless of where it carries on business

any body corporate or partnership, wherever it is incorporated or formed, which carries on business in the UK.

We will refer to those affected by this corporate offence as ‘businesses’.

Persons associated

The corporate offence also refers to a person ‘associated’ with a commercial organisation. While there is not an absolute list of all who could be included, we are told that this is a person who performs services for, or on behalf of, the organisation, regardless of the capacity in which they do so.

Accordingly, this term will be construed broadly and while examples are given of an employee, agent or subsidiary, it could also cover intermediaries, joint venture partners, distributors, contractors and suppliers.

Guidance issued by the Ministry of Justice (see below) acknowledges that the scope of ‘persons associated’ is broad and states that this is so as to ‘embrace the whole range of persons connected to an organisation who might be capable of committing bribery’ on its behalf.

Improper performance

The passive and active bribery offences both refer to the 'improper performance' of a function or activity. 'Improper performance' covers any act or omission that breaches an expectation that a person will act in good faith, impartially, or in accordance with a position of trust. This is an objective test based on what a reasonable person in the UK would expect in relation to the performance of the relevant activity.

Ministry of Justice guidance

The Act requires the Secretary of State to publish guidance for commercial organisations about procedures that they can put in place to prevent persons associated with them from bribing. This is important guidance in respect of providing a defence against the 'corporate offence'.

The Ministry of Justice (MoJ) has issued the following formal, statutory guidance:

The Bribery Act 2010 - guidance about procedures which relevant commercial organisations can put into place to prevent persons associated with them from bribing (section nine of the Bribery Act 2010). Whilst the guidance is not prescriptive and does not set out an absolute checklist of requirements for businesses to follow, it does aim to clarify the practical requirements of the legislation. Illustrative case studies, which do not form part of the guidance issued under section nine of the Act, are also included.

It has also produced non-statutory guidance for small businesses, providing a concise introduction to how they can meet the requirements of the Act:

The Bribery Act 2010 - quick start guide

Insight into awareness and impact of the Bribery Act 2010 among small and medium sized enterprises (SMEs)

Defending your business against failing to prevent bribery

All businesses will need to pay some attention to the new corporate offence of failing to prevent bribery. How much you will have to do will depend on the bribery risks facing your business.

If a business can show that it had 'adequate procedures' in place to prevent bribery then it will have a full defence against the corporate offence. The meaning of 'adequate procedures' is not defined in the Act and it is here that the MoJ statutory guidance should be considered.

This guidance requires procedures to be tailored to the individual circumstances of a business, based on an assessment of where the risks lie. Therefore, what counts as 'adequate' will depend on the bribery risks faced by a business and its nature, size and complexity.

The MoJ guidance does recognise that the Act is not there to impose the 'full force' of criminal law upon well run businesses for an isolated incident of bribery. It also recognises that no business is capable of preventing bribery at all times. The 'quick start' guidance for smaller businesses comments that 'a small or medium-sized business which faces minimal bribery risks will require relatively minimal procedures to mitigate those risks'.

How should you begin to determine the approach needed in your business? The MoJ guidance identifies six guiding principles for businesses wishing to prevent bribery from being committed on their behalf (see the panel below). These principles are not, however, prescriptive.

The six principles that should guide anti-bribery procedures

1. Proportionate procedures

A commercial organisation's procedures to prevent bribery by persons associated with it are proportionate to the bribery risks it faces and to the nature, scale and complexity of the commercial organisation's activities. They are also clear, practical, accessible, effectively implemented and enforced.

2. Top-level commitment

The top-level management of a commercial organisation (be it a board of directors, the owners or any other equivalent body or person) are committed to preventing bribery by persons associated with it. They foster a culture within the organisation in which bribery is never acceptable.

3. Risk assessment

The commercial organisation assesses the nature and extent of its exposure to potential external and internal risks of bribery on its behalf by persons associated with it. The assessment is periodic, informed and documented.

4. Due diligence

The commercial organisation applies due diligence procedures, taking a proportionate and risk based approach, in respect of persons who perform or will perform services for or on behalf of the organisation, in order to mitigate identified bribery risks.

5. Communication (including training)

The commercial organisation seeks to ensure that its bribery prevention policies and procedures are embedded and understood throughout the organisation through internal and external communication, including training, that is proportionate to the risks it faces.

6. Monitoring and review

The commercial organisation monitors and reviews procedures designed to prevent bribery by persons associated with it and makes improvements where necessary.

Other important matters

Corporate hospitality

A potential area of concern under the Act is the provision and receipt of corporate hospitality, promotional and other such business expenditure and how this might be perceived. While this may not be a significant issue for your business, especially when you consider your own level of such expenditure, it may be an important consideration for others.

The MoJ guidance states: 'Bona fide hospitality and promotional, or other business expenditure which seeks to improve the image of a commercial organisation, better to present products and services, or establish cordial relations, is recognised as an established and important part of doing business and it is not the intention of the Act to criminalise such behaviour. The Government does not intend for the Act to prohibit reasonable and proportionate hospitality and promotional or other similar business expenditure intended for these purposes.'

The guidance goes on to say: 'It is, however, clear that hospitality and promotional or other similar business expenditure can be employed as bribes.'

Facilitation payments

Facilitation payments, which are payments to induce officials to perform routine functions they are otherwise obligated to perform, are bribes and are therefore illegal under the Act.

Penalties

The penalties associated with the Act are significant. On conviction for one of the main bribery offences, an individual may face up to ten years' imprisonment and/or an unlimited fine. A business faces an unlimited fine.

The senior officers of a business could also be liable to a prison sentence if bribery was perpetrated with their 'consent or connivance'. Disqualification from acting as a director for a substantial period of time could also arise.

Conclusion

The steps to be taken to prevent bribery will clearly vary from business to business and not all businesses will need to put in place complex procedures to deal with the requirements of the legislation. The supporting guidance issued by the MoJ emphasises the need for a common sense approach.

A key point noted in 'quick start' guidance is that 'there is a full defence if you can show you had adequate procedures in place to prevent bribery. But you do not need to put bribery prevention procedures in place if there is no risk of bribery on your behalf.'

2. Company secretarial duties

Certain information about a company must be publicly available including, for example, the company's annual accounts, registered office address and details of directors, company secretary (if there is one) and members. Providing and updating this information has historically been the job of the company secretary. If your company is in the Nottinghamshire area we, at Franklyn & Co, can provide comprehensive assistance with company secretarial matters.

Company legislation provides an opportunity for a business organisation to benefit from the protection of limited liability, separating the legal persona of the organisation from the individuals who own and run it.

In return for this protection, a certain amount of information about a company must be publicly available including, for example, the company's annual accounts, registered office address and details of directors, its company secretary (if there is one) and its members. Historically, providing and updating this information has been the job of the company secretary.

Do all companies need a company secretary?

Since April 2008, unless there is an express requirement in the company's articles of association, the Companies Act 2006 no longer requires private limited companies ('limited' or 'ltd') to appoint a company secretary. Even if the articles do require it, it is relatively straightforward for the directors of a company to amend the provision, subject to shareholder agreement.

Although there is no requirement for private companies to employ a company secretary if their articles do not require it, in practice many still choose to do so. The important tasks that would normally fall to a company secretary, including shareholder administration and communication, corporate governance and statutory compliance must still be done. In the absence of a company secretary, company law states that directors must take on this responsibility. As a result, many private companies continue to employ a company secretary in order to reduce the administrative and corporate governance burdens that are otherwise placed on their directors.

Public limited companies (whose names end in 'plc') are still required to have a company secretary who must have "the requisite knowledge and experience" achieved by having a professional qualification (accountancy or company secretarial), a legal qualification, recent experience or other competencies which lead the directors to believe they can act as company secretary.

The company secretary is an officer of the company. This means that they may be criminally liable for company defaults: for example, failing to file a document in the time allowed or failing to submit the company's annual return.

If your private company does not want to have a company secretary

If a private company decides not to have a company secretary then it should check its Articles of Association to ensure that its own regulations do not require it to appoint one. The company should inform Companies House of the resignation of any existing company secretary.

Where a private company chooses not to have a company secretary, any item that would normally be sent to the company secretary is treated as being sent to the company. Any duties which would normally be the responsibility of the company secretary will be carried out either by a director or a person authorised by the directors.

The company secretary and Companies House

A company secretary, or in the case of a private company the person responsible for company secretarial duties, will have regular dealings with Companies House as this is where public records about the company are held.

Most communications with Companies House are through Companies House Webfiling. Companies House is moving towards 100% online filing and on the area of the website where forms are available to download and print, there are prominent flags for areas that could instead be completed electronically.

Company secretarial duties

The duties of the person responsible for company secretarial matters are not defined specifically within company law but may be divided generally into three main areas:

maintaining statutory registers (keeping the company's records up to date)

completing and filing statutory forms (keeping the public record up to date)

meetings and resolutions (making sure the company abides by both its internal regulations and the law).

Maintaining statutory registers

All companies must maintain up-to-date registers of key details. These include:

a register of members

a register of directors

a register of charges

a register of People with Significant Control (PSC register)*.

The details in these registers include, for example, names, addresses, dates of appointment and resignation (for directors) and for members, the number and type of shares held. This is not an exhaustive list.

Responsibility for maintenance of the company's statutory books and records is a duty that normally falls to the company secretary. It can be a time-consuming task that is often overlooked, but failure to keep the registers up-to-date can incur a penalty of up to £5,000.

The registers must be made available for inspection by the general public at the company's registered office or at a single alternative inspection location (SAIL) which must also be recorded at Companies House.

A company may choose to keep its directors' residential addresses private and to record a service address for them. If so it will need to keep an additional register showing the directors' residential addresses, which is not open to inspection by the general public.

* A person with significant control is an individual who ultimately owns or controls more than 25% of a company's shares or voting rights or who otherwise exercises control over a company or its management.

Maintaining statutory information at Companies House

Alternatively, a private company may also choose (elect) to keep some of the statutory registers on the public register at Companies House rather than at its registered office or SAIL. This will include its registers of directors, directors' usual residential addresses, secretaries, members and People with Significant Control. While this election is in force the company does not need to keep its own separate statutory registers updated.

The general public can access company information through Companies House instead of visiting the registered office whilst this election is in force. This will include some information, such as members' addresses or directors' full dates of birth, which is not generally available on the public record for private companies.

Completing and filing statutory forms

The company must ensure that their record at Companies House is always up to date and contains current details of various statutory matters.

Many of the more common types of information can be submitted online by first registering at www.companieshouse.gov.uk. Alternatively, Companies House currently has a series of over 100 statutory forms to allow paper filing.

The company secretarial duties would extend to ensuring that, for example:

The company's annual accounts are filed on time at Companies House. For a private limited company, under normal circumstances, this must be within 9 months of the end of the accounting year. A fine will be levied if the accounts are late.

Once each year, Companies House will send each company a reminder to file their ‘confirmation statement’, which replaces the old Annual Return, and can be filed online or by downloading and completing on paper (for a higher fee). The company must 'check and confirm' that the information held at a given due date is accurate. The statement must be filed within 14 days of the end of the 'review period' and the due date will be specified on the reminder; if it is returned late or not returned at all, the company, director(s) and secretary (if appointed) may be prosecuted. This confirmation statement replaced the annual return from June 2016 and companies are permitted to file them more often than annually if they wish, though they would still only pay a fee annually (rather than every time they file).

All changes to the way the company is organised need to be notified to Companies House, within a specified period of between 14 and 28 days, depending on the change. The annual confirmation statement cannot be used to change this information and a separate form should be used. The most common forms include:

changes in directors, secretaries and their particulars

a change of accounting reference date

a change of registered office

allotments of shares.

If a company does not complete its confirmation statement, the Registrar might assume that the company is no longer carrying on business and take steps to strike it from the register.

An updated version of the company's Articles of Association is filed whenever a change is made.

The rules relating to the PSC register have already changed since this register was introduced. Initially, companies could update the public version of their PSC register annually as part of their confirmation statement, but now each change has to be updated on the register within 14 days and notified to Companies House within a further 14 days.

Charges

When a company gives security for a loan, either the lender or borrower should notify Companies House within 21 days, by filling in the appropriate form and paying the statutory charge. Without timely registration the charge will be void - that is, the loan will still be repayable but the security given will not be valid. This does not apply to property acquired which is subject to a charge.

Good company secretarial practices ensure that any charges created are registered and that the company's credit profile is protected by removing the charge from the register as soon as the loan is repaid.

Meetings and resolutions

Company law sets out procedures for conducting certain aspects of company business through formal meetings where resolutions will be passed. When resolutions are passed, the company is bound by them (a resolution is an agreement or a decision taken by the members).

Here the company secretarial role would be to ensure that proper notice of meetings is given to those who are entitled to attend, to minute the proceedings and to ensure that copies of resolutions which affect the way the company is run are sent to Companies House within the relevant time frame.

Notice of company meetings

Members and auditors are entitled to notice of company meetings. For a private limited company, a general meeting notice of at least 14 days is needed. Notice can be in writing, by email or by means of a website (if certain conditions are met). However, a private company is no longer required to hold an Annual General Meeting (AGM), unless the company's Articles of Association make express provisions for holding AGMs.

If an existing company with an existing express provision for an AGM wishes to abolish this requirement, it will need to change its Articles by special resolution.

Resolutions

There are two types of resolution that may be passed: ordinary resolutions (passed by a simple majority of the members) and special resolutions (passed by a 75% majority of the members). In general, resolutions will be voted on by any members present at a meeting.

Private companies can take most decisions by written resolution. Such a resolution does not require a hard copy and can be passed by email. These resolutions, however, need to be passed by a majority of all members of the company, not just by those who return the voting form!

It is important that companies retain copies of all important decisions taken in the management of the company where they are taken at a meeting or by written resolution. Where these decisions change the way a company is run, a copy needs to be filed at Companies House.

Keeping your public record safe

Companies House has recently reported increasing levels of fraudulent filing of information. A favourite ploy is to change the company's registered office by submitting the appropriate form to Companies House. Once this has been accepted, the fraudsters can change directors or file false accounts without the company having any idea that they have been hijacked! They can then buy goods or obtain credit based on this false information.

Companies House is keen for companies to file their information online. This can be a very secure method, particularly if the company signs up for the enhanced security arrangements offered by their PROOF (protected online filing) system, which prevents the paper filing of certain forms.

Changes to come

The government published a white paper at the end of February 2022 setting out its position on reforming Companies House ahead of introducing legislation into Parliament. The key changes being proposed include expanding the role of the Registrar in order to maintain the integrity of information held on the public register, the introduction of identity verification for those forming, managing and controlling companies and improving the financial information that is available, including the requirement for iXBRL tagging of accounts being filed and the removal of the ability for small companies to file abridged or fileted accounts. It has been confirmed that there are no plans though to amend the deadlines for filing accounts which will come as a relief to many.

The Economic Crime and Corporate Transparency bill achieved Royal Assent on 26th October 2023. The first of the measures in the act are expected to be introduced from Spring 2024, however many of the changes need system development and secondary legislation before they're introduced. Over time, the measures introduced will lead to improved transparency and more accurate and trusted information on the registers.

3. Criminal Finances Act 2017

The Criminal Finances Act makes companies and partnerships criminally liable for failing to prevent tax evasion. At Franklyn & Co, we can provide guidance on the key aspects of the Act and the implications for your business in the Nottinghamshire area.

Under the Criminal Finances Act 2017 (CFA) companies and partnerships may be criminally liable for failing to prevent their employees from criminally facilitating tax evasion. A potential defence can be utilised, in cases where the business has put into place a system of reasonable prevention measures. Here, we take a look at the key aspects of the Act and the implications for your business.

Outlining the Act

Under the CFA, two criminal offences were introduced:

Domestic fraud offence

The domestic fraud offence criminalises companies, partnerships and relevant bodies for failing to put into place reasonable prevention measures to stop their employees, agents or associated persons from facilitating tax evasion.

Overseas fraud offence

This offence criminalises corporations trading within the UK who fail to implement reasonable procedures to prevent their employees, agents or representatives from facilitating tax evasion in another jurisdiction.

The rules apply to tax evasion committed both onshore and offshore, and are applicable to all taxes.

Three stages to the facilitation of tax evasion

Under the CFA, there are three stages that apply to both the domestic and the foreign tax evasion facilitation offences. Only the UK offence is considered here, additional requirements apply for the foreign offence.

Stage one

The criminal evasion of tax (including national insurance contributions (NICs) is committed by a taxpayer.

Stage two

The criminal facilitation of tax evasion is committed by an 'associated person' of the 'relevant body'.

Stage three

The relevant body failed to prevent its employee from criminally facilitating tax evasion, or failed to implement reasonable measures to prevent the employee from committing the facilitation of tax evasion.

Under the CFA, only 'relevant bodies' and legal entities, such as incorporated bodies and partnerships, can commit the new offences. Natural persons, as opposed to legal persons, cannot commit the offences.

'Relevant body' refers to body corporates (including LLPs), and partnerships (whether incorporated or formed). Meanwhile, a person acts in the capacity of an 'associated person' if they are:

an employee of a relevant body, acting in the capacity of an employee

an agent of a relevant body, acting in the capacity of an agent

any other person who performs or intends to perform services for or on behalf of a relevant body, who is acting in the capacity of an individual performing such services (for instance, a subcontractor).

Where stages one and two have been committed, the relevant body is deemed to have committed a corporate offence (subject to a reasonable defence being claimed).

Stage three does not essentially alter what is considered to be a criminal act, but focuses on who is held accountable.

Making use of a 'reasonable defence'

Under the CFA, the onus is on the relevant body in question to demonstrate that it has implemented adequate procedures within the business to protect against the criminal facilitation of tax evasion. If the organisation can prove that it implemented stringent procedures, prosecution will be 'unlikely'.

A relevant body may utilise a defence whereby they can prove that, when the tax evasion facilitation offence was committed, it had appropriate prevention procedures in place.

'Prevention procedures' here refers to procedures designed to prevent persons acting in the capacity of someone associated with a relevant body from committing UK tax evasion facilitation offences. The new Act does not require relevant bodies to have 'excessively burdensome' procedures, but it does require more than 'mere lip service'.

High risk

The government advises organisations within 'high risk' sectors, such as banks and financial services companies, carry out thorough risk assessments to establish the likelihood of their associated persons committing the criminal act of facilitation of tax evasion. It is recommended that such organisations follow government advice on the matter.

What does my business need to do?

HMRC has published guidance on the procedures that relevant bodies (ie. your organisation) should have in place in order to help prevent their associated persons from committing the criminal offence of the facilitation of tax evasion. This can be accessed here.

The HMRC guidance is designed to help you understand the types of processes available.

The six 'guiding principles'

The government has outlined six 'guiding principles' that can be used to help inform preventative processes. Each of the principles aims to advise organisations in respect of assessing the risk of their associated persons criminally facilitating tax evasion.

1. Risk assessment

As a relevant body, you are advised to assess the nature and the extent to which you are exposed to the risk of their associated persons committing the facilitation of tax evasion. HMRC recommends that you 'sit at the desk' of your 'associated persons' and consider whether they have a motive, the opportunity and the means to criminally facilitate tax evasion.

You should ask:

Is the work that 'associated persons' carry out subject to monitoring or scrutiny?

How likely is the criminal facilitation of tax evasion by an 'associated person' to be detected?

Are there any products or services that 'associated person' use that could be open to abuse?

How often do those within high risk roles receive fraud training, and how vigorously is this training evaluated?

2. Proportionality of risk-based prevention procedures

Your reasonable procedures must take into account the nature, scale and complexity of its preventative activities. Organisations in sectors such as the banking industry or the accountancy sector may find that they are exposed to more significant risks than others.

3. Top level commitment

Senior management need to be committed to preventing ‘associated persons’ from criminally facilitating tax evasion. A ‘zero tolerance’ attitude may be adopted, and managers should ensure that the consequences of the criminal facilitation of tax evasion are outlined to their associated persons.

Managers are urged to:

Outline the consequences of failing to comply with the relevant body’s facilitation of tax evasion policy

Refrain from utilising the services of those who do not have the appropriate preventative measures in place

Communicate the relevant body’s main preventative procedures.

4. Due diligence

In order to mitigate any potential risks, you must ensure you apply proportionate due diligence procedures in relation to persons who perform or intend to perform services on their behalf.

Ask yourselves:

How well do you know the persons performing tasks on behalf of your organisation? Do you need to carry out any additional checks on them?

Does your organisation require annual certificates to show that you are complying with the CFA?

If you plan to acquire or merge with another business, have you considered the CFA implications?

5. Communication

The associated persons of your organisation must receive thorough and adequate training in regard to the criminal facilitation of tax evasion, and prevention policies must be well-communicated, understood and implemented through the workforce.

Your communication should seek to outline:

The policies and procedures in place to prevent the criminal facilitation of tax evasion

How to seek advice or report any concerns in regard to the criminal facilitation of tax evasion

What is meant by tax evasion and associated fraud

An employee’s duty under the CFA.

6. Monitoring and review

Detailed reviews must be carried out of your preventative measures, and changes must be made to these where necessary. Typically, the nature of the risks you face will evolve over time: as such, senior management must ensure that the organisation adapts in response.

Ways to review your procedures:

Through feedback provided by internal staff members

Through periodic reviews, accompanied by documented findings

By working alongside other organisations facing similar risks.

Non-compliance: what are the penalties?

HMRC states: ‘The legislation aims to tackle crimes committed by those who act for or on behalf of a relevant body.’ Under the CFA, relevant bodies who fail to prevent their associated persons from committing the criminal act of facilitation of tax evasion are subject to unlimited fines and ancillary orders, such as serious crime prevention orders or confiscation orders.

4. Directors' responsibilities

Becoming a director carries with it potentially onerous duties. Make sure you know what those duties are. If you are located in the Nottinghamshire area we, at Franklyn & Co, can provide professional advice to help you fulfil your duties and obligations.

The position of director brings both rewards and responsibilities upon an individual.

Whether you are appointed to the Board of the company you work for or you are involved in establishing a new business and take on the role of director you will feel a sense of achievement.

However the office of director should not be accepted lightly. It carries with it a number of duties and responsibilities. We summarise these complex provisions below.

Companies

You can undertake business in the UK as either:

an unincorporated entity, i.e. a sole trader or a partnership or

an incorporated body.

An incorporated business is normally referred to as a company. Although there are limited liability partnerships and unlimited companies the vast majority of companies are limited by shares. This means the liability of shareholders is limited to the value of their share capital (including any unpaid).

A limited company can be a private or public company. A public company must include 'public' or 'plc' in its name and can offer shares to the public.

The responsibilities and penalties for non compliance of duties are more onerous if you are a director of a public company.

Directors

When you are appointed a director of a company you become an officer with extensive legal responsibilities. For a director of an incorporated body, the Companies Act 2006 sets out a statement of your general duties. This statement codifies the existing 'common law' rules and equitable principles relating to the obligations of company directors that have developed over time. Common law had focused on the interests of shareholders. The Companies Act 2006 highlights the connection between what constitutes the good of your company and a consideration of its wider corporate social responsibilities.

The legislation requires that directors act in the interests of their company and not in the interests of any other parties (including shareholders). Even sole director/shareholder companies must consider the implications by not putting their own interests above those of the company.

The aim of the codification of directors' duties in the Companies Act 2006 is to make the law more consistent and accessible.

The Act outlines seven statutory directors' duties, which also need to be considered for shadow directors. These are detailed below.

Duty to act within their powers

As a company director, you must act only in accordance with the company's constitution, and must only exercise your powers for the purposes for which they were conferred.

Duty to promote the success of the company

You must act in such a way that you feel would be most likely to promote the success of the company (i.e. its long-term increase in value), for the benefit of its members as a whole. This is often called the 'enlightened shareholder value' duty. However, you must also consider a number of other factors, including:

the likely long-term consequences of any decision

the interests of company employees

fostering the company's business relationships with suppliers, customers and others

the impact of operations on the community and environment

maintaining a reputation for high standards of business conduct

the need to act fairly as between members of the company.

Duty to exercise independent judgment

You have an obligation to exercise independent judgment. This duty is not infringed by acting in accordance with an agreement entered into by the company which restricts the future exercise of discretion by its directors, or by acting in a way which is authorised by the company's constitution.

Duty to exercise reasonable care, skill and diligence

This duty codifies the common law rule of duty of care and skill, and imposes both 'subjective' and 'objective' standards. You must exercise reasonable care, skill and diligence using your own general knowledge, skill and experience (subjective), together with the care, skill and diligence which may reasonably be expected of a person who is carrying out the functions of a director (objective). So a director with significant experience must exercise the appropriate level of diligence in executing their duties, in line with their higher level of expertise.

Duty to avoid conflicts of interest

This dictates that, as a director, you must avoid a situation in which you have, or may have, a direct or indirect interest which conflicts, or could conflict, with the interests of the company.

This duty applies in particular to a transaction entered into between you and a third party, in relation to the exploitation of any property, information or opportunity. It does not apply to a conflict of interest which arises in relation to a transaction or arrangement with the company itself.

This clarifies the previous conflict of interest provisions, and makes it easier for directors to enter into transactions with third parties by allowing directors not subject to any conflict on the board to authorise them, as long as certain requirements are met.

Duty not to accept benefits from third parties

Building on the established principle that you must not make a secret profit as a result of being a director, this duty states that you must not accept any benefit from a third party (whether monetary or otherwise) which has been conferred because of the fact that you are a director, or as a consequence of taking, or not taking, a particular action as a director.

This duty applies unless the acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.

Duty to declare interest in a proposed transaction or arrangement

Any company director who has either a direct or an indirect interest in a proposed transaction or arrangement with the company must declare the 'nature and extent' of that interest to the other directors, before the company enters into the transaction or arrangement. A further declaration is required if this information later proves to be, or becomes either incomplete or inaccurate.

The requirement to make a disclosure also applies where directors 'ought reasonably to be aware of any such conflicting interest.

However, the requirement does not apply where the interest cannot reasonably be regarded as likely to give rise to a conflict of interest, or where other directors are already aware (or 'ought reasonably to be aware') of the interest.

Enforcement and penalties

The Companies Act states that they will be enforced in the same way as the Common Law, although under Company Law. As a result there are no penalties in the Companies Act 2006 for failing to undertake the above duties correctly.

Enforcement is via an action against the director for breach of duty. Currently such an action can only be brought by:

the company itself (i.e. the Board or the members in a general meeting) deciding to commence proceedings; or

a liquidator when the company is in liquidation.

an individual shareholder can take action against a director for breach of duty. This is known as a derivative action and can be taken for any act of omission (involving negligence), default or breach of duty or trust.

Where the company is controlled by the directors these actions are unlikely.

5. Grants

Grants are sums of money awarded, by the government or other organisations, for a specific project or purpose. Generally the amount is not repayable. If your business is in the Nottinghamshire area we, at Franklyn & Co, can help you find an appropriate source of grant funds and help you with your business plans.

Ensuring adequate finance is a fact of life if you run a business. Whether you are looking to expand, undertake a specific project or simply fund your day to day purchases, finance is essential.

Obtaining finance is not always easy especially if yours is a small business and particularly if it is a recent start-up. Borrowing may be difficult due to lack of security.

A grant may be the answer.

What is a grant?

A grant is a sum of money awarded, by the government or other organisation, for a specific project or purpose. Normally it will cover only some of the costs (typically between 15% and 50%); the business will need to fund the balance. One of the main features of a grant is that the money is not repayable provided that the terms and conditions of the grant are met but, having said that, their availability is limited and competition for the funds can be quite intense.

This sounds quite simple in principle. However, in practice, it can be somewhat daunting because of the huge number of different schemes in operation and the fact that schemes are constantly changing. Government grants are distributed through a variety of ministries, departments and agencies both on a national and local basis. They are usually for proposed projects only, so ensure you have not already started the project otherwise you may not be entitled to the grant.

The following website may help with initial research into grant availability: www.gov.uk/business-finance-support-finder.

Grants can also be received through Local Enterprise Partnerships (LEPs), local authorities and charitable organisations.

Is my business eligible?

Many of the available schemes are open to all without restriction. Eligibility for others will generally depend upon a number of factors:

geographical location of the business - for example some schemes are targeted in areas of social deprivation or high unemployment

size of business - for example some schemes are restricted to small or medium sized businesses – such as those businesses with fewer than 250 employees

industry or sector in which the business operates - for example some schemes aim to tackle particular problems or issues affecting an industry sector

purpose of the grant - grants are often awarded for specific purposes - for example purchasing a new machine or increasing employment. Grant bodies often seek specific targets which are often in line with their own objectives.

Applying for a grant

Before applying

Initial research is essential so that you know what's on offer.

It is also necessary to ensure that you:

have funds available to 'match' any grant that may be awarded (where this is a condition of the grant)

need the money for a specific 'project' or purpose

have a business plan

do not start work on the project before the award is confirmed.

Making the application

It is a good idea, if possible, to make personal contact with an individual involved in administering your chosen scheme. This will give you a feel for whether it is worthwhile proceeding before you spend too much time on a detailed application. You may also be able to get some help and advice on making the application.

It is also a good idea where you can to apply as soon as possible after launch of the scheme. Many grant schemes run for a limited period of time; there will be more money available at an early stage and the administrators will be keen to receive applications and make awards.

The application itself should focus on the project for which you are claiming a grant. It should include an explanation of the potential benefits of the project as well as a detailed plan with costings. You should ensure that your application matches the objectives of the scheme. You will almost certainly need to submit a business plan as part of the application. It is important to show that the project is dependent on grant funds to proceed and that you have matching funds available.

Hearing back

This can take anything from a few weeks to a year or more. Your application will generally be assessed by looking at a variety of factors including your approach, your expertise, your innovation and your need for the grant.

6. Micro Entity Accounting

This factsheet considers the options available to micro entities when preparing their accounts. At Franklyn & Co, we can provide guidance on the options available and their implications in the Nottinghamshire area.

Small companies, which qualify as 'micro-entities', have a choice of accounting standards:

to use the same accounting standard - FRS 102 - as larger UK companies but using a reduced disclosure regime (section 1A) within the standard, or

to apply an alternative standard - FRS 105.

FRS 102 introduced some significant accounting challenges including more widespread use of ‘fair value’ accounting so there may be a temptation to use FRS 105 as fair value accounting must not be applied. However this may not always be the best choice for the company.

Qualifying as a micro-entity

The main criterion is based on size limits. The company has to meet two out of three size limits, for two consecutive years:

turnover of £632,000,

total assets of £316,000 and

10 or fewer employees (averaged throughout the year).

Certain financial services firms, such as credit institutions and insurers, and also charities, are excluded from qualifying and there are special rules if the company is part of a group.

Simplified accounts

Accounts prepared under FRS 105 need consist of only a simplified Profit & Loss Account (the accounts filed at Companies House need not include this), a Balance Sheet and four notes to the balance sheet.

Company law presumes that micro-entity accounts prepared as above give a true and fair view. This means that the company is not required to add any further disclosure. If instead the company opts for the reduced disclosure regime under FRS 102, there may be a need for extra disclosure to ensure that the accounts give a true and fair view.

Simpler accounting

FRS 105 imposes simpler accounting treatment compared to FRS 102. There are numerous differences between FRSs 102 and 105 but the three most significant are likely to be:

Revaluation / fair value of assets

This is not permitted under FRS 105. By contrast, FRS 102 permits (and in some cases requires) some assets to be measured at fair value annually.

Avoiding the need to obtain regular fair values may prove more convenient and less costly for the business. However, if the company is currently revaluing properties and has significant loans and other debts against these properties, using FRS 105 would mean re-measuring the properties at 'depreciated cost', which could reduce the balance sheet value considerably.

Fewer intangible assets

Under FRS 105, fewer intangible assets are recognised than under FRS 102. For instance, if the company were to acquire a business, the purchase price will be divided between tangible assets and liabilities and goodwill - the company would not need to identify separate individual intangible assets such as customer lists and brand names. It also means, however, that internally-generated intangibles such as development costs cannot be treated as assets; instead, such costs must be expensed through profits as incurred.

No more deferred tax

FRS 105 does not allow companies to recognise deferred tax. By contrast, FRS 102 includes deferred tax more frequently than before.

Other things to consider

The relatively brief information presented within micro-entity accounts means that less financial detail is available to the public (via the filed accounts at Companies House). Directors may find this an advantage; however, it remains to be seen whether this lack of information could damage the company's credit-rating. The shareholders of the company will also receive less information in their members' accounts.

Directors can provide more information in the accounts than the statutory minimum, should they prefer to do so. We will be happy to supplement the minimum statutory information with extra analysis so that directors have enough financial detail to make informed decisions in running the business.

We want to ensure that directors are prepared and informed about the accounting choices for the company, which include (but are not limited to) the issues we have covered above. Please do get in touch.

7. Preparing for your accountant

Thank you for allowing us, at Franklyn & Co, to provide you with a service in the Nottinghamshire area. Whether we are producing your accounts or carrying out tax compliance work, being prepared for us will ensure our work is carried out smoothly and efficiently and with the minimum disruption to yourselves. We highlight the ways in which you can help.

You may also be able to help by preparing some of the routine schedules for us. This will mean our time can be better spent advising you on the running of your business.

Below we highlight some of the ways in which you can prepare.

It is however important for you to discuss these ideas with us since all of the suggestions may not be applicable.

Setting the scene

Keeping us informed

We will be better prepared if we know of any changes in your business that could affect our work. These could include changes to:

product or market

business strategy eg pricing policy

bookkeeping system

key personnel.

If you maintain minutes of any management meetings that you hold providing us with copies of these can be a very helpful way for us to gain an understanding of the key events that you have faced over the course of the year.

Also as part of our work it is likely that we will ask you whether there have been any instances of non-compliance with the legal and regulatory framework in which your business operates, including whether there has been any fraudulent activity that you are aware of. This represents part of our obligations that we are required to perform as your professional adviser and is not meant to imply that we believe that you may have committed any wrongdoing.

What we need

If you know what information we need to be able to complete our work you can make sure it is available.

We can decide together what you can prepare for us and what we will need to prepare for ourselves.

Better communication between us will help to minimise misunderstandings and avoid unnecessary work.

Timetable

We need to agree a suitable timetable in advance. This gives us both a chance to be properly prepared.

However, if you find yourself behind schedule let us know as soon as possible so that the timetable can be rearranged if necessary.

How you can help

Books and records

Setting up and maintaining your books in an organised manner will help us to extract quickly and easily the information needed to prepare or audit your accounts. It will also enable you to see at a glance the state of your business.

Consideration of the following points may improve the organisation of your records:

totalling and balancing your books at regular intervals will help you spot and correct any mistakes

analysing your payments and receipts so that information can be easily extracted

filing your invoices in a logical order (numerical, alphabetical or date) to make it easy to find any one of them.

Procedures

By establishing and maintaining certain procedures you will be able to keep a better control over your records and your business. It will also mean we can cut down on the work we need to do which may save you some money.

We can help you set up these procedures initially and once established you will be able to carry them out yourself. These procedures will include control accounts, reconciliations and stocktaking.

Control accounts

Control accounts record the movements of cash, debtors and creditors by using the monthly totals from your cash book and sales and purchases summaries.

The cash control account will show how much cash the business has at the end of each month.

The debtors or sales ledger control account will show how much your customers owe you at the end of each month.

The creditors or purchase ledger control account will show how much you owe your suppliers at the end of each month.

Reconciliations

Reconciliations help to ensure that the figures in your books are complete and accurate. Therefore if produced on a regular basis they will help you spot any errors which can then be corrected before we examine your records. Some of the records which will need reconciling are:

bank accounts

control accounts

suppliers' statements.

Stocktake

If your business carries any stock you will need to count it at least once a year. To ensure that the count is carried out efficiently and accurately you should consider the following points:

stock items should be stored neatly and logically to make counting easier

all staff involved in counting should be given clear instructions

try to minimise the movement of stock during the count. If possible deliveries in and out should be withheld until the counting has finished

spot checks should be performed during the count.

If you hold large amounts of stock we may need to attend the stocktake and perform our own checks.

Schedules

There are a number of schedules which have to be produced in order that the accounts can be prepared and/or audited. We can prepare all of these schedules ourselves but obviously if you were to produce them it would save time and money.

You may wish to consider the preparation of some of the following schedules:

a detailed list of additions and disposals of fixed assets with a copy of the appropriate sales and purchase invoices attached

schedules showing each item of stock held, the quantity, unit value and total value. Indicate any stock items which are old or damaged

a list of your debtors at the year end including how much they owe you and how long they have been outstanding. Indicate any which are unlikely to pay you

a schedule of all bank and cash balances at the year end, together with all the bank statements for each bank account

a list of creditors which should include HMRC as well as the usual business suppliers.

supporting workings for disclosures that need to be included in your accounts, such as average employee numbers, operating lease commitments or directors' remuneration (required for companies only).

Not all of these schedules will be applicable to your business and therefore before doing anything you may wish to discuss this with us.

Other issues

Some issues are only relevant to companies. These include:

Narrative reports

Larger businesses may be required to include some form of narrative reporting that accompanies the accounts such as a strategic report. This is your opportunity to provide additional information that can support the users of your accounts' understanding of your business and its performance. If this is the case we will discuss these requirements with you so that you can produce the wording of any necessary reports.

Future plans

As part of the accounts production process you are required to consider the business' going concern position, to ensure that you are confident that it will have sufficient resources to remain in business for a minimum period of 12 months from the date that the accounts are approved. In addition you are also required to consider whether there is any evidence that the value of your assets has been impaired, for example as a result of obsolescence caused by changes in the market or technological developments.

If there is any uncertainty regarding the business' future performance we may ask you to provide evidence in support of your going concern assessment. This could include forecast results and cash flow projections, sales orders received or details of new sources of funding. Providing these at the earliest opportunity will ensure that our work can be completed as quickly and efficiently as possible.

8. Register of people with significant control

All companies are required to keep a Register of People with Significant Control (PSC) and to file relevant information at Companies House. At Franklyn & Co, we can provide guidance on PSC obligation in the Nottinghamshire area.

All companies (except certain listed companies) are required to keep a register of people with significant control (PSC register) and, file relevant information at Companies House. This requirement is in addition to those in respect of existing registers.

The requirement to keep a PSC register has the objective of increasing transparency over control and ownership of UK companies. However, this places additional obligations on companies, their officers and the people with significant control over them.

What are the requirements?

The new requirements include:

taking reasonable steps to find out whether there are people with significant control (PSCs)

contacting people identified as relevant, or others who may know them, to confirm whether they are a PSC

obtaining or confirming relevant information to put in the PSC register

putting information obtained into the PSC register

keeping the PSC register up to date.

Changes to the information on persons of significant control must be updated on the company's own register within 14 days and notified to Companies House within a further 14 days. Regardless of any changes companies must also confirm, through their annual confirmation statement, that the information about their PSCs, as held on the central register, is correct.

If at any time the company is aware that the information on the PSC register needs to change, but the relevant information has not yet been confirmed, the register must be updated to show the date from which the information was no longer correct and the status of the investigation into the new PSCs.

What is meant by a PSC?

A PSC is defined as an individual that meets on or more of the following conditions:

holds, directly or indirectly, more than 25% of the shares or voting rights in the company

holds the right, directly or indirectly, to appoint or remove a majority of the board of directors of the company

has the right to exercise, or actually exercises, significant influence or control over the company

where a trust or firm would satisfy any of the above conditions, any individual that has the right to exercise, or actually exercises, significant influence or control over the activities of that trust or firm.

A company must take reasonable steps to identify its PSCs. Some companies may have no PSCs or find it easy to ascertain who the PSCs are, but others may have to carefully follow all the steps laid out to try to establish if there are any PSCs and, if so, their identity and details.

In some cases a company is owned or controlled by a legal entity, rather than an individual. Details of relevant and registrable legal entities must also be put on the PSC register. An entity that owns or controls a company is relevant if it keeps its own PSC register or has voting shares admitted to trading in certain markets (eg it is listed on the London Stock Exchange).

What information is required to be kept on the register?

The PSC register must be kept, and it cannot be blank! Where, for example, a company is in the process of obtaining information or confirming, a specific statement to that effect is required by law to be made in the PSC register.

New information must be entered on your company’s PSC register within 14 days and filed with Companies House within a further 14 days. Failure to comply with these requirements is a criminal offence.

The particulars of a relevant individual that are required to be obtained and confirmed for inclusion in a company's PSC register include:

their name

their date of birth

their nationality

the country, state (or part of the UK) in which the PSC usually resides

a service address

their usual residential address (if different to the service address)

the date on which the individual became a PSC in relation to the company

the nature of the PSC’s control over the company using the official wording any restrictions on disclosing the PSC's information that are in place.

A specific statement is also required in the PSC register if you believe the company has no PSCs.

Information about a PSC must be confirmed before you enter it on the PSC register. Information can be treated as confirmed if the PSC:

supplied the information or was aware the information was being provided

has been asked to confirm that the information is correct and has done so

has previously confirmed the information and there is no reason to believe it has changed.

Do PSCs have any obligations?

There are a number of legal obligations on a PSC. For example, a relevant individual that does not respond to requests for PSC information may be committing a criminal offence. A company is also entitled to apply restrictions to shares or rights in the company held by the individual who is not responding.

Is information held on the PSC register publicly available?

Almost all of the information on the central PSC register is available to the public. The only information that will not be available is the PSC’s usual residential address (unless this has been supplied as the service address) and the day of the PSC’s date of birth. The PSC register that you keep must be available for public inspection, but you should not provide the usual residential address of any PSC when it is inspected or a copy is requested.

If you choose to keep your PSC register only at Companies House then all of the information that would otherwise appear in the company’s PSC register will be available publicly. This means your PSC’s full date of birth will appear, but the residential address will still be suppressed.

In exceptional circumstances (where there is a serious risk of violence or intimidation) there is a regime for suppressing all information relating to the PSC from the PSC register and the central register for public inspection or for preventing their residential address being shared with credit rating agencies.

Of course all of the information will be available to law enforcement agencies and Companies House will supply information regarding residential addresses and dates of birth to credit reference agencies and certain public authorities in certain circumstances.

What happens if the company does not comply with the requirements?

Failure to comply with the requirements of the PSC regime could lead to the company or directors, or identified PSCs committing a criminal offence. The company and its directors could face a fine or imprisonment, or both.

In this regard it should be noted that under the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (as amended) those in the regulated sector for anti-money laundering purposes, such as accountants or solicitors, have a duty to inspect a company's PSC register and report any discrepancies in beneficial ownership to Companies House.

Is further guidance available?

The Department for Business, Energy & Industrial Strategy has issued a significant amount of additional information in the form of summary, statutory and non-statutory guidance in this area. This guidance contains, for example, further detail of the requirements and processes involved at various stages of keeping the PSC register, official wording for entering on the PSC register and example notices relating to obtaining and confirming PSC information.

9. Running a limited company

Running a limited company presents a range of unique challenges and responsibilities. At Franklyn & Co, we can provide guidance on the rules regarding the reporting and financial responsibilities in the Nottinghamshire area.

A limited company is a separate legal entity and the finances of a limited company are separate to the individual shareholders and directors finances. Limited companies are subject to tight reporting and financial responsibilities and the directors of the limited company have their own duties and responsibilities.

Here we outline what owners (the shareholders) should be aware of in order to successfully run their company.

Administration

Shareholders

Companies which are limited by shares are usually businesses which set out to make a profit. The shares are owned by the shareholders (who can be individuals, another company or an institution) who must own at least one share of the company. A shareholder invests money in the company by buying shares and has the potential for sharing in the profits of the company. The liability of shareholders is limited to the value of their share capital (including any unpaid part).

The shares issued to the shareholders are decided upon and noted in the Memorandum of Association, which is the initial document setting up the company. The type of shares or the ‘class’ is recorded together with what rights the shares give to each of the shareholders. This could be the amount of dividend to be paid, if the shares can be redeemed (exchanged) for cash, if the share gives a right to vote on company matters and how many votes each share receives.

The rules for operating the company are contained in the Articles of Association.

When a company is formed the Memorandum and Articles of Association are produced and completed by the initial shareholders.

Dividends

Dividends are paid from the profits of the company once the tax liability has been met. Dividends can be paid at a different rate on the different types of shares issued by the company. They can either be paid as a final dividend after the year end, or can be paid as an interim dividend in advance of the final profits being established, however it is a legal requirement for the profits of the company to be sufficient to pay these dividends after allowing for the corporation tax liability.

Dividends are income for the shareholders and are subject to the shareholders' individual tax rates, depending on the shareholders' own individual circumstances.

Limited liability

A company normally provides limited liability. If a shareholder’s shares are fully paid they cannot normally be required to invest any more in the company. However, banks may require personal guarantees from the directors for borrowings. The advantage of limited liability will generally apply in respect of liabilities to other creditors.

Legal continuity

A company will enjoy legal continuity as it is a legal entity in its own right, separate from its owners (the shareholders). It can own property, sue and be sued.

Directors

A director can be involved from the start in establishing a new company or appointed to the Board of a company. A director is an officer of the company with extensive legal responsibilities. The Companies Act 2006 sets out a statement of general duties.

The legislation requires that directors act in the interests of their company and not in the interests of any other parties (including shareholders). Even sole director/shareholder companies must consider the implications by not putting their own interests above those of the company.

The Companies Act 2006 outlines seven statutory directors' duties:

Duty to act within their powers - in accordance with the company's constitution.

Duty to promote the success of the company.

Duty to exercise independent judgment.

Duty to exercise reasonable care, skill and diligence.

Duty to avoid conflicts of interest.

Duty not to accept benefits from third parties.

Duty to declare interest in a proposed transaction or arrangement.

Where a company director’s income is all taxed at source there is no need for them to file a self assessment tax return, providing earnings are less than £100,000.

Company secretaries

Since April 2008, unless there is an express requirement in the company's articles of association, the Companies Act 2006 no longer requires private limited companies to appoint a company secretary. Even if the articles do require it, it is relatively straightforward for the directors of a company to amend the provision, subject to shareholder agreement.

The important tasks that would normally fall to a company secretary, including shareholder administration and communication, corporate governance and statutory compliance, must still be done. In the absence of a company secretary, company law states that directors must take on this responsibility.

The company should inform Companies House of the resignation of any existing company secretary.

Maintaining statutory registers

All companies must maintain up-to-date registers of key details. These include:

register of members

register of directors

register of directors' residential addresses

register of mortgages and charges

register of debentures

details of indemnities

minutes of board meetings, including results of any shareholder votes and resolutions

minutes of general meetings, including results of any shareholder votes and resolutions

directors service contracts

details of transactions when someone buys shares in the company

register of People with Significant Control (anyone who has more than 25% shares or voting rights in the company, can appoint or remove a majority of directors or has the right to exercise, or actually exercises significant influence or control the company).

Failure to keep the registers up to date can incur a penalty of up to £5,000.

The registers must be made available for inspection by the general public at the company's registered office or at a single alternative inspection location (SAIL), which must also be recorded at Companies House.

Accounts and Confirmation Statement

There is a requirement for a company to prepare financial statements and for tax purposes a requirement to maintain accounting records for six years from the end of the last company financial year they relate to, or longer if they show a transaction that covers more than one of the company's accounting periods, the company has bought something that it expects to last more than six years, like equipment or machinery, the company tax return was filed late or HMRC started a compliance check into the company tax return.

A company’s accounts and confirmation statement (previously annual return) must be filed annually with the Registrar of Companies. Non-compliance can lead to penalties, disqualification of company directors and the company may be struck off.

Penalties

The Companies Act 2006 provides for the Registrar of Companies to charge penalties and fines, including a penalty of between £150 - £1,500 for the late filing of accounts (the amount depends on the status of the company and the degree of lateness and is doubled if late for two successive years).

Failure to file Confirmation Statements, annual returns or accounts is a criminal offence which can result in directors being fined personally in the criminal courts.

Insurance

Insurance cover should be reviewed for Public Liability, Professional Indemnity and if the company takes on staff, Employers' Liability.

Taxation

PAYE, NICs and employing staff

For the directors of the company who receive a salary it will be necessary to register for a Pay As You Earn (PAYE) scheme and the payments made will need to be considered for deduction of PAYE tax, National Insurance contributions (NICs) and pensions auto-enrolment.

If the company employs staff members, they will be paid on a regular basis and along with PAYE tax, NICs and pensions auto-enrolment deductions from their wage the company as an employer will potentially be required to pay an employers' NIC and pensions auto-enrolment contribution.

The company directors and employees are able to receive benefits-in-kind from the company (for example company cars and private medical insurance). Most benefits are subject to income tax and the company will have to meet an extra charge of NICs on the value of the benefits. Special rules apply to company directors who receive loans from the company at no or beneficial rates of interest.

VAT

VAT is a tax charged when a VAT registered business sells its goods or services. The company collects this tax and pays it over to HMRC typically on a quarterly basis. The company may also pay VAT on items purchased and in some circumstances can deduct the VAT it has paid from the VAT it has collected from customers.

A company must register for VAT within 30 days of the end of any month, when the total VAT taxable turnover for the last 12 months was over the VAT threshold, or if you expect turnover to go over the VAT threshold in the next 30 days.

Corporation tax and self assessment (CTSA)

The company will be subject to corporation tax.

The main rate of corporation tax increased from 19% to 25% on 1 April 2023 for companies with profits over £250,000. The 19% rate became a small profits rate payable by companies with profits of £50,000 or less. Companies with profits between £50,000 and £250,000 will pay tax at the main rate reduced by a marginal relief, providing a gradual increase in the effective corporation tax rate.

CTSA key features

A company has to calculate its own corporation tax liability.

A company is required to pay the tax due in advance of filing a tax return.

A 'process now, check later' enquiry regime applies when the tax return is submitted.

The inclusion in the tax return of the liabilities of close companies on loans and advances to shareholders and others, and of liabilities under Controlled Foreign Companies legislation.

The requirement for companies to self assess by reference to transfer pricing legislation.

Notice to file

Every year, HMRC issues a notice to file to companies. In most cases, the return must be submitted to HMRC within 12 months of the end of the accounting period.

Companies must file their corporate return online. Their accounts and computations must also be filed in the correct format - inline eXtensible Business Reporting Language (iXBRL).

Penalties

Penalties apply for late submission of the return of £100 if it is up to three months late and a further £100 if the return is over three months late. Additional tax-geared penalties apply when the return is either six or 12 months late. These penalties are 10% of the outstanding tax due on those dates.

Submission of the return

The return required by a notice to file contains the company's self assessment, which is final, subject to:

taxpayer amendment

HMRC correction; or

HMRC enquiry.

The company has a right to amend a return (for example changing a claim to capital allowances). The company has 12 months from the statutory filing date to amend the return.

HMRC has nine months from the date the return is filed to correct any 'obvious' errors in the return (for example an incorrect calculation). This process should be a fairly rare occurrence. In particular the correction of errors does not involve any judgement as to the accuracy of the figures in the return. This is dealt with under the enquiry regime.

Payment

Payment of the corporation tax liability must be made by the due date, which is usually nine months and one day after the end of the accounting period. Interest is charged on the late payment of corporation tax.

10. Small Company Accounting

We consider the reporting requirements and their impact. At Franklyn & Co, we can provide guidance on the reporting standards in the Nottinghamshire or surrounding areas.

The required format of statutory accounts that small companies have to prepare and send to Companies House has changed. This factsheet sets out the choices that small companies now have. The nature of the company's activities, the types of assets which it has and whether external scrutiny is required/desired will need to be considered.

We would be happy to assist you in providing specific advice for your company.

UK GAAP for small companies

Small companies, depending on size, have the following options:

to use the same accounting standard as non-small UK companies - FRS 102

to use the FRS 102 reduced disclosure regime (section 1A), or

where relevant, to apply an alternative standard - The Financial Reporting Standard applicable to the Micro-entities - FRS 105.

Size limits for small and micro-entities

The size limits to qualify as a small entity are set out below:

	Current
Turnover	£10.2m
Total assets	£5.1m
Employees	50

The size limits to qualify as a micro-entity are set out below:

	Current
Turnover	£632,000
Total assets	£316,000
Employees	10

A company needs to meet two out of three of the above criteria for two consecutive years to qualify as a small or micro company, unless it is the first year of the company's existence, in which case only that year has to be considered. The turnover limit is adjusted if the financial year is longer or shorter than twelve months.

There are certain exclusions from the above small and micro-entity size limits which are set out in the Companies Act 2006. Certain types of entities are prohibited from preparing micro-entity accounts, for example charities.

Small companies previously had the option of not filing their profit and loss account and/or directors' report at Companies House, known as filing 'filleted' accounts. Small companies also had the option of preparing less detailed accounts (abridged accounts) for members, providing every member agreed annually, and then upon filing were able to choose to abridge the balance sheet, the profit and loss account or both. Charities were prohibited from preparing abridged accounts.

Please note, that while the effective date is unknown, legislation changing the filing requirements for small companies has been passed into law. This means that small companies will no longer have these options available to them.

Contents of micro-entity accounts

The accounts of a micro-entity are considerably shorter and simpler than those otherwise required for a small company. Micro-companies are no longer required to prepare a Directors' report.

The profit and loss account and balance sheet include less detail. For example, current assets are shown in aggregated total on the balance sheet rather than being analysed into stocks, debtors and cash.

Notes of the following should be disclosed at the foot of the balance sheet:

off balance sheet arrangements

average monthly employees

directors' advances, credits and guarantees, and

guarantees, contingencies and other financial commitments.

Only the balance sheet and the footnotes need to be filed at Companies House. The profit and loss account does not need to be filed.

The company does not need to produce (nor file) typical small company notes such as:

accounting policies

post balance sheet events, and

related party transactions.

Fair value accounting and alternative accounting rules cannot be applied in micro-entity accounts, meaning no revaluations or measurement at fair value is permitted.

Contents of FRS 102 1A accounts

The financial statements of a small entity must give a true and fair view of the assets, liabilities, financial position and profit or loss of the small entity for the reporting period.

A complete set of financial statements of a small entity must include all of the following:

a statement of financial position as at the reporting date

an income statement for the reporting period, and

notes to the accounts.

A statement of cashflows is not required.

The following may however be required in order to show a true and fair view:

when a small entity recognises gains or losses in other comprehensive income it is encouraged to present a statement of total comprehensive income, and

when a small entity has transactions with equity holders it is encouraged to present a statement of changes in equity or a statement of income and retained earnings.

In relation to the notes of the accounts one significant exemption is available in relation to related party transactions. Only material related party transactions which are not concluded under normal market conditions will need to be considered for disclosure.

Comparison of FRS 102 1A accounts and FRS 105

The table below sets out the requirements including those encouraged for FRS 102 Section 1A and FRS 105:

	FRS 102 (Section 1A)	FRS 105
Directors' report	Yes	No
Profit and loss account	Yes	Yes
Statement of comprehensive income / Statement of total recognised gains/losses	Encouraged	No
Statement of changes in equity / Statement of income & retained earnings / shareholders' funds note	Encouraged	No
Balance sheet	Yes	Yes
Statement of cash flows	No	No

FRS 105 imposes simpler accounting treatment compared to FRS 102 Section 1A. There are numerous differences between FRS 102 Section 1A and FRS 105 but the most significant are as follows:

Revaluation / fair value of assets

Fair value accounting is not permitted under FRS 105. By contrast, FRS 102 Section 1A permits (and in some cases requires) some assets to be measured at fair value annually.

The following assets and liabilities are most significantly impacted by fair value accounting under Section 1A:

Investment properties, for example those properties held to earn rental income, should be revalued every year to fair value.

Forward foreign currency contracts require restatement to their fair value at the balance sheet date.

Loans payable or receivable (for example to or from a director) falling due more than one year, with a nil or below market rate of interest, must be measured at the present value of future cash flows, however there is an optional relaxation of this requirement permitted within FRS 102 for small entities, in certain circumstances.

Deferred tax

FRS 105 does not allow companies to recognise deferred tax. By contrast, FRS 102 Section 1A requires deferred tax to be provided on fair value adjustments, and therefore likely to occur more frequently than before.

11. Valuing your business

There are a number of methods available to calculate the value of a business. It is not a precise science but requires experience and judgement. If your business is in the Nottinghamshire area we, at Franklyn & Co, can help you value your business and help you develop an exit strategy if you have decided to sell your business.

There are many reasons why you may need to calculate the value of your business. Here we consider the range of methods available as well as some of the factors to consider during the process.

It is important to remember throughout that valuing a business is something of an art, albeit an art backed by science!

Why value your business?

One of the most common reasons for valuing a business is for sale purposes. Initially a valuation may be performed simply for information purposes, perhaps when planning an exit route from the business. When the time for sale arrives, owners need a starting point for negotiations with a prospective buyer and a valuation will be needed.

Valuations are also commonly required for specific share valuation reasons. For example, share valuations for tax purposes may be required:

on gifts or sales of shares

on the death of a shareholder

on events in respect of trusts which give rise to a tax charge

for capital gains tax purposes

when certain transactions in companies take place, for example, purchase of own shares by the company.

Share valuations may also be required:

under provisions in a company's Articles of Association

under shareholders' or other agreements

in disputes between shareholders

for financial settlements in divorce

in insolvency and/or bankruptcy matters

measuring investments for the annual financial statements.

When a business needs to raise equity capital a valuation will help establish a price for a new share issue.

Valuing a business can also help motivate staff. Regular valuations provide measurement criteria for management in order to help them evaluate how the business is performing. This may also extend to share valuations for entry into an employee share option scheme for example, again used to motivate and incentivise staff.

Valuation methods

While there is a ready made market and market price for the owners of listed public limited company shares, those needing a valuation for a private company need to be more creative.

Various valuation methods have developed over the years. These can be used as a starting point and basis for negotiation when it comes to selling a business.

Earnings multiples

Earnings multiples are commonly used to value businesses with an established, profitable history.

Often, a price earnings ratio (P/E ratio) is used, which represents the value of a business divided by its profits after tax. To obtain a valuation, this ratio is then multiplied by current profits. Here the calculation of the profit figure itself does depend on circumstances and will be adjusted for relevant factors.

A difficulty with this method for private companies is in establishing an appropriate P/E ratio to use - these vary widely. P/E ratios for quoted companies can be found in the financial press and one for a business in the same sector can be used as a general starting point. However, this needs to be discounted heavily as shares in quoted companies are much easier to buy and sell, making them more attractive to investors.

As a rule of thumb, typically the P/E ratio of a small unquoted company is 50% lower than a comparable quoted company. Generally, small unquoted businesses are valued at somewhere between five and ten times their annual post tax profit. Of course, particular market conditions can affect this, with boom industries seeing their P/E ratios increase.

A similar method uses EBITDA (earnings before interest, tax, depreciation and amortisation), a term which essentially defines the cash profits of a business. Again an appropriate multiple is applied.

Discounted cashflow

Generally appropriate for cash-generating, mature, stable businesses and those with good long-term prospects, this more technical method depends heavily on the assumptions made about long-term business conditions.

Essentially, the valuation is based on a cash flow forecast for a number of years forward plus a residual business value. The current value is then calculated using a discount rate, so that the value of the business can be established in today's terms.

Entry cost

This method of valuation reflects the costs involved in setting up a business from scratch. Here the costs of purchasing assets, recruiting and training staff, developing products, building up a customer base, etc are the starting point for the valuation. A prospective buyer may look to reduce this for any cost savings they believe they could make.

Asset based

This type of valuation method is most suited to businesses with a significant amount of tangible assets, for example, a stable, asset rich property or manufacturing business. The method does not however take account of future earnings and is based on the sum of assets less liabilities. The starting point for the valuation is the assets per the accounts, which will then be adjusted to reflect current market rates.

Industry rules of thumb

Where buying and selling a business is common, certain industry-wide rules of thumb may develop. For example, the number of outlets for an estate agency business or recurring fees for an accountancy practice.

What else should be considered during the valuation process?

There are a number of other factors to be considered during the valuation process. These may help to greatly enhance, or unfortunately reduce, the value of a business depending upon their significance.

Growth potential

Good growth potential is a key attribute of a valuable business and as such this is very attractive to potential buyers. Market conditions and how a business is adapting to these are important - buyers will see their initial investment realised more quickly in a growing business.

External factors

External factors such as the state of the economy in general, as well as the particular market in which the business operates can affect valuations. Of course, the number of potential, interested buyers is also an influencing factor. Conversely, external factors such as a forced sale, perhaps due to ill health or death may mean that a quick sale is needed and as such lower offers may have to be considered.

Intangible assets

Business valuations may need to consider the effect of intangible assets as they can be a significant factor. These in many cases will not appear on a balance sheet but are nevertheless fundamental to the value of the business.

Consider the strength of a brand or goodwill that may have developed, a licence held, the key people involved or the strength of customer relationships for example, and how these affect the value of the company.

Circumstances

The circumstances surrounding the valuation are important factors and may affect the choice of valuation method to use. For example, a business being wound up will be valued on a break up basis. Here value must be expressed in terms of what the sum of realisable assets is, less liabilities. However, an on-going business (a ‘going concern’) has a range of valuation methods available.