

THE FORMALITIES OF STARTING A BUSINESS

EXTRACTED FROM
**STARTING A BUSINESS
IN IRELAND**

A Comprehensive Guide and Directory
6th edition

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FORMALITIES

LEGAL STRUCTURE

Setting Up as a Sole Trader

You automatically become a sole trader by starting up a business. Setting up as a sole trader needs almost nothing by way of legal formality. A further advantage of being a sole trader is that apart from normal tax returns, which every business must make, a sole trader is not required to make public any information on the business.

However, if you plan to run your business under a name other than your own, you must register with the Registry of Business Names (part of the Companies Registration Office – www.cro.ie).

Setting Up as a Partnership

A partnership, essentially, is an agreement between two or more people to go into business together. It may be no more formal than a handshake or may run to a multi-page legal document. Whichever route you take, build the following points into your planning:

- In a partnership, each partner is liable for all the liabilities of the business. If the business fails, and your partner(s) abandon(s) you, you could be left to pay for everything out of your own pocket. Before entering a partnership, decide whether you trust your partner(s)-to-be with everything you own – because that's what you will be doing.
- If you write down nothing else, write down and have all the partners sign a document setting out how the business is to be financed, how profits and losses are to be shared, and what will happen if one of the partners decides to leave. These are important points. Failure to agree on them at an early stage can lead to difficulty later.

Forming an Unlimited Company

An unlimited company is formed in much the same way as a limited liability company. The principal difference is that the company's Memorandum of Association (part of the company's constitution) states that the liability of members is unlimited. Again, like sole traders and partnerships, this exposes your total assets in the event of the failure of the company. There seems little advantage in going through the formation requirements of a company without benefiting from limited liability.

Forming a Limited Liability Company

A limited liability company is a legal entity separate from its share-holders. The shareholders are only liable, in the event of the business becoming unable to pay its debts, for any amount outstanding on their subscribed shareholdings.

The steps involved in forming a limited company are:

- Decide on a name for your company.
- Define the purpose for which the company is being formed. This will make up the company's Objects clause.
- Prepare the Memorandum of Association, which states what the company has been set up to do, who the initial share-holders are and how much they have subscribed.
- Prepare the Articles of Association, which details the rules governing internal procedures of the company.
- Submit the appropriate forms, together with the Memorandum and Articles of Association and a cheque or draft for the formation fees, to the Companies Registration Office (www.cro.ie).

The cost of forming a limited company depends on whether you do the work yourself or ask an accountant, solicitor, or company formation agent to do it for you. Typically, using a professional adds considerably to the cost.

If your application to form a company is accepted, the Registrar will issue a Certificate of Incorporation. Only after its issue, and the first meeting of the Board of Directors of the company, may the company begin to trade.

Forming a Co-operative

A worker co-operative is where a team comes together to form and run a business according to a set of values that includes self-help, self-responsibility, democracy, equality and solidarity. The business is jointly owned and democratically controlled. Co-operative members believe in the ethical values of honesty, openness, social responsibility and caring for others. The Co-operative Principles provide guidelines on how the business should conduct itself.

Co-operatives can be registered as an Industrial & Provident Society, a company limited by guarantee or a company limited by shares.

TAX REGISTRATION

The Revenue Commissioners now use a single form to register a business for the many taxes to which it is liable. Form TR1 applies to individuals and Form TR2 to companies.

Your business's PAYE / PRSI registration number, its VAT registration number and its Corporation Tax number should be the same, though this number has nothing to do with the company's Registered Number, which is issued by the Companies Registration Office when the company is formed.

As a first step, download the Revenue's *Starting in Business* guide (reference IT 48) and *VAT for Small Businesses* (IT 49) from its website (www.revenue.ie).

Employers

Employers must register for PAYE when they pay remuneration exceeding a rate of €8 a week (€36 a month) to a full-time employee or €2 a week (€9 a month) to an individual with other employment – in other words, **all** employees.

When you take on an employee, you should first obtain from them a form P45 or tax-free allowance certificate. Then you must notify the tax office in respect of the new employee's former employment that you have employed them.

If neither a P45 nor a current year's tax-free allowance certificate is available (for example, in the case of an employee in first-time employment), you must complete form P46 (ring the tax office for a copy) and send it to the tax office. In those circumstances, PAYE / PRSI should be operated on the 'emergency basis' until a tax-free allowance certificate is received. Details on how to do this are available from the tax office.

An employer must:

- Maintain PAYE / PRSI records.
- Deduct tax, levies and the employee's share of PRSI and keep records of the amounts deducted.
- Submit a monthly return on form P30 between the 5th and 14th of the month, detailing the tax payable and PRSI (including employer's share).
- Submit a cheque for the total amount due with each monthly return.
- Submit yearly returns on forms P35 and P35L to the Collector General after the end of the tax year.
- Give to each employee working on 31 December each year a completed form P60 showing details of earnings and deductions for the income tax year ended on that date.
- Advise the Inspector of Taxes of any employee commencing or ceasing employment.

You should consider using the Revenue Online Service to submit your returns electronically.

Your Own Position as an Employee

If you are a director of a limited company, then you must send in a P45 or P46 to the tax office in order to become a registered employee. Thereafter, with the exception of PRSI rates, which are lower for owner-directors, you will be treated on a day-to-day basis like any other PAYE employee.

However, directors are now subject to self-assessment (which means you must make an annual return of income), even though their income from the company already is subject to PAYE. Directors will be liable to a surcharge where they fail to make a return of income by the appropriate date. You should discuss your own situation with your accountant.

If you are self-employed, write to your local tax office explaining your situation. You are not liable for tax payments until after the first year of trading. Two months before the first year of trading ends, you will be sent a preliminary tax notice that informs you when your first tax payment is due.

Registering for VAT

You must register your business for Value Added Tax as soon as its taxable supplies (that is, your business transactions that are liable to VAT) exceed or become likely to exceed the limits for registration. The current limits are:

- €75,000, where the supplies are of goods.
- €37,500, where the supplies are of services.

Your registration for VAT is notified to you on Form VAT 2. This will tell you:

- The date from which your business is registered for VAT. From this date onwards, you will have to charge VAT to all your customers and account to the Revenue Commissioners for it.
- Your VAT number, which you will have to quote on all invoices, statements, credit notes, etc.

In certain circumstances, you may register for VAT before you begin to trade or while your turnover is below the limits for registration. Doing so allows you to reclaim VAT paid on purchases of goods and may be of advantage to you. However, voluntary registration for VAT should not be done without professional advice. Consult your accountant and / or local tax office for further information.

Registering for Corporation Tax

Once your new company has been registered, and you have submitted Form TR2, it will be registered for Corporation Tax, which is payable in two instalments following the end of your accounting year. Consult your accountant and / or local tax office for further information.

Note that start-up companies, which commenced trading on or after 1 January 2009, and whose tax liability for each year does not exceed €40,000, are exempt from Corporation Tax (including capital gains tax) in each of the first three years of trading.

INSURANCE

When you start in business, you need to consider both business and personal insurance.

Business insurance

The main kinds of business insurance are:

- **Fire** – To cover rebuilding costs, etc following a fire;
- **Burglary/theft** – To replace stolen or damaged assets;
- **All risks** – Coverage against loss of assets, however caused;
- **Public liability** – Coverage against claims by members of the public;
- **Product liability** – Coverage against loss relating to defective or dangerous products;
- **Employer's liability** – Coverage against claims from staff;
- **Motor insurance** – Coverage against driving accidents.

Most insurance companies offer these (or some combination) in a single "Office" or "Business" policy, which is more cost-effective than separate policies for each.

Other areas for which you might consider the protection of insurance include:

- Legal fees protection;
- Credit insurance;
- Bad debt insurance;
- Computer equipment and data;
- Travel;
- Goods in transit;
- Patents;
- Business interruption.

Since insurance companies rate risks differently, it is worth talking to an insurance broker, whose job is to find you the widest coverage at the lowest price. Ask whether you can reduce the premiums by paying an excess (just like motor insurance). Ask also whether the premiums can be paid over the year rather than all at the start.

People-related insurance

If the business is dependent on yourself, or one or two key staff, it is also a good idea to take out “keyman insurance” on these people. Then, if they die or are unable to work, the insurance company will pay a lump sum to help overcome the difficulty.

You may also want to look at life assurance (to provide “death-in-service” benefits), critical illness, permanent health insurance or medical expenses insurance for your staff. Here cost, and whether staff value the insurance, will be major factors.

Your own insurance

What insurance you take out on yourself depends on the risk you are willing to take, your budget and your family situation. You may already have some insurance in place, in which case taking out more through the business would be duplication.

Look at the key risks and the solutions that insurance offers:

- **You could get sick and not be able to work** – You need insurance to provide a replacement income (permanent health insurance)
- **You could get sick or die and have no one to take over the running of the business for you** – You need a replacement income plus enough extra to pay someone else to run your business (permanent health/critical illness/life assurance).

Talk to a life assurance broker about coverage against these risks. Talk to him/her also about pensions. A pension can be a tax-effective way of transferring cash from your business to yourself over time.

ADVISERS

As you start in business, you need two key advisers: an accountant and a solicitor. In the pressures of setting up your new business, there will be a temptation to avoid finding either of

these two. Not doing so saves you time and possibly money, both of which are important in a start-up situation. But it could cost you dearly later on.

The reasons for choosing a financial and a legal adviser at the start are:

- Their experience and expertise in dealing with other start-ups may save you hours of time and hundreds, or even thousands, of pounds. If they are the right advisers for you, they will be prepared to assist your enterprise with timely and constructive advice – take it and use it!
- With luck, you will never find yourself in a situation where you need to be bailed out of difficulty, but if you do, it's better to have your advisers on your team already than have to start looking for them with the millstone of your problem around your neck.

In choosing advisers, look for:

- Membership of the appropriate professional body. This is your guarantee of quality of work and source of redress, should the need ever arise (hopefully not!).
- Experience in the type of business or at least in the business area in which you intend to operate. You want to learn from your advisers' experience, not spend your time teaching them about your business.
- Adequate resources to meet your needs. What is adequate will depend on you, but don't choose a one-man band if you expect a limitless range of expertise. There is only so much one person can be expert in. Ask about the advisers' hours of business (actual hours, not published hours). Can you telephone them at 7 p.m. on a Sunday night? What happens when they go on holidays?
- People you can trust and work easily with. If you can't trust your advisers with your most confidential information, you shouldn't have them on your team. Find someone else.

Choosing an Accountant

If your business is set up as a limited company, your accountant will have one primary task: to carry out the annual audit (note that an audit is not required where the company's turnover is below €1.5 million and certain other conditions are met). This is a statutory inspection of the company's accounting records, which results in a formal set of accounts and an audit report.

This report is to the members (that is, the shareholders) of the company and gives the auditor's (the accountant's) opinion on:

- Whether the accounts give a true and fair view.
- Whether proper books of account have been kept.
- Whether a meeting as specified under the Companies (Amendment) Act, 1986 needs to be called (this would arise where the share capital of the company amounts to less than half the net assets of the company).
- Whether all the explanations and information considered necessary for the purposes of the audit were received.

and, as a matter of fact:

- Whether the accounts agree with the books.
- Whether proper returns were received from branches (if any) not visited by the auditor.

If you do not know a suitable accountant, check the *Golden Pages* or contact one of the following:

- Association of Chartered Certified Accountants.
- Chartered Accountants Ireland.
- Institute of Certified Public Accountants in Ireland.

Many accountants provide advice and assistance in taking a business concept from viability assessment through to the production stage and also in obtaining assistance from State and other support organisations. An initial meeting between a potential entrepreneur and the accountant is usually free and is used to gather information about the promoter and the business proposal. Based on the information available, appropriate action to advance the project will be agreed. Where further information is required, a structured feasibility study is carried out, embracing key aspects such as products, markets, competitors, technology, funding etc. A fee should be agreed before work starts. If the proposal is viable, the accountant will assist in the preparation of a comprehensive business plan, at a further agreed cost. They will make application for grants appropriate to the project and assist in raising finance from banks or private investors. They may also help to obtain commercial partners.

Choosing a Solicitor

Unlike an accountant, a solicitor has no statutory duties in relation to a company. You will, however, need a solicitor for the following:

- To sign a statutory declaration when you are forming your company.
- To check out the lease of any premises you decide to buy or rent.
- To prepare employment contracts for you and your staff.
- To draft or review contracts that you enter into with customers or suppliers.

In addition, from time to time, you may require advice on legal issues.

If you do not know a suitable solicitor, look in the *Golden Pages* or contact the Law Society of Ireland.