

LEGAL ASPECTS TO BE CONSIDERED WHEN SETTING UP YOUR OWN BUSINESS

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Most people only dream of setting up their own business and for many it never does become a reality. Don't be deterred. With the right information and advice, it can be done. However, one decision that must be made at a very early stage is the legal framework within which you will want to operate. There are three basic forms of private enterprise organisation.

- Sole Trader
- Partners
- Limited Liability Company

Your choice will be influenced by the financial need of the business, consideration of personal liability and the degree of personal control which you may wish to seek.

SOLE TRADERS

A sole trader is an individual operating independently. This is a form of business organisation which is commonly found in trades where small amounts of finance are required. One of the reasons why so many people prefer to work for themselves, and to become self-employed, is they like the idea of being independent. Other advantages:

- Freedom and flexibility
- Personal satisfaction
- Enjoyment of profits
- Personal control with no requirement to consult others
- Absence of legal formalities when establishing the business

Some of the major drawbacks which stand alongside the advantages are as follows:

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

Above all, the sole trader has the disadvantage of unlimited liability which means that, in the event of bankruptcy, they will not only lose the organisation as such, but could also lose other assets including their home.

The sole trader can run a business under the individual's name. However, if another name is to be used then the individual's name must still appear somewhere on all business stationery; the rationale being that creditors should know with whom they are conducting business.

PARTNERSHIP

In order to overcome some of the problems inherent in the sole trader form of business organisation, a partnership might be formed. A sole trader will often take on a partner when there is too much work to be done, or when extra skills are required.

Accordingly, many businesses take advantage of this concept of division of labour, or of the division of time, so that partners may work different shifts.

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. Following on from this, an individual partner can be sued personally and held liable for all decisions made, and debts incurred, by other partners.

As with the sole trader, it is possible to set up a partnership without any legal formalities. However, one should consider entering into a legal contract called a "Deed of Partnership" which 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.

LIMITED LIABILITY COMPANY

Limited liability companies are the most common form of business organisation. The owners of limited companies are called shareholders because they each own a part of the business. A limited company is a separate body in law from its shareholders and directors.

Unlike the sole trader and partnership business described previously, the legal position of the company is completely unaffected by the death or retirement of one of the 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 such shareholders. However, one should point out that creditors often insist that shareholders in a small private company (they would more often than not be the director as well) accept some personal responsibility for a debt.

To set up a business as a private limited company, one must register with the Registrar of Companies at Dublin Castle. A Memorandum of Association must be prepared which establishes the company and determines the objects of the business which it is to conduct. Additionally, the Articles of Association must be prepared, which contains the internal constraints governing the conduct of the company as between the shareholders and the directors of the company.

Once these documents have been lodged with the registrar and accepted, a Certification of Incorporation will be granted and the company can commence trading.

Companies may be purchased "off the shelf" already made which may then be altered to suit individual requirements. Alternatively, one may wish to form a company "from scratch" thereby overcoming the necessity to alter the constitution of a pre-existing company.

GENERAL

No matter which business format you wish to adopt, there are a number of other legal issues to consider when establishing a business venture:

- What you call yourself will fix your business in the minds of the public.
- A business name should project the image of the organisation and hopefully build up goodwill, thereby enhancing the success of your business.
- Care must be taken when choosing a business name and it is always advisable to seek professional advice from a solicitor before doing so.
- Business location
- Improvements and general maintenance.
- Insurance
- Business activity
- Employment matters

There exists a veritable army of professional advisors capable of setting a potential business person on the right route. Solicitors, accountants, bankers, insurance brokers, business consultants and small firms advisors can all provide the basic information to ensure that a business gets off on the right footing and continues on the road to success. The County Enterprise Board can be one of your closest allies when you are engaged in the process of setting up a new business or expanding an existing business. Their advice and help can be invaluable for many people.

At the end of the day it is you, and you alone, who will make the final decisions so consider the advice you are given very carefully and make your choices with confidence.