

A business start-up report flashcard



A company has to be created by registering with Companies House in accordance to The Companies Act 1985. When all the formalities of document creation and company acceptance are done, Companies House issues a Certificate of Incorporation, which is effectively the birth certificate of a company. As a human is considered a separate legal entity when issued with a birth certificate, so does a company.

The House of Lords with the SALOMON v SALOMON & CO Ltd case established this principle of a separate legal entity in 1897:” In the eyes of the law a company is a person capable of perpetual succession** and quite distinct from the natural persons who are its members at any given time. “ perpetual succession = A company created by a process of law can only be destroyed by a process of law. It will exist even if all its human members are dead because is a separate legal person. As a Private Limited Company is a separate legal entity, it can own property, borrow, sue and be sued. For this reason members of a Private Limited Company have limited liability.

Limited liability ensures that an investor will only lose what he has invested should the company cease to exist. Although it may seem a little severe for someone to lose their invested life savings, it prevents creditors demanding debts be paid by the shareholders who haven't put up any guarantees. There must be at least two members of a Private Limited Company; a director and a company secretary (these cannot be the same person). You can only be a company director or company secretary if you are not a discharged bankrupt, or have been disqualified by a court from holding such a position. Each company has to have a registered address (in your case the

restaurant), where all the statutory documents (register of members, memorandums) for the company are kept.

Please be aware that all the contracts you have entered into already are “pre-incorporation contracts”. This means that because your company is not yet a separate legal entity, contracts cannot be made on its behalf. Be warned, whoever made the contracts will be held personally responsible until the company is created, so we need to get proceedings under way post haste.