

How do I structure my new business?

Most people dream of setting up their own business and for many it never becomes a reality. Don't be deterred. With the right information and advice, it can be done. One decision that must be made at a very early stage is the legal framework within which you wish to operate. There are three basic ways to organize a business:

- Sole Trader
- Partnership
- Limited Liability Company

Your choice will be influenced by your financial needs, considerations of personal liability and the degree of personal control you require.

SOLE TRADER

Sole traders are individuals who operate independently. This form of business organization is commonly where a small amount of finance is required. One reason why so many people prefer to become self-employed is the idea of being independent.

Advantages

- Freedom and flexibility
- Personal satisfaction
- Enjoyment of profits
- Personal control without a requirement to consult with others
- Absence of legal formalities when establishing and running the business

Disadvantages

- Full personal responsibility for decisions and for the debts of the business
- Success depends on the owner's energy and continuing wellness
- No continuity of existence, since the business dies with the owner
- Responsibility for a range of separate tasks rests on the shoulders of the owner e.g. paperwork, tax returns.
- Dealing with suppliers and customers.

Unlimited Liability

Unlimited liability means that in the event of bankruptcy the business owner may lose the business and may also lose other business and personal assets including the family home.

Registration of Business Name

If you trade under a name other than your own you must register that trading name with the Companies Registration Office. Ensure you have proper stationary so that creditors know with whom they are conducting business.

PARTNERSHIP

Partnerships are generally unlimited and operate the same way as sole traders. They allow a number of individuals to pool their resources and carry on a business activity as a group. Sole traders may opt for a partner if there is too much work to be done, or when extra skills are required or to help finance the business.

A partnership is an association of individuals and, accordingly, each partner is responsible for the debts of the partnership. One should choose business partners very carefully since every partner, when acting on behalf of the business, acts as an agent of the partnership and can thus bind their fellow partners. Individual partners can be sued personally and held liable for all decisions and debts of the partnership, however a partnership is not responsible for the activities of partners carried out in their personal capacity.

As with the sole trader, it is possible to set up a partnership without any legal formalities. However, one should draft a legal contract called a “Deed of Partnership” that sets out the rights and responsibilities of each partner. This document should also allow for the continuation of the business in the event of the death or retirement of one of the partners and set out how the partnership can be wound up.

LIMITED LIABILITY COMPANY

Limited liability companies are a very popular form of business organization. Owners of limited companies are called shareholders because they each own a part of the business generally denominated by the amount of share capital held by each shareholder. A limited company is a separate body in law from its shareholders and directors.

Unlike the sole trader and partnership structure described previously, the legal position of the company is completely unaffected by the death or retirement of any of its shareholders. Shareholders enjoy the privilege of limited liability which means that they are liable to meet the debts of the company only to the extent that they have invested in the business. Accordingly, if shares owned by shareholders are fully paid up, there can be no further claim made upon the shareholders. However, it should be pointed out that banks for instance often insist that shareholders in small private companies provide personal guarantees for loans. This means that where a company fails to repay the debt the individual will have to make payment from their personal resources.

New private limited companies are registered with the Registrar of Companies. A Constitution or Memorandum of Association must be prepared which establishes the company and determines the objects of the business. Along with the Companies Acts the company’s constitution contains the rules governing the conduct of the company and the relationship between shareholders and directors. The constitution will also contain different share types where the rights of shareholders can be varied as necessary. Once these documents are lodged with the registrar, a Certification of Incorporation will issue and the company can commence to trade.

GENERAL

Other matters to consider establishing a business.

- A good trading name is very important, What you call yourself will fix your business in the minds of the public and you can develop you own unique brand over time.
- A business name projects the image of an organization and hopefully builds goodwill that will contribute to the success of your business.
- Care must be taken when choosing a business name and it is advisable to seek professional advice in advance.
- Business location
- Insurance
- Employment law & practice

To succeed modern businesses people need to gather together a team of experienced professional advisors to help navigate all the laws and regulations controlling the business environment. These professionals include Accountants, Solicitors, Bankers, Insurance Brokers, HR Professionals and Management Consultants etc. Look for help where ever you can find it and there are numerous state agencies who can help start-up companies with advice and finance such as Enterprise Ireland and your local County Enterprise Board.