

CHOOSING A BUSINESS STRUCTURE

When you start a business, you must decide on an ownership structure, i.e. a sole trader, partnership or limited company. You need to choose the structure that best meets your needs. In making your decision, you should take into account the potential risks and liabilities of your business, the time and costs involved in establishing and maintaining the structure and the tax implications of each option.

SOLE TRADER

A sole trader is a business owned by one person. It is easy to set up with minimal costs. You will need to register with your local tax office by complete the STR form and you may need to register a business name with the Companies Registration Office if it differs to your own name.

The business income is personal income and many business expenses can be offset against it for tax purposes. The main disadvantage is that you have no protection if your business fails as all your assets become available to pay off your creditors.

Advantages

- It is easy to set up or cease and is subject to minimal regulations
- As proprietor you have direct and personal control over your business and can make decisions without have to consult any other person
- Your Accounts are submitted to the inspector of Taxes, and no other body receives information on your financial affairs, without your consent
- You are not obliged to use an Accountant or Tax Agent to prepare your Accounts or submit your Tax Returns
- At any stage in the future, you can change this business structure to a partnership or a limited company.

Disadvantages

- The success of your business very much depends on you
- You may not have all the necessary skills required for your business
- The time you have to spend with your family or on other activities may be limited because of your commitment to the business
- As Sole Proprietor, you are personally and totally responsible for all the debts and liabilities of the business, whether to the Banks, Suppliers or the Inspector of Taxes.

PARTNERSHIP

A partnership is an agreement between two or more people to go into business together. There can any number of partners in the business and it is not necessary for all of them to work full-time in the business.

It is worth considering organising an agreement between all partners outlining the obligations of each partner.

Advantages

- The legal structure is similar to that of the Sole Trader
- The responsibility is shared between the partners
- Partners and their expertise and experience may complement each other
- There may be tax advantages for married or co-habiting couples in business.

Disadvantages

- Partners may turn out to be incompatible
- Partners are jointly and severally liable for all the debts and liabilities of the business.
- If one partner dies, or absconds, the remaining partner can be sued by the bank or creditors.

Being involved in a partnership can be a very positive experience; 2 or more people working together can enable the business to develop in a much stronger and creative way than might be possible with a single owner.

However, a partnership that is not set up properly and managed effectively, can lead to many problems in the business. If you are thinking of forming a partnership, discuss fully with the other partner(s) what exactly each of you wants out of the business, what your roles will be distributed and what will happen the event of the partnership dissolving, either through death or choice.

A partnership agreement should then be drawn up with the help of either your accountant or solicitor, or if necessary, both.

PRIVATE LIMITED COMPANY

A limited company is a legal entity separate from its shareholders. The shareholders are only liable, in the event of the business becoming unable to pay its debts, for any amount outstanding on the share capital they subscribe. On the downside, the need to adhere to Companies Act legislation can be costly and time consuming. Among the formalities involved in incorporating a company is the need to set up Memorandum and Articles of Association.

Advantages

- A limited company is a separate legal entity from the directors or shareholders
- A company can sue, or be sued
- Ownership is transferable
- Liabilities of the company are the responsibility of the company. In general, shareholders' liability is limited to the amount of their shareholding
- Depending on the business, it may prove to be more tax efficient than a sole tradership or partnership, if the owner intends reinvesting profits in to the business

Disadvantages

- Setting up a limited company requires a number of legal formalities
- Financial accounts and other information about the company must be lodged each year in the Companies Registration Office, and anyone can have access to information about your company

- Complying with all the various regulations contained in the Companies Acts can be expensive and time-consuming, and non-compliance can lead to huge fines and penalties being imposed
- Directors are usually required to give personal guarantees when seeking finance for the company

We recommend you seek professional advice from an accountant or solicitor when choosing a legal structure for your business.

	Sole Trader	Partnership	Limited Company
Initial Formation	None other than inspector of Taxes	None other than Inspector of Taxes	Form Limited Company, register with Companies Registration Office
Registering with Inspector of Taxes	Submit Form TR1	Submit Form TR1	Submit Form TR2
Ownership	Full ownership	Ownership shared between partners	Ownership is shared between the Shareholders and can be transferred
Changing the Business Structure	Easy to convert to Partnership or Company	Easy to convert to Company	Strict rules apply in dissolving a Company
Autonomy and Decision making	Owner makes all the decisions	Decisions agreed by partners	Decisions usually made by the majority shareholder. Activities are restricted according to Memorandum and Articles of Association
Using a Tax Agent or Accountant	No obligation	No obligation	Most companies are obliged to have Accounts audited
Income Tax Rates	Standard 20% Marginal 42%	Standard 20% Marginal 42%	Manufacturing 10% Standard 12.5%
Owners Remuneration	Taxable of Profits of the Business, not on amount take out of the Business	Taxable of Profits of the Business, not on amount take out of the Business	Taxable as an employee of the company; company claims cost as expense of the Business
Filing Obligations	One Income Tax Return each year	One Income Tax Return each year	One Corporation Tax Return each year. One return to the CRO (Companies Registration office)
Penalties for non compliance	Surcharge and fines, eventual prosecution by the Revenue Commissioners	Surcharge and fines, eventual prosecution by the Revenue Commissioners	Surcharge and fines, eventual prosecution by the Revenue Commissioners. Fines, eventual prosecution, company strike-off, disqualification of directors by the CRO
Owner's Liability	Fully responsible for debts of business	Each partner is jointly and severally liable for the debts	Liability is limited to the assets of the Company.

When you have chosen the most appropriate legal structure you can then proceed with the following steps.

Register as Self Employed with the Revenue Commissioners

You need to register with your local Tax Office as soon as you start trading.(website-www.revenue.ie)

Register as Self Employed with the Department of Social Welfare

Register as self-employed for Social Welfare purposes to ensure that your pension records are available on retirement. A form SE3 should be completed and submitted to the Self Employment section in Waterford.

(website – cro.ie)

Ensure that you have the necessary permits and licences

You may need to apply for permits and/or licences to operate, so it is essential that you research this thoroughly before you commence trading.

(website- has.ie)

Ensure that you have adequate insurance

At present the only compulsory insurance in Ireland is motor. However, in some sectors customers may insist on full product liability cover being in place before doing business with you. It is vital that you have sufficient insurance to cover your premises, equipment and stock, and more importantly, if you have employees, you need to have employer's liability insurance. In the event of a work related accident you may be prosecuted for lack of insurance.

CHOOSING PROFESSIONALS

- **Accountant** – helps you choose the right form of business, sets up your books, prepares your taxes, provides you with tax advice related to the operation of your business
- **Solicitor** – drafts and interprets contracts and leases, defends you if legal action is brought against your business, represents you if you bring legal action against someone else, provides you with legal advice related to the operation of your business.
- **Bank** – helps you with your financing, helps you establish credit card accounts, provides you with business operation advice.

Business Name Registration

Registration of a business name is obligatory if an individual, partnership (composed of individuals or bodies corporate or a combination of both) or body corporate carries on business under a name other than their own.

RBN1 Form (Sole Trader) RNB1a Form (Partnership) RBN1b Form (Body Corporate)

On registration of your business name, you will be issued with a Certificate of Business Name. Typically, this Certificate will be needed to open a business bank account.

Who to Contact

Companies Registration Office
Parnell House
14 Parnell Square
Dublin 1

Tel: (01) 804 5200
Lo call: 1890 220 226
Web: www.cro.ie
Email: info@cro.ie