



Conducting business in Ireland

In considering business entities in Ireland, a distinction needs to be made between unincorporated and incorporated bodies. A significant feature of an incorporated body is that it has a legal status separate from its owners and is capable of suing and being sued in its own name.

Incorporated bodies include private limited companies, public limited companies and unlimited companies. An unincorporated body may be a sole proprietorship or a partnership.

Companies operating in Ireland are currently governed by the Companies Acts 2014. The legislation has consolidated all previous Companies Acts into one coherent act and makes it easier for companies to do business in Ireland, by reflecting a working reality for modern Irish companies.

Formation

The following is a brief summary of the main requirements when incorporating a company in Ireland:

- a company must have the intention of carrying on an activity in Ireland;
- details of the place or places in Ireland where it is proposed that the company will carry on its activity and the place where the central administration of the company will normally be carried on (full business postal address) must be provided;
- at least one of the directors is required to be resident within the EEA or the company must obtain an insurance bond; and
- private companies have no minimum capital rules.

It is likely to take approximately five working days to incorporate a company and the Registrar of Companies will then issue a certificate of incorporation.

Register of Beneficial Ownership

All Irish companies are required to maintain a Register of Beneficial Owners (RBO). The RBO must be kept fully up to date and each company is obliged to take appropriate actions to ensure that the information on the register is adequate and current. Additionally companies are required to submit the information to the Central Register. The information required to be recorded in the Central Register should be reflective of the current information contained in the entity's beneficial ownership register at the date on which the filing is delivered. Newly incorporated companies have five months from incorporation date to deliver their information to the Central Register.

Companies are also obliged to provide certain bodies (i.e. any member of An Garda Síochána, Revenue Commissioners) with timely access, on request, to their RBOs. Restricted access to the information on Central Register is also available to the general public. This access will allow the general public to see the identity of any beneficial owners listed.

A beneficial owner is a natural person(s) who ultimately owns or has control of 25% plus one share of the equity or voting/control rights, either directly or indirectly.

Types of entities

Private Limited Companies (Ltd)

Private Limited Companies (Ltd) are the most common form of business entity used in Ireland. The essential feature of a Ltd is that the liability of members is limited to the amount, if any, remaining unpaid on the shares held by them. A company is regarded as a separate legal entity and therefore, is separate and distinct from those who run it.

To qualify as a Private Limited Company the company must:

- limit the maximum number of members to 149;
- have a minimum of one director;
- have a company secretary, that can be an individual or body corporate - where there is a single director, they cannot also act as the company secretary;
- not list debt securities;
- restrict the members' right to transfer shares; and
- prohibit any invitation to the public to subscribe for shares.

A Private Limited Company is required to show the word 'Limited' (which may be abbreviated to "Ltd") in its name. The Ltd has a single document constitution which sets out details of the company's share capital and how it is regulated in accordance with the Companies Act 2014.

The Ltd does not have a principal objects clause and will have no restriction on the type of trade or transaction it can enter into, it will have the same legal capacity as a natural person.

Designated Activity Companies (DAC)

A Designated Activity Company (DAC) is a company which is formed for a particular purpose or to carry on a specific activity.

A DAC can be limited by shares or guarantee. It must have a minimum of two directors but can have a single member. A DAC's constitution will contain a Memorandum and Articles of Association. The Memorandum of Association will contain an objects clause that sets out the principle activity of the company, together with ancillary objects outlining in general style transactions the company can undertake. It is common for such objects to contain clauses around borrowing, providing security and such like.

A company may seek to register as a DAC for both legal and commercial reasons. For example a company which wishes to raise finance by the issuance of debt, is a credit institution or insurance undertaking will be legally required to register as a DAC. Another reason that a company may seek to register as a DAC, is where a company is set up and there is a commercial requirement to set out the purpose or the objective of the company (e.g. joint venture or SPV).

A DAC is required to show the words Designated Activity Company, (which may be abbreviated to DAC) in its name.

Public Limited Company (PLC)

Public Limited Companies (PLC) have the same essential characteristics as private limited companies, i.e. the liability of members is limited to the amount of nominal capital subscribed, but the key differences are:

- shares in a public limited company are freely transferable;
- there is no restriction on the maximum number of members;
- a minimum of €25,000 of share capital must be issued and maintained;
- shares may be issued to the public and may be listed on a stock exchange; and
- certain additional reporting and capital requirements apply to such companies.

The word public refers not to the listing of the company's shares on a stock exchange, but rather to the facility to issue shares under a general public offering.

The constitution sets out the objects and rules of the company. There is no upper limit on the level of the issued share capital, but a minimum of €25,000 of share capital must be issued, of which 25% must be paid up.

The name of a public limited company must include the letters "PLC". In all other respects, public limited companies are similar in nature and form to private limited companies. In practice, PLCs are seldom used by inward investors since the facility to issue shares to the public is often not of interest to such investors, while the minimum requirements in relation to the number of members and issued share capital can prove unnecessarily burdensome.



Unlimited Company

This is a form of business entity where there is no limit on the member's liability, if the company's assets are insufficient to discharge the creditors. As a result of the risk of unlimited liability, inward investors do not often use these companies. An unlimited company must include Unlimited Company or the letters "UC" at the end of its name. Unlimited companies must have a minimum of two directors. In all other respects, unlimited companies are similar in form to private limited companies. Some unlimited companies can avoid the filing of their financial information on public record.

In practice, the use of unlimited companies is confined to particular situations where the members may wish to avoid the public disclosure associated with filing of accounts with the Registrar of Companies or where a limit on members' liability is not required.

Companies incorporated in other countries trading in Ireland

Foreign companies (i.e. companies incorporated outside Ireland) may conduct business in Ireland through a branch. There is a distinction between trading into Ireland (i.e. distance selling) and trading in Ireland, where one may have established a presence thus creating a permanent establishment.

Branch

For Irish company law purposes, a branch is a division of a foreign company trading in Ireland that has the appearance of permanency, a separate management structure, the ability to negotiate contracts with third parties and a reasonable degree of financial independence. EU regulations have been implemented that impose a similar registration regime on branches, to that imposed on local companies.

Only companies registered abroad with limited liability are required to register as a branch in Ireland. Such foreign companies setting up a branch in Ireland are required to file basic information with the Registrar of Companies.

This includes the date of incorporation of the company, the country of incorporation, the address of the company's registered office, details regarding the directors of the company the name and address of the person responsible for the branch's operation within the state and the name of a person resident in the state, who is authorised to accept service of documents on behalf of the branch. The foreign company's constitution (duly certified and legalised as required), certificate of incorporation and audited accounts must also be filed with the Registrar of Companies.

A foreign company trading in Ireland through a branch is also required to annually file its financial statements with the Registrar of Companies. Separate branch financial statements are not required for such filing, although they are required for tax return preparation purposes. As with Irish incorporated entities, changes in previously notified information must be reported to the Registrar of Companies.

Contact

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