

THE SIMPLE GUIDE TO COMPANY FORMATIONS



	CONTENTS	PAGE
1.	Advantages of incorporation	2
2.	Company Names	3
3.	Company Types	3
4.	Company Memorandum & Articles of Association	4
5.	Company Activities	4
6.	Company Registered Office	5
7.	Company Directors	5
8.	Company Secretary	7
9.	Share Capital	6
10.	Shareholders	6
11.	Readymade Companies	6
12.	Opening a Bank Account	7
13.	Tax Registration	7
14.	ICC Incorporation Process & Company Packages	7
15.	Useful Websites	9
	After Incorporation	10
	Non-Compliance with Annual Rules	11
	Audit Exemption	13
	Changes in Company Directors/Secretary/Shareholders	14



1. ADVANTAGES OF COMPANY INCORPORATION

The limited liability company is, as it has always been, the most popular form for new businesses. Even though many people in business today continue to do business as sole traders or partnerships the benefits of carrying on business as a limited liability company are considerable.

The main advantages of incorporation by way of a limited company are:

SHAREHOLDERS' LIABILITY FOR COMPANY'S DEBTS IS LIMITED ("LIMITED LIABILITY")

The protection given by limited liability is perhaps the most important advantage of incorporation. The shareholders' only liability is for the amount, if any, remaining unpaid on their shares. Since most private companies issue shares as "fully paid", if things go wrong, a shareholders' only loss is the value of the shares and any loans made to the company. Personal assets are not put at risk.

On the other hand, with the sole trader or partnership, each of the individual members of the sole trader-ship or partnership can be held jointly and individually accountable/liable for *all* of its debts and obligations *without any limitation whatever*.

PROTECTION OF COMPANY NAME

Having a registered company name means no one else can use it. Registration of Business Names by an individual, firm or company provides no exclusive rights whatever to that name. Any number of identical Business Names can be registered. The only protection for sole traders and partnerships is trademark legislation.

NEW SHAREHOLDERS AND INVESTORS CAN EASILY BE ADDED

The issue, transfer or sale of shares is a relatively straightforward process - although existing shareholders may be protected through a right of first refusal and by company legislation that seeks to protect the interests of minority investors.

The process of lending to a company is also easier than with other business forms. The lending bank may be able to secure its loan against certain specified assets of the business (a "fixed charge") or against the business as a whole ("floating charge").

BETTER PENSION SCHEMES

Approved company pension schemes usually provide better benefits than those paid under contracts to self-employed sole trader businesses.

TAXATION

Companies pay Corporation Tax on their taxable profits. Sole traders and partnerships pay income tax.

There is a wider range of allowances and tax-deductible costs that can be offset against a company's profits. In addition, the current level of Corporation Tax - 12.5% - on trading profits is lower than income tax rates.

2. COMPANY NAME:

The very first thing you need to know is – can I use the name I have chosen for my New Company? Because there are many companies already registered, it would be very easy to choose a name, which may already be in use.

Also, there are also certain words, which may not be used in Company Names, either without special permission or not at all. Ultimately, the Registrar of Companies is the final judge in matters of what is and what is not acceptable as a company name.

It is most important, therefore, not to incur expenses relating to the proposed name (e.g. preparing signs, headed notepaper, stationery, etc.) in advance of the issue of the Certificate of Incorporation by the Registrar of Companies.

You can IMMEDIATELY check the current availability of your chosen Company Name – just call ICC Company Formations now on 1800 677 677.

3. COMPANY TYPE:

Companies can be either private or public, with their liability to creditors limited or unlimited. The private limited company is the most popular type of company chosen by those setting-up new businesses.

In a **limited liability company**, the shareholders' liability, should the company fail, is limited to the amount which they have invested in the company.



On the other hand, an **unlimited company** is one which does not limit the liability of its members/shareholders. In effect this means that if the company is closed down/wound-up, its members/shareholders will have to pay **ALL** of the Company's debts.

Another popular form of company is the **company limited by guarantee, not having a share capital**. This type of company is used by people involved in a non-trading, non-profit making activity. Many clubs, associations, charitable and professional bodies find this form of company to be the most suitable form for incorporation as they wish to secure the benefits of separate legal personality and of limited liability but do not require to raise funds from the members.

Because this Company does not have a share capital it cannot be classed as a private company. Therefore, as a public company, there must be a minimum of seven members. The members' liability is limited to the amount they have undertaken to contribute to the assets of the company, in the event it is closed-down/wound up i.e. the guarantee, not exceeding the amount specified, usually €1.

4. COMPANY MEMORANDUM & ARTICLES OF ASSOCIATION:

A Company's constitution is divided into 2 parts – the Memorandum of Association and the Articles of Association.

The Memorandum of Association looks at the Company's relationship with those it will do business with – the outside world – it defines what the Company may do while remaining within legal boundaries.

The Articles of Association, on the other hand, looks to the internal management of the Company and sets out the terms of the contract between the Company and its shareholders.

ICC provides its clients with a standard pre-prepared Memorandum & Articles of Association for each type of company.

5. COMPANY ACTIVITIES:

Within a Company's Memorandum of Association you will find a clause (usually Clause 2), which presents in detail precisely what business activities the Company will carry on e.g. own and operate a pub or restaurant, manage a block of apartments etc.

6. COMPANY REGISTERED OFFICE:

Your Company's Registered Office Address is the company's formal address for legal purposes. It is the address to which Companies Registration Office (CRO) correspondence and all formal legal notices addressed to the company will be sent.

A Company's Registered Office Address should not be confused with its Trading Address, which is the location of its day-to-day business. However, in practice many companies' Registered Office Address and Trading Address are one and the same.

7. COMPANY DIRECTORS:

A Company's Directors are those who are tasked with managing its day-to-day business affairs. They manage the business on behalf of the Company's owners, who are the shareholders/members. Many small Irish companies are owned and managed by the same people.

Every Company must have a minimum of two Company Directors, one of whom is required to be an Irish-resident. There are, however, exceptions to this rule.

Contact us for more information – Tel: 1 800 677 677.

8. COMPANY SECRETARY:

Every Irish Company is required to have a Company Secretary, who is responsible for making sure that the company complies fully with its legal obligations.

The Company Secretary and the Company's Directors are collectively known as the Company's officers.

The Company Secretary may be one of the Directors, who will act in both roles.

Always make sure that the person who acts as Company Secretary is fully aware of the importance of this role, the legal obligations associated with it and the potential implications of failing to comply. If in any doubt, you should discuss this with your professional adviser.



9. SHARE CAPITAL:

To have a “share” in a Company is to be a part-owner of that Company and the more “shares” you have, the greater part of the Company you will own.

A Company’s share capital will be divided into “authorised share capital” and “issued share capital”.

A company’s “authorized or nominal share capital” is merely the maximum amount of capital the company can issue.

The Company’s issued share capital is the total value of the shares it has actually issued to its shareholders. For incorporation/start-up purposes a small number of shares will normally be issued e.g. 1 or 2 shares. These initial shares must be paid for in cash, which will be paid into the company’s bank account.

10. SHAREHOLDERS:

A Company’s shareholders will be all those who hold shares in a Company. These are the people who own the business; the greater the percentage of shares held, the greater the say a person has in how the business is run e.g. to have more than 50% is to have a controlling interest in the company.

11. READymADE COMPANIES:

From time to time, some readymade companies become available, which have been incorporated for clients who have decided not to use them for the original intended purpose. These companies will then be available for purchase and immediate use. This option will be of particular benefit to those, say, wishing to purchase property through a company but time doesn’t allow them to wait for a new company to be incorporated.

If you would like to get some information on these companies or, indeed, reserve one of these companies, please contact us - Tel: 1 800 677 677.

12. OPENING A BANK ACCOUNT:

As soon as a company is incorporated it may want to open a bank account. The following will be required, as a minimum, by financial institutions as part of this process:

- The ORIGINAL Certificate of Incorporation;
- A copy of the company's Memorandum & Articles of Association;
- Copies of passport/driving licence as evidence of identity;
- Copies of two utility bills e.g. ESB or Gas Bills for each Director as evidence of residency;
- Copies of Companies Registration Office Forms showing the appointment of the Directors and Company Secretary; and
- Completed bank account opening forms.
and probably some money to begin with !!

13. TAX REGISTRATION:

All newly incorporated companies are required to complete and submit the following to the Revenue Commissioners within 30 days of incorporation:

- Initial tax registration form - Form 11F CRO
- Registration of Company for Corporation Tax, PAYE/PRSI and VAT - Form TR2.

Whether or not you will have to register for VAT will depend on the level of your Company's business.

Copies of these and any other forms you may need are readily available from ICC – just give us a call on 1 800 677 677.

14. ICC INCORPORATION PROCESS & COMPANY PACKAGES:

Here at ICC we aim to make your customer experience as pleasant and straightforward as possible. We will keep you advised of the progress of the incorporation of your Company regularly throughout the process.



When you have assembled all the information you need, just contact us - you can place your Company Order Online at www.iccformations.ie – or just give us a call on 1 800 677 677.

Incorporation of your Company in the Companies Registration Office will be completed electronically in one to five working days.

To begin the process - all we need from you is the following:

- Your chosen name for your new company
- Completed Order Form
- Directors written Consent to Act
- Your payment (except where you have a Credit Account with us)

To enable your company to be incorporated as quickly as possible ICC will provide the first Company Secretary to your company. The completed Companies Registration Office Form B10 (to record changes in Company Secretary after incorporation) completed by the new Company Secretary should then be forwarded to us as soon as possible.

You will be advised immediately when your company has been incorporated. Your Company Package will be issued to you on the day we receive the Certificate of Incorporation from the Registrar of Companies.

WHAT YOU WILL RECEIVE IN YOUR COMPANY PACKAGE:

- Original Certificate of Incorporation
- Copies of the Memorandum & Articles of Association
- Minutes of Board Meetings
- Share Transfer Forms
- Share Certificates
- Combined Company Register & Minute Book
- Company Seal
- Information Sheet on Compliance Issues

TELEPHONE: 1 800 677 677 Fax: 01 – 240 5806 or alternatively you can e-mail us at sales@iccformations.ie or visit our website at www.iccformations.ie

These are very important legal documents and should therefore be held in a safe place at all times.



15. SOME USEFUL WEBSITES:

The Institute of Directors in Ireland	http://www.iodireland.ie
The Irish Revenue Commissioners	http://www.revenue.ie
Office of the Director of Corporate Enforcement	http://www.odce.ie
The Institute of Certified Public Accountants	http://www.cpairland.ie
The Institute of Chartered Accountants in Ireland	http://icai.ie
The Institute of Chartered Secretaries & Administrators	http://icsa.org.uk

TELEPHONE: 1 800 677 677 Fax: 01 – 240 5806 or alternatively you can e-mail us at sales@iccformations.ie or visit our website at www.iccformations.ie



AFTER INCORPORATION

So, after you have your company incorporated and you start your new business, what are your ongoing legal obligations as a company and as a Director? What must you do to keep your company fully legally compliant at all times?

(A) ANNUAL GENERAL MEETINGS:

Your Company's first Annual General Meeting (AGM), which is a meeting of shareholders held to consider the Company's performance in the previous year, must be held within 18 months of incorporation. After that, an AGM should be held in each calendar year. No more than 15 months should pass between the date of one AGM and that of the next.

Who is responsible for calling company meetings?

The person who occupies the position of Company Secretary is responsible for the legal affairs of the company. He/she will be responsible for calling and holding company meetings.

(B) ANNUAL REPORTS AND FINANCIAL STATEMENTS ("ACCOUNTS"):

Accounts are required to be prepared, audited, if necessary, (see following) and presented to an AGM on a yearly basis. (Note: The Registrar is reluctant to accept financial statements which cover periods of more than 12 months).

The accounts in respect of a financial year should be presented to an AGM within 9 months of that financial year-end.

It is most important that you seek the professional advice of your accountant/financial adviser well in advance of the relevant timelines.

(C) ANNUAL RETURNS:

Every Company is given a distinctive Annual Return Date (ARD). For new companies this date is 6 months after its incorporation. Annual Returns/accounts must be filed within 28 days of this ARD.

The first Annual Return can be filed without accounts but must be filed within 28 days of the ARD. Subsequent Annual Returns should be made up to the anniversary of the specified ARD and filed with the necessary accounts, audited or un-audited, within 28 days of the ARD.

The preparation and filing of Annual Returns for your Company is of critical importance to the wellbeing of your business (see following). It is recommended that you engage the services of professional service providers, who will deal with the preparation and filing of your Company's Annual Returns. This will provide you with the necessary peace of mind knowing that your filing deadlines will never be missed.



NON-COMPLIANCE WITH ANNUAL RULES

The implications of non-compliance can be very severe indeed:

- A)** Late Filing Fees - any Annual Return presented for filing 29 days or more after the Annual Return Date (ARD) will suffer late filing penalties. A fixed penalty of €100 becomes due on the day after the filing deadline. In addition, daily penalties of €3 will be payable in respect of every day the Return is late, up to a maximum of €1,200 per Return.
- B)** Fines – On conviction, the Company and every Director/Secretary of the company who is considered to be at fault in respect of the holding of Annual General Meetings/filing of Annual Returns on time may be fined of up to €1,900 in respect of each offence. Persistent late filing could result in an additional on-the-spot fine.
- C)** Strike-Off - The Registrar of Companies could begin strike-off proceedings against companies who fail to file an Annual Return in any year.
- D)** Disqualification - any Company Director found guilty of being persistently at fault in relation to the filing of returns may be disqualified from acting as director or other officer, auditor, receiver, liquidator or examiner or from being in any way involved in the promotion, formation or management of any company for such time as the Court considers appropriate.
- E)** Loss of Limited Liability – While a Company is struck-off/dissolved, the Directors/Secretary/Shareholders become personally responsible for all debts of the Company.



- F)** Loss of Company Property and Assets – While a Company is dissolved, the rights to property and assets of that Company are transferred to the State and cannot be dealt with in any way by the Company.

Not every company can justify the cost of employing a qualified company secretary to deal with its Compliance matters. Here at ICC we can provide the solution. We will provide the services of our dedicated Company Secretarial Services Department to deal with all your compliance needs.

Indeed, we can even provide the services of our in-house trust company to act as named secretary to client companies. The fixed annual fee for this facility can be discussed. Any work then undertaken would be charged out at normal charge-out rates.

Compliance Solutions can be tailored to each company's precise needs and at very competitive rates. This is but a part of the comprehensive Company Secretarial Services available to all ICC clients.

All you have to do is remember one telephone number 1 800 677 677 and we will look after all your Company's needs.

AUDIT EXEMPTION

Your Company may be able to claim an exemption from the need to have its accounts audited.

A private company, being a limited company or an unlimited company which is required to file accounts may be able to qualify not to have to audit its accounts or to appoint/retain an auditor.

As a Director you must be sure that your company will satisfy the conditions in respect of the current financial year and (unless it is your company's first financial year) be satisfied that the company met the conditions in the previous financial year. Then, and only then, can you decide to avail of the exemption. Also, your decision to avail of the exemption must be recorded in Minutes of a Board Meeting.

The exemption is lost if during the financial year one or more of the conditions are not satisfied.

Your company can avail of the exemption if:

- it is a private limited or unlimited;
- its turnover does not exceed € 7.3m;
- its balance sheet total does not exceed €3.65m;
- the average number of people employed in the business does not exceed 50;
- it is permitted by its Articles of Association to avail of audit exemption.

ALSO VERY IMPORTANT: Even if your company meets each of the qualifying criteria, you will not be able to file unaudited accounts with your Annual Return unless you file that Return on time AND the Return for the previous year was also filed on time.





CHANGES IN COMPANY DIRECTORS/SECRETARY/ SHAREHOLDERS

Over time you may need to record changes in your Company's Directors, Secretary or Shareholders.

(A) CHANGES IN DIRECTORS/SECRETARY:

Any changes in personnel or their registered details e.g. home address must be recorded in the Register of Directors and Secretaries (part of Combined Company Register – see Company Package above). These changes must also be notified to the Companies Registration Office (CRO) within 14 days of the change – CRO Form B10 (available from ICC) is used for this purpose.

(B) CHANGES IN SHAREHOLDERS:

These changes can arise in two ways:

(I) TRANSFERS OF SHARES:

This situation can arise when one of the current shareholders/owners wants to “cash in” their investment in the business. Usually, their share(s) will be acquired by the other shareholder(s) by transfer of the share(s).

(II) ISSUES OF NEW SHARES:

As your business grows and prospers you may need to introduce new investors. This can be achieved through the issue of new shares to these investors in return for their investment of new capital in your business.

ICC can provide you with step-by-step advice on any of these changes and will provide with all necessary paperwork to ensure full compliance with your legal obligations and at very competitive rates. This is but a part of the comprehensive Company Secretarial Services available to all ICC clients.

All you have to do is remember one telephone number 1 800 677 677 and we will look after all your Company's needs.

TELEPHONE: 1 800 677 677 Fax: 01 – 240 5806 or alternatively you can e-mail us at sales@iccformations.ie or visit our website at www.iccformations.ie

