



A Guide to Company Formation in Ireland





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Introduction

Following the UK's vote in 2016 to leave the European Union, multinationals began taking preliminary steps to mitigate against any potential negative impact of Brexit. While negotiations advance between the UK and the EU, uncertainty remains. However, companies who have not yet done so, should plan now for their post-Brexit future. As the opportunities and challenges of Brexit begin to crystallise, Ireland is appearing to become more and more the location of choice for companies looking to relocate their European hubs from the UK. Ireland's close ties to the UK, not least its geographical proximity, common language and time zone, as well as its comparable legal system and culture give it a significant edge for UK based multinationals.

The following make Ireland a very strong market for firms looking to relocate:

- The Companies Act 2014 (the "Companies Act") makes it easier for a director to manage a company;
- Primary English-speaking common law country in the EU;
- A 12.5% corporate tax rate;
- Comprehensive Double Taxation Agreements, currently signed with 74 countries;

- The quality, flexibility and skills of our work force;
- Government grants and incentives;
- Transparent judicial system;
- Strong intellectual property protection; and
- Excellent image as a reputable corporate domicile and positive working relationship with EU and other markets.



Incorporating a Company

When planning on establishing an Irish company, it is important to choose the right company type for your venture. The following are the main Irish company types:

1 Private company limited by shares (LTD):

This is the most simplistic and frequently used company type in Ireland. The members' liability, if the company is wound up, is limited to the amount, if any, unpaid on the shares they hold. The maximum number of members is 149. Unlike any other company type, an LTD can have a single director but in this situation must appoint a separate secretary. An LTD does not have a memorandum of association and has no objects stated in its constitution and therefore is very flexible in terms of its activities. An LTD cannot be a credit institution or insurance undertaking.

2 Designated activity company (DAC):

A DAC has a 2 document constitution consisting of a memorandum and articles of association. A DAC must have a main objects clause included in its constitution which will restrict the activities of the company. It has limited liability. It must have at least two directors and a company secretary. The maximum number of members is 149.

3 Company limited by guarantee not having a share capital (CLG):

This is a public company type. The members' liability is limited to the amount they have undertaken to contribute to the assets of the company, in the event it is wound up, not exceeding a specified amount and subject to a minimum of €1.00. The activities of a CLG are limited to its objects as set out in its memorandum of association. A CLG must have at least two directors and a company secretary. Charities and professional bodies commonly incorporate as a CLG.

4 Public Limited Company (PLC):

A PLC is permitted to have shares listed on a stock exchange and offered to the public. A PLC can have one member and no maximum limit on members. The liability of members is limited to the amount, if any, unpaid on shares held by them. The nominal value of the company's allotted share capital must not be less than €25,000, at least 25% of which must be fully paid up before the company commences business or exercises any borrowing powers. A PLC must have at least two directors and a company secretary.

5 Establishment of an External Company (Branch):

A foreign company may also establish an external company within the State. Any company that so establishes itself must register with the Irish Companies Registration Office ("CRO") within 30 days of its establishment in the State. Once the external company has been registered it will be required to file an annual return each year together with the financial statements of the parent company within 30 days from the date they are published in the parent jurisdiction. The external company will also be required to reflect any changes of the parent at branch level, e.g. any changes of directors, share capital etc. (i.e. the external company should mirror the parent at all times).



Points to consider

The following points should be considered when incorporating a new company:



1 Company Name:

The CRO may refuse to incorporate if the proposed company name is identical or too similar to a name already appearing on the register of companies, if it is offensive or would suggest state sponsorship.



2 Addresses:

In order to incorporate a new company, the following addresses are required:

- Registered office address – this is the address in the State to which CRO correspondence and all formal legal notices addressed to the company will be sent;
- Address where the proposed activity of the company will be carried on – this must also be in Ireland; and
- Address where the central administration of the company will be carried on – this may be outside Ireland.



3 Share Capital

The following points should be noted when considering a company's share capital:

- No upper limit on authorised share capital ("ASC") for any company type;
- No restriction on type of currency or denomination amount of shares;
- An LTD is not required to have an ASC;
- A DAC is required to have an ASC.
- A PLC is required to have a minimum issued share capital as outlined above.



4 Directors/Officers:

As outlined above, all company types, with the exception of a LTD, must have a minimum of two directors and must have a company secretary. In a one director company, the secretary must be a different person to the director. The company secretary may be a body corporate or a natural person. A company director can only be a natural person in Ireland. He/she must be over the age of 18 years and cannot be an undischarged bankrupt, an auditor of the company or a person disqualified or restricted from acting as a director by the High Court. All company directors and officers have wide responsibilities in law to act in good faith in managing the affairs of a company.



5 Residency Requirements

At least one of the directors is required to be resident in a member state of the European Economic Area (EEA). If this is not possible, the following two options are available:

- Application to the CRO to grant a certificate confirming the company has a real and continuous economic link with Ireland; or
- Provide a bond, in the prescribed form, to the value of €25,395.

Consideration should also be given, at this time, to the tax residency of the directors.

A majority of the directors should be Irish tax resident to establish the Irish tax residency of the company. Our tax department are happy to provide advices in this area prior to incorporation.

Requirements Post Incorporation



1 Annual Return:

Every company must file an annual return and financial statements each year with the CRO. This is a summary document of the directors, secretary, shareholders and share capital at a point in time. A company's first annual return is made up to 6 months after the date of incorporation. No financial statements are required with this. Thereafter, a company will be required to file an annual return every 12 months together with a copy of its financial statements.



2 Annual General Meeting:

In general, a company is required to hold an annual general meeting ("AGM"), or provide a shareholder written resolution in lieu thereof, each year. A company is required to hold its first AGM within 18 months of its incorporation. The AGM must be held within 9 months of the company's financial year end. No more than 15 months can elapse between AGMs.



3 Financial Statements:

The Companies Acts require that directors of companies incorporated in Ireland prepare financial statements for the company in respect of each financial year which give a "true and fair view".

Such financial statements are either:

'Companies Act financial statements',

prepared in accordance with the accounting and disclosure requirements of company law and, principally but not exclusively, with the Financial Reporting Standards (FRSs) published by the Financial Reporting Council (FRC); or

'IFRS financial statements',

prepared in accordance with the International Financial Reporting Standards published by the International Accounting Standards Board (IASB), as adopted by the European Union.

The directors of all companies are required to lay the following financial statements and reports before the company members at the AGM or be sent to the members where written resolution is adopted in lieu of the AGM or where the AGM has been waived:

- a profit and loss account (or an income and expenditure account if the company is not trading for profit);
- a balance sheet;
- a directors' report; and
- a statutory auditors' report



4 Corporate Tax Returns

A company's tax accounting period normally coincides with its financial accounting period, except where the latter period exceeds 12 months. Within 9 months of a company's financial period end (but no later than 21st day of the month), a corporation tax return must be filed with Irish Revenue. Irish resident companies are liable to corporation tax on their world-wide profits. Exemptions may apply. Our tax department are happy to provide advices in this area.



5 Other relevant matters:

- A company must display its full name outside its registered office address, place of business and on all company stationery.
- A bank account in the name of the company should be set up to facilitate any financial transactions.
- Changes to the particulars of the company capital, directors and officers should be notified to the CRO within specified timeframe.

Our Entity Governance and Compliance team of qualified chartered secretaries has considerable experience in assisting clients with all the company secretarial aspects of managing the life cycle of their legal entities, from incorporation through to ongoing administration, reporting and statutory compliance, providing guidance on good corporate governance practice, to end of life.

How PwC Can Help You:



Compliance

1. Company Incorporation
2. Preparation of Annual Return & AGM Documentation
3. Maintenance of statutory books / registers:
 - Register of Members;
 - Register of directors/secretaries;
 - Register of charges over the company's assets;
 - Register of directors'/secretaries interests in shares & debentures;
 - Register of directors' interests in contracts;
 - Minutes of director and shareholder meetings;
 - Ultimate Beneficial Ownership Register
4. Act as Filing Agent
5. Updates on company law changes
6. Provision of registered office address
7. Act as company secretary, where permitted
8. Attendance at Board and shareholder meetings and minute taking
9. Timely preparation of documents in respect of the following:
 - Director/secretary changes;
 - Share transfers;
 - Share allotments; and
 - Amendments to company constitution
10. Company change of name



Corporate Governance

1. Advice on corporate governance/ obligations
2. Updates on company law issues
3. Director training



Restructuring

1. Group Reorganisations / Corporate Simplifications
2. Mergers / Acquisitions
3. Distributions
4. Capital reductions
5. Re-Registrations
6. Voluntary strike-offs
7. Liquidations
8. Share allotments / share transfers
9. Due Diligence & Provision of Corporate Health Checks
10. Intra-Group Loans



Secondments

Provide short and longer term secondments for maternity leave, periods of organisational change, specialised projects etc.

To find out more about incorporating a company or about our post incorporation services, please contact:



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