OPEN FOREST

Legal Handbook **for Startups**

Introduction

This short handbook is created by Open Forest to enable early-stage founders to have a basic understanding as to their obligations and requirements when starting a business.

It sets out at a high level what is expected from founders from Day 0 to the first 6 months of their business from a company compliance perspective.

What exactly is a limited company and why use one?

Types of Business

1. WHAT IS A LIMITED COMPANY AND WHY USE ONE?

Founders have a choice when it comes to the business structure they use to run their operations.

There are a number of different options in Ireland, depending on what type of business it is but, in general, the two most common business structures are **sole traders** and **limited companies**.

Note: Throughout this handbook, when we mention “limited company”, we are referring to a private limited company rather than a public limited company.

SOLE TRADERS

This is when you are operating your business in your own name.

This means that every euro made will be taxed at your own personal income tax rate and it also means that if anything goes wrong in the business, you may be held personally liable and your assets (car, house, bank accounts etc) may be used to pay off that liability.

The upside is that generally all that is needed to operate a business as a sole trader is a registration with Revenue Commissioners and a yearly tax filing. You are required to register when your business has revenue of over €5,000.

Operating as a sole trader is generally best for one-person business, businesses that will not require third-party investment or businesses that are inherently at risk of legal action, i.e. businesses where things can go wrong or people could get injured for example.

PRIVATE LIMITED COMPANY

On the other hand, opening a private limited company is a more complicated registration process, but it comes with some excelled up-sides.

REGISTRATION

To set up a limited company, you are required to submit a lengthy application form to the Companies Registration Office. This is in addition to any tax registrations that need to be made to the Revenue Commissioners.

The application form requires you to specify details about your company including who the directors will be, who the company secretary will be, who the shareholders will be and what the share structure should look like.

LIMITED LIABILITY

One of the main benefits of using a limited company to run your business is that your liability is limited to the assets of the company, and not the assets of the shareholders of the company.

This means that, for example, if you started a coffee shop that eventually failed and your coffee shop still owed €20,000 to suppliers, then generally speaking those suppliers can't recover that €20,000 from your personal assets - and if there is no cash left in the business, they don't recover it at all.

This is a long-standing legal principle that helps limit the risk for founders starting their own business. It has to be like this to encourage people to do business without fear of losing the assets they may have accumulated over their lifetime.
If this protection wasn't in place, a lot less people would start a business!

TAX EFFICIENCIES

Unlike operating as a sole trader where you will immediately get taxed at your own personal income tax rates for every euro the business makes, if you operate through a limited company, it is the company that will get taxed first, and then you will only get taxed on what you pay yourself personally.

Depending on your circumstances, they may be beneficial to you or not - but as a matter of fact, trading through a limited company offers a lot more flexibility with regard to tax management.

Generally, this is only beneficial if your business is turning over more than €50-60,000 in revenue.

CHAPTER

Pre-Incorporation Checks

Initial Review

2. PRE-INCORPORATION CHECK

Before you try to incorporate, you will need to ensure that the following is in order:

REGISTERED OFFICE

All Irish companies are required to have a registered address in Ireland and it has to be a real location, rather than a PO Box. This office will be on public record and so be aware of that if you choose your own residential address.

You can also outsource the Registered Office address to companies like Open Forest which has a double benefit of privacy but also making your company appear more professional in its earliest days.

The purpose of the Registered Office is to allow the Revenue Commissioners and the Companies Registration Office to send official post.

COMPANY SECRETARY

You are also required to appoint a company secretary to the company.

There are no formal educational or experience requirements for this position but directors have a duty to ensure that the person appointed as secretary has the skills or resources necessary to discharge his or her statutory duty as company secretary.

In practice, directors sometimes appoint family members or friends to be the company secretary but it is almost always likely that doing this falls short of the requirement to have an appropriately skilled person in that position.

The company secretary is responsible for preparing legal registers, share certificates and tracking governance obligations. If the person you appoint does not have the skills to put these documents in place (at least), then you should consider outsourcing the role to professional company secretaries like Open Forest.

We always recommend outsourcing the company secretary role for at least the first year - that way you will have all of the initial paperwork prepared correctly from the start. You can then change the company secretary at a later date if required.

SHAREHOLDERS

The shareholders (also called the members) are the actual owners of the company. They are the ones that own the shares.

Each private limited company can have anywhere between 1 and 149 shareholders (although the more shareholders there are, the harder it is to organise signatures etc).

The shareholders are top of the hierarchy because it is the shareholders, as owners, that choose the directors and can hire and fire the directors (unless they delegate those powers to the directors).

But the ultimate power will usually always rest with the shareholders (the shareholders with the voting power to be precise).

DIRECTORS

You (as the initial shareholder) will also need to choose who will be the director(s) of the company. The minimum number of directors is only one, but, if that director is also going to be the company secretary, then you need to appoint a second director.

If you are a company of one founder, then you should appoint yourself as the only director initially and then find someone else to be the company secretary, preferably a professional like Open Forest.

If you are a company of two or more founders, then you can all be directors and one of you could also be the company secretary. Just keep in mind that the more directors there are, the more signatures that are needed to achieve certain things and you are still bound by the requirement to appoint an appropriate company secretary.

COMPANY CONSTITUTION

You will also need to put a company constitution in place. The constitution is the playbook of the company - it sets out how things work, like director meetings, how to issue shares to people, how to hire and fire the directors and what the share structure of the company looks like.

The CRO form has a checkbox that will populate a really basic constitution for you, but it is just a one-page document that falls really short on information.

Putting in place a more robust constitution can be advisable, depending on your circumstances but really that would be a job for a lawyer, as it can be complicated.

CHAPTER

The Incorporation Process

Incorporating your Company

3. THE INCORPORATION PROCESS

Once you have everything organised, the next step is to do the actual incorporation.

This can take anywhere between 30 minutes to 3 hours to complete the form and anywhere between 3 days to 21 days to get approval.

The higher time estimates are almost exclusively when a founder tries to do it themselves.

CRO PROCESS

Ultimately, the CRO Form A1 is the appropriate form to complete to set up a new company. There are over 10 pages of questions, some more technical than others.

You will be asked about the details we discussed earlier in the pre-incorporation checks and then, importantly, about the share structure of your company. This is like asking you to build the engine of your new car or the foundations of your new house.

SHARE STRUCTURE

You will be asked to set out the following:

AUTHORISED SHARES

Authorised Shares, whether your company will have an "authorised share capital" which means whether you want to set an absolute maximum amount of shares that your company can give out to people (issue). You don't have to set a maximum number and we recommend that you don't set one to give yourself maximum flexibility;

ISSUED SHARES

Issued Shares of the Authorised Shares, how many shares do you actually want to issue to people from the start and who those people are (the shareholders). You can issue all of the Authorized Shares (if you set a max) or just some of them - the important thing is to get the percentages correct - i.e. with two founders, you can issue 1 share each of 100,000 shares each - either way it would still be 50:50;

CLASSES OF SHARES

Share Classes of the issued shares, what class or type of shares are you giving the shareholders now. Will those shares have any specific benefits or restrictions (for example, votes, rights to dividends, liquidation preferences etc)?

PAR VALUE

The "par value" is the nominal cost of each share that is set at the very start. You often see founders that incorporate their own company or accountants setting the par value at €1.00, but that can be a restriction in some circumstances. At Open Forest, we set our company's par value at €0.01 per share which offers more flexibility.

It’s really important to get the share structure right as it will set your company up well from the start and limit the chance of running into early issues.

For example, if you set the Authorised Shares too low or give out too many Issued Shares, you can run into problems when you try to get fundraising from Enterprise Ireland through their pre-seed start fund (PSSF).

If you set your par value too high and a co-founder leaves early, they might trigger stamp duty when they try to transfer their (still probably worthless) shares to the remaining co-founder.

CHAPTER

Post-Incorporation Obligations

Meet Your Responsibilities

4. POST INCORPORATION OBLIGATIONS

Once your incorporation is approved, there are a few legal requirements that you have to meet.

LEGAL REGISTERS

Most of the rules come directly from the Companies Act 2014 (as amended from time to time) and the requirement to put certain legal registers in place is one of them.

There are 6 or 7 different registers but the main ones are:

- Register of Directors
- Register of Member
- Register of Company Secretaries

The specific details of what information should be set out in each register is also listed in the Companies Acts and keep in mind that the registers are living documents, like ledgers, and have to be updated when any changes are made.

SHARE CERTIFICATES

Every company must "complete and have ready for delivery" share certificates for each shareholder within 2 months of them getting issued with shares.

Generally the share certificate is stamped with the company seal, signed by a director and countersigned by the company secretary although the companies act doesn't actually specify that market practice.

Generally these days the details are just placed on the share certificate it is signed by a director and countersigned by the company secretary and a digital copy is kept.

RBO FILING

The Register of Beneficial Owners is a requirement that has come from various pieces of anti-money laundering legislation.

The idea is for all companies to clearly identify who the real owners are - in terms of the actual natural persons that own and control the company.

To find that out, every company has to list out the people that own over 25% of the shares in the company, and where it is another company that owns the shares, the requirement is to keep looking behind each company all the way back until a natural person can be identified.

If there are no shareholders that own more than 25% of the company, then it can be the directors or senior management that gets listed as the beneficial owner.

This filing has to be done within 5 months of the date of incorporation and is also a live register, so any changes have to be filed too.

TAX REGISTRATIONS

Separate to company law requirements, there are various possible taxation requirements.

Companies are required to register for corporation tax within 30 days of “trading”, although Revenue is a little light on information as to what “trading” actually means.

It’s simple in the simple cases but it can get a little tricky for other cases.

Companies may also have to register for employer taxes and VAT, depending on their circumstances.

FIRST ANNUAL RETURN

Finally, precisely 6 months after incorporation, a company’s first annual return date arrives.

As per the name, the “annual return” has to be filed annually. “Return” just means it’s a form - so the annual form has to be filled in.

The form requests details of any changes that happened in the prior period.

Companies always have 56 days from their annual return date to file their form. So if your annual return date is 1 May, you have until 26 June to file.

It is really important that you do not miss this filing date, even by 1 minute - as there is no going back (not easily anyway).

The moment you are late, you get a €100 fine, plus €3 fine every day you continue to be late but the worst part is that small companies are usually exempt from getting their year-end financial statements audited, and if you file your annual return late, then you lose that audit exemption for the next 2 years. That is probably a €4,000 mistake.

Speaking of financial statements, you don’t have to prepare and file them for your first annual return (the 6 month one) but you do have to prepare and file them (hopefully unaudited ones) for each annual return afterwards.

CHAPTER

First Legal Agreements

Kickoff Agreements

5. FIRST LEGAL AGREEMENTS

Finally, in terms of the immediate legal agreements that companies will usually need, there are the following two main ones:

FOUNDERS AGREEMENT

This is an agreement that is put in place when there is more than one founder.

It normally contains these provisions:

- Roles & Responsibilities: who is responsible for what, when do both founders have a say, is one founder in charge of an area exclusively?

- Decision Making: does any one founder have more voting power than the other founder in any particular area?

- What happens when founders disagree? Do you hire an independent advisor to make a decision? If so, is their decision binding on the founders?

- Vesting: do both founders need to vest? If so, for how long? 4 years? 7 years? 10 years?

- Death: what happens in the unfortunate case of the death of a founder?

Founders Agreements are not to be confused with shareholder agreements (even though the founders are usually shareholders).

Shareholder Agreements are the big sister to the Founders Agreement and are usually brought in when an external investor comes into the picture.

Founders Agreements tend to be a little more informal and a little more commercial, but we can't express this enough - the founders should crawl through every sentence of their founders agreement, understand every word and be sure they know what they are agreeing to.

The large language models are fantastic for reading a draft founders agreement and helping the founders model out different scenarios.

IP ASSIGNMENT AGREEMENTS

Under Irish law, the intellectual property rights to a creative work (logos, software, website copy etc) belong to “the creator” - which usually means the person that puts “pen to paper”, i.e. the person that drew the logo or typed out the code.

The exception to this being an employee.

You cannot copyright an idea and so what that means is that founders can find that the person that they outsourced some work to, i.e. the Upwork developer or the Fiverr designer actually owns the copyright to their code or their designs, rather than the founder or the company owning it!

The way to avoid this is to have anyone that does any creative work whatsoever for you or your company sign over the rights to those creations by signing an IP Assignment Agreement. This includes the founders themselves, who should also transfer their IP rights to the company - although this is normally dealt with in the Founders Agreement.

If you are thinking of setting up a company for your new business venture or maybe you want to set up a holding company, or a coffee shop, or the next tech unicorn - Open Forest helps hundreds of founders meet their legal, tax and accounting requirements all on one platform, and at super low costs.

Founders can use Open Forest to avoid all of the possible issues set out in this handbook and Open Forest can support companies with all of their compliance needs, from incorporation to exit.

Visit openforest.co for more information.