

Startup Business Structure

When you're starting up a new business you'll need to decide what the legal structure of your business will be.

In many cases the choice boils down to being unincorporated, as a sole trader or partnership, or forming a limited company.

There are also options when it comes to forming a limited company. You can form a company limited by shares ('CLS'), a designated activity company ('DAC') or a public limited company ('PLC'). Very few startups would form a PLC.

A DAC is limited to carrying out only the activities specified in its formation documents, but does have some advantages when it comes to debt financing.

A CLS is the most flexible type of company and is generally the preferred choice for most startups.

Many business people assume that setting up a company is the essential first step in going into business. But a company isn't always the best structure for a startup. In fact, there are a number of factors that need to be considered.

The following provides information about the advantages and disadvantages of the different legal structures, as well as some of the other legal requirements involved.

1. Trading as a limited company

A limited company has the following main advantages:

- Liabilities (any money that is owed) of the company are the responsibility of the company. In the event of the company getting into financial trouble the shareholders will only lose the money they've invested in the company. However, note that some lenders and key suppliers may require trading conditions that get around this.
- Income tax is paid only on salaries drawn and benefits in kind and generally higher rate tax applicable to individuals can be avoided if profits are retained in the business.
- Improved options for raising finance.
- Greater pension benefits can be secured.
- The standard Corporation Tax rate for trading income is 12.5%. This compares with a marginal Income Tax rate of 41% plus PRSI and health levies. Note that this is only really a

big advantage of you're able to keep profits in the company to grow it. There are some trades that are excepted from the low Corporation Tax rate so it is best to get advice if you want to rely on this advantage.

- Finance can be raised under the Business Expansion Scheme for certain companies.
- Structure better suited to facilitate tax planning opportunities.
- Certain intangible benefits, for example a company name will often present a more professional image.
- Easier to spread ownership of the company.

A limited company has the following main disadvantages:

- Legislation requires that financial and certain other information be filed on public record.
- Compliance with the considerable legislation applicable to limited companies, such as contained in the Companies Acts can be time-consuming and costly.
- Lenders and key suppliers often seek personal guarantees from directors which tend to reduce significantly the value of limited liability.
- Restrictions on the tax relief available on trading losses.
- Investment income and some forms of trading income are subject to the higher 25% Corporation Tax rate.
- Additional tax is payable when accumulated profits are withdrawn from the company as dividends, extra remuneration, benefits in kind or loans.
- Investment income will be subject to a corporation tax surcharge of 20% unless it is distributed by way of dividend. This may also apply to the trading income of companies carrying on professional activities.
- In some circumstances, there can be a double charge to tax on income and/or capital gains.

2. Trading as a sole trader or partnership

A sole trader or partnership structure has the following main advantages:

- Confidentiality is maintained since the public has no access to accounts.
- PAYE and PRSI contributions do not need to be paid when proprietors or partners draw cash. Although you need to be aware that they do catch up later.
- Losses from the business can be set off against other income you may have.
- It's relatively easy to transfer the business to a limited company at some later stage, subject to capital gains tax and stamp duty issues.

A sole trader/partnership has the following main disadvantages:

- Possibly higher Tax liabilities.
- Offer fewer tax planning opportunities.
- The owner is personally responsible for all the liabilities of the business (i.e. unlimited liability); with a partnership, partners are liable for debts on a joint and several basis which means that if one partner fails to meet his share of the partnership debts, creditors can look to other partners for settlement.
- Less flexibility in transferring ownership (for example, to other members of the family).

3. Forming a company

The formation of a company normally takes between 3 to 5 working days from application and we can deal with this for you.

A CLS company only needs to have one director. But there does need to be a separate company secretary. There is a legal duty for the directors to ensure that the company secretary has the necessary skills and resources to fulfil this role.

The formation of a new company involves choosing and agreeing an appropriate name, compiling a suitable Constitution, lodging these and other documents with the Registrar of Companies and obtaining a Certificate of Incorporation. We can complete and process all this documentation for you.

You will need to hold a first meeting of directors to:

- Appoint additional or new directors and the company secretary.
- Appoint the auditors.
- Determine the financial year end.
- Determine the banking arrangements.
- Allot shares and approve transfers of subscribers' shares, as appropriate.
- Make the arrangements for keeping statutory books (such as Register of Members, Directors and Minute Book and designate the company's registered office).

You should consider carefully in consultation with us whether you need to amend the 'standard' or 'off-the-shelf' Constitution to take account of:

- The rights of directors to decline to register a future share transfer and of shareholders to buy shares from other shareholders before sale to outsiders, or if a shareholder ceases to be a director or employee or dies.
- The chairman's casting vote.
- The shareholder/director's voting rights.
- Who controls the company (different levels of shareholding confer different rights).

We can assist in the completion of the first board minutes and the maintenance of the statutory books.

4. Choosing a business name

Many businesses operate under the names of their owners (e.g. Paddy O'Brien, or Kelly & O'Connor); others adopt a business name (e.g. Speedikleen or Kelly & Co.).

However, if you adopt a business name other than your true surname (and christian names), or your registered corporate name in the case of a company, you must register the name under the Registration of Business Names Act 1963.

For instance, if B.P. Murphy Ltd. wished to use 'BPM' as a business name, the name would have to be registered under the Act.

The Registration of Business Names Act 1963 gives the Registrar of Companies, the right to refuse the registration of any name, which in his opinion is undesirable. Although, the applicant does have the right to then appeal against the Minister's decision to the High Court.

If a business name is used, the Certificate of Registration must be displayed in a prominent position at all locations to which customers or suppliers have access.

It is illegal to pass yourself or your business as being someone else's, whether intentionally or otherwise. If, for instance, you manufactured and sold water pumps under the business name "Byrnes" then you could be sued by Byrnes Ltd. for passing yourself off as them.

Steps therefore need to be taken to ensure that your proposed business name is usable. You can access a list of all existing companies to check this out. And we would recommend that you give us at least two business names, in order of preference, in anticipation of there being a problem.

If a sole trader or a partnership is using a business name, then there are legal requirements for the business stationery. For instance, the letter heading, written orders, invoices, receipts and written demands for payment of business debts must include:

- The name and nationality (if not Irish) of each partner in the partnership or the individual in the case of a sole trader.
- The business address in the State (at which any document relating to the business can be legally served).

Call Now

If you need help in deciding on the best structure for your business call Seamus Parfrey today on **021 431 0266**.

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