

## LEGAL STRUCTURES

### Overview

There are a number of possible ways in which an Irish based business can conduct business with or in the United Kingdom. It is possible to conduct a business exclusively from Ireland with minimal obligations under United Kingdom law. The business may export goods or provide services without having any permanent presence in the UK. Sales may be undertaken directly or through one or more UK agents or distributors.

There is a key distinction between trading with the UK from Ireland and trading in the UK. The establishment of a branch, subsidiary company or other presence in the UK will entail a much greater degree of involvement with the UK authorities and will entail much greater need for compliance with English law and regulations.

### Branch

A branch refers to a division of an existing company or existing business. It is possible for an Irish based sole trader, partnership or company to operate in England and Wales without setting up a UK company or partnership. The opening of a branch or a permanent establishment of an Irish company in England and Wales will trigger an obligation to comply with various UK and English rules and obligations. It is possible to conduct a business exclusively from Ireland with fewer obligations under United Kingdom law.

A UK branch of a company is simply the Irish company operating in the United Kingdom. The company continues to be subject to Irish company law, but there will be an obligation to register certain particulars with the English Companies House. This involves making certain additional returns to Companies House in England in addition to those required to the Irish Companies Office.

The establishment of a branch or permanent place of business is usually the trigger to bring a company or business within the charge to Income Tax or Corporation Tax in the United Kingdom. Under certain circumstances it may be necessary to register for UK VAT with the UK Revenue, even where there is no branch or permanent establishment.

### **Sole Trader or Partnership**

If a sole trader or partnership business in Ireland begins to trade within the United Kingdom (i.e. establishes a subsidiary company, branch or presence there) he or it must register with HM Revenue & Customs (HMRC). Generally speaking, unless the business involves special regulatory requirements, a sole trader or partner's principal obligations are taxation obligations.

A sole trader is personally liable for all debts incurred in the course of his business. Due to European Union legislation, the personal assets of an Irish sole trader or partner are potentially available to satisfy any Court Order in the United Kingdom.

Partners are individuals who agree to undertake the risk, costs and responsibilities of being in business in common. There is no separate legal entity, as is the case with a company or LLP. A partnership does not create a separate legal entity and there are little or no obligations to file documents with the Companies Registers.

It is desirable to have a partnership agreement to determine the ground rules of the partnership. A partnership agreement can be drafted in a way that is tailored and specific to the financial and personal circumstances of the partners and the business.

Each partner is self employed and takes a share of the profits and usually partakes in business decisions. Each partner is personally liable for business debts. English and Irish Partnership Law are identical and both are still based on the same common 1890 legislation which applies in both countries.

Each partner must register as self employed with HMRC. Partners and individuals must make annual self assessment returns to HMRC of the income and profits of their trade.

They must keep all records necessary to show their business income and expenses. Partners are taxed on the share of profits. Each partner needs to pay either Class 2 or Class 4 National Insurance (equivalent of Irish social insurance) contributions.

Partners are jointly and severally liable for the debts of the business. This means that any one of them can be made liable to an outside third party for all partnership debts. If this occurs, then either under Partnership Law or their partnership agreement each partner will have a right of contribution from his fellow partners.

### **Limited Liability Partnerships**

"Limited Liability Partnerships" are a new option for undertaking business that have been recently introduced. There is no equivalent available in Ireland. In the case of an LLP, liability is limited to the amount the parties have invested and by any personal guarantees they agree to give to third parties. An LLP gives members protection against liability while retaining the tax advantage of sole traders or "ordinary partners". In contrast in the case of companies, the company itself is taxed in addition to the members, with the result that there is double taxation.

Each LLP partner needs to register as self employed with HMRC. There can be any amount of members, but there must be at least two designated members on whom the law places certain responsibilities. Each LLP must register at Companies House. It is very desirable to draw up a written agreement to provide for the rules of the partnership.

Each member takes an equal share of profits unless otherwise agreed. Members of the partnership pay tax and National Insurance contribution on their share of profits. An LLP is fiscally transparent i.e. unlike a company it is not taxed as a separate entity in itself. Tax law looks through the entity to the members. The LLP is not taxed itself. This is a very significant advantage.

### **Companies**

Limited liability companies formed under Companies legislation in England and Wales are broadly similar to those found in Ireland. A recent reforming piece of legislation, the Companies Act, 2006 has taken effect to reform the law. Private limited companies can have one or more members (shareholders). However, they cannot offer their shares to the public. A company's shareholders are not personally liable for the company's debts, although in practice they may have to give guarantees.

English Companies legislation is broadly similar to that in Ireland. A company must be registered at Companies House. There must be at least one director (two are necessary in Ireland). A company secretary is not necessary, but it is desirable. The board of directors manage the company and make business decisions. Finance comes from shareholders by contributions, loans or directly from retained capital. Private companies cannot raise money by selling shares. Public companies can do so.

Companies must file accounts with Companies House annually. Companies accounts must be audited unless turnover is below certain amounts. Certain other significant transactions such as the issues of shares, appointments of new directors, changes in company rules and other significant matters in the life of a company must be notified to Companies Office. The companies file is available for inspection at the Companies House website.

A company is a separate legal entity from its owners and it must register with HMRC. It is liable to corporation tax which is a separate tax on the profits of a company's trade and other income. Income tax is charged on dividends and other payments made to members. Generally, company directors and controllers are employees of the company and they must pay both income tax and Class 1 National Insurance contributions on their salaries.

Company Law provides a basic mechanism for running companies. It is desirable to have a shareholders agreement where a number of parties are involved in the management and control of the companies. This should deal with the management and operation of the company and the decision making process. It should also provide for scenarios where one individual exits the business or wishes to sell his shares. In effect,

most small companies are closer to a partnership and it is very desirable to set up rights and rules that reflect the personal relationship of the parties and the fact that the business may be dependent upon the participation of certain key individuals.

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This Guide is intended as an overview and broad outline of the matters covered in it. Its purpose is to inform and raise awareness. We are happy to offer specific legal advice on particular circumstances.

This Guide should not be relied on as a substitute for comprehensive legal advice with reference to the particular circumstances.

While we have taken due care in the preparation of this publication, we do not accept legal liability as a result of any reliance placed on anything in this Guide. The reader should rely only on specific legal or taxation advice.

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