



THE REALLY SIMPLE SHORT USEFUL GUIDE TO STARTING/ OPENING A BUSINESS AND BUYING/SELLING A BUSINESS

*Based on over 25 years of
giving Practical legal advice*

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BUSINESS STRUCTURE

Good legal advice is that a Business should usually be operated and managed through a limited liability company (See table below for various types of Company) The benefit of a limited liability company is that it creates a separate legal entity with the liabilities of a business attaching to the company rather than to any person. Ireland has a modern advanced company law structure regulated to ensure a secure environment for business whilst at the same time safe guarding the interests of consumers. The most common type of company in Ireland is an 'LTD' company which at its most basic requires one director, one shareholder and one company secretary. Often there will be more than one shareholder and more than one director.

One of the benefits of having a company structure for business is that it is flexible and permits the appointment/resignation of directors and the transfer/sale of shares without difficulty. Should there be more than one shareholder then good legal advice is that there should be a Shareholders Agreement put in place to set out the understanding between the shareholders in relation to the operation of the company and the transfer/sale of shares.

It is possible for one company to own another company and often different parts of a business are put into different companies in order to manage risk and keep different eggs in different baskets. This would facilitate the sale or liquidation of separate parts of the business at a later date.

Directors and company secretaries have legal obligations and responsibilities and information can be obtained in this regard from the website of the Companies Registration Office at www.cro.ie and on the other websites listed on the back page. Usually it is necessary for one of the directors of a company be an EEA resident unless the company obtains a special bond. By way of alternative a company can apply for exemption if the company can prove that it has real and continuous links with one or more economic activities carried on in Ireland (for more see www.cro.ie).

Irish Companies At A Glance

Private Limited Companies	88.61%
Public Limited Companies	0.58%
Unlimited Companies	2.19%
Guarantee Companies	7.35%
External Companies	1.26%

(Source CRO.ie)

TAX CONSIDERATIONS

Ireland has one of the lowest corporation tax rates in Europe and various tax reliefs and exemptions for Start-up Companies. In addition various Grants are available to Start-Ups. For more information see the websites listed on the back page and talk to your accountant.

PREMISES

A premises for business can be let or purchased depending on the requirements of a business. Business lettings tend to be divided into Short Term Letting Agreements of up to four years and nine months or a more onerous full repairing and insuring long lease of 10 years and more. A well resourced company can buy its own premises and sometimes in this context the premises is purchased by the owner of the company who then lets the premises to the company (tax advice should be obtained). If a company is borrowing to purchase it is important to ensure that the provisions of the Companies Act 2014 are complied with.

EMPLOYEES

Good employees are a valuable asset and help to grow and establish a business. It is important to be aware that employees acquire rights. Employee rights include the right not to be unfairly dismissed after 12 months (shorter periods apply in some cases) and the right to redundancy after 2 years. A good practice is to have all employees enter into written contracts setting out the terms of their employment including their hours, rates of pay, sick leave if any and grievance procedures. It is also possible to start new employees on fixed term contracts with a defined termination date.

LEGAL STRUCTURE

All businesses should have written terms and conditions of business to limit liability and which should include a Mediation and possibly an Arbitration Clause to assist in the event of a dispute with a customer or supplier. In addition all businesses should have appropriate insurance policies to cover employees, premises, third parties, products, and directors.

What you need to give your Solicitor when Starting or Opening a Business

1. Details of Business including Name of Business/Company
2. Names, Address, Date of Birth and Nationality of Directors and details of other Directorships held by them
3. Name, Address, Date of Birth and Nationality of Shareholders

4. Number of Shares to be issued and to whom
5. Details of Premises (if any)
6. Details of Employees (if any)
7. Name of Accountant (if any)
8. Details of any special circumstances

BUYING/SELLING A BUSINESS

As an alternative to starting or opening a business and also by way of expanding an existing business it is possible to buy an established business. The following considerations arise whether you are buying or selling a Business.

VALUATION

It can be difficult to value a business and there are different valuation models used in this regard depending on the type of business. The usual approach is a multiple of profit or sometimes turnover averaged over a period of three or five years. Usually it is a matter of negotiation between the parties.

BUY THE ASSETS OR BUY THE COMPANY

A business can be purchased in two different ways. The first option is to buy the shares in the company that owns and operates the business. The second approach is to buy the assets (all or some) including the goodwill or customer list of the business. For larger transactions approval might need to be obtained from the CCPC (see website listed on the back page).

DUE DILIGENCE

An essential aspect to the purchase of a business is financial and legal due diligence which is the process of checking the financials and clarifying the liabilities which affect the business (usually a Solicitor and Accountant are required). The rights of the employees of the business are usually protected and these need to be ascertained. It would also be usual for the owner of the business to make himself/herself available on a consultancy basis for a reasonable period after the sale and also give warranties concerning the information furnished about the business.

CONFIDENTIALITY AGREEMENT (NDA)

Before any negotiations are commenced the parties should sign a non disclosure agreement (NDA) also known as a Confidentiality Agreement to safe guard and protect any information exchanged between the parties or their advisors.

PURCHASE PRICE

The purchase price can be divided into different components paid at separate times and will sometimes include an Earn-Out Provision with payment being made to the person selling the business provided certain targets are reached.

PRE-SALE RESTRUCTURE

Sometimes before a business is sold it might be restructured to enable the owner to retain part of the business or to avail of valuable tax reliefs including retirement reliefs.

What you need to give your Solicitor when Buying or Selling a Business

1. Confirmation that a non disclosure agreement or confidentiality agreement has been put in place.
2. Details of the Business
3. Valuation
4. Name and Address of Directors
5. Name, Address and number of Shares held by Shareholders
6. Details of Premises
7. Details of Business Assets
8. Details of Employees
9. Name of Accountant
10. Details of any Special Circumstances

REALLY USEFUL WEBSITES

www.enterprise-ireland.com	Enterprise Ireland
www.idaireland.com	IDA Ireland
www.cro.ie	Companies Registration Office
www.businessregulation.ie	Business Regulation
www.dbei.ie	Department of Business Enterprise and Innovation
www.Revenue.ie	Revenue Commissioners
www.odce.ie	Office of Director of Corporate Enforcement
www.citizensinformation.ie	Citizens Information
www.ccpc.ie	Competition and Consumer Protection Commission
www.workplacelrelations.ie	Workplace Relations Commission
www.dataprotection.ie	Data Protection Commissioner
http://hsa.ie	Health and Safety Authority
www.nsai.ie	National Standards Authority of Ireland
www.localenterprise.ie	Local Enterprise Offices
www.welfare.ie	Department of Employment Affairs and Social Protection
www.chambers.ie	Chambers Ireland
www.ibec.ie	Irish Business and Employers Confederation
www.isme.ie	Irish Small and Medium Enterprise Association
www.sfa.ie	Small Firms Association
https://een.ec.europa.eu/	Enterprise Europe Network
www.leesolicitors.ie	Lee Solicitors

ABOUT THE AUTHOR

Richard Lee is a practising Solicitor with over 28 years experience and holds a Master of Laws in Advanced Legal Practice recently awarded by the University of Northumbria in association with the Law Society of Ireland further to a specialist Thesis in the area of Corporate Compliance, Enforcement and Corporate Governance.

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