

PAUL BRADY & CO. SOLICITORS

Incorporating
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Guide to setting up a private limited company in Ireland

Why set up a private limited company?

- unlike a partnership or sole trader, a company has a separate legal existence from its owners;
- limited liability – should the company fail, the owners (shareholders) liability for unpaid debts is limited to the amount of share capital contributed by them;
- personal assets of directors and shareholders cannot be seized to pay off company debts.

A company incorporated in Ireland must carry on an activity in the Republic of Ireland. “Activity” means “any activity that a company may be lawfully formed to carry on and includes the holding, acquisition or disposal of property of whatsoever kind”.

The Irish Companies Act 2014 (the “Act”), which came into effect on 1 June 2015 changed the landscape for private companies in Ireland. The Act not only consolidated all existing Irish Companies Acts and related statutory instruments into a single statute, but it also made significant reforms to Irish company law.

This guide will provide a brief outline of current state of play for private limited companies incorporated in Ireland.

The Act introduced two new types of private companies, a Private Company Limited by Shares (LTD) or a Designated Activity Company (DAC).

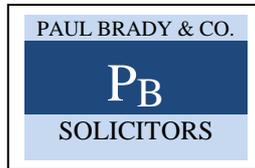
LTD or DAC?

The LTD has replaced the existing private limited company. The key points to note are:

- i. a simpler one document constitution (i.e. articles of association);
- ii. a memorandum of association is not required;
- iii. there is no need for an authorised share capital;
- iv. there are no stated objects in its constitution;
- v. only one director is required;
- vi. 149 maximum number of members;
- vii. if only one director, then it must have a separate secretary;
- viii. there is no requirement for a physical AGM;
- ix. company may pass written resolutions by the relevant majority;

The DAC is a new form company. The key points with a DAC are as follows:

- i. similar to private company limited by shares, pre the introduction of the Act;



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- ii. a DAC does have a memorandum of association stating its objects and limiting the company's activities;
- iii. it must have at least two directors and one secretary (secretary can be one of the directors);
- iv. 149 maximum number of members;
- v. it must have an AGM if two or more shareholders;

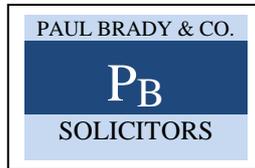
Certain companies will have no option but to become a DAC (e.g. financial institutions, insurance undertakings, companies wishing to have debentures admitted to trading or listed on a market) while most existing private limited companies will have to make a decision as whether to become a DAC or a LTD. While the transition period for existing companies ended in December 2016, any existing private company who failed to make a decision (and is not required by law to be a DAC) became a LTD. Such companies should consider the LTD requirements and identify if there are any changes to the company they now need or wish to make. Changes regarding the constitution and directors should be considered.

Registered Office

A private limited company must have a registered office address within the State for the service of CRO correspondence and all formal legal notices that are to be addressed to the company. The registered office can be in the care of a Registration Office Agent (ROA), provided the ROA has been approved by the Companies Registration Office.

The company's registered office, or sometimes the company's principle place of business within the State or another place within the State, must keep a number of statutory registers up-to-date and on its premises and available for inspection of any member of the company without charge, or member of the public on payment of a fee. These registers include:

- i. a Register of Members;
- ii. a Register of Directors & Secretaries;
- iii. a Register of instruments creating charges; (not available for inspection by members of public)
- iv. a Register of disclosable interests;



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Display of Company Name

Every business must paint or affix its name on the outside of every office or place in which the business is carried on, even if it is a director's home. The name must be both conspicuous and legible.

Directors

At least one of the directors of a private limited company must be resident in the European Economic Area. A director can only be a director of a maximum of 25 companies at any one time. If a director is a director of two or more companies, one of which is a holding company of the other(s), these are counted as only one company.

Director's duties

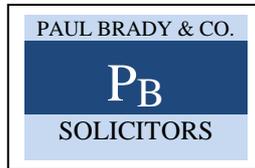
These have been set out in the Act for first time. A director has eight fiduciary duties:

- i. act in good faith;
- ii. act honestly and responsibly;
- iii. act in accordance with the company's constitution;
- iv. not use the company's property, information or opportunities for their own or anyone else's benefit;
- v. not agree to restrict the director's power to exercise an independent judgement;
- vi. avoid any conflict between the director's duties to the company and the director's other interests;
- vii. exercise the care, skill and diligence which would be exercised in the same circumstances by a reasonable person in the same position with the same knowledge; and
- viii. have regard to the interests of its employees and of its members as a whole.

On taking office, both directors and company secretaries must make a statement acknowledging their duties under the Act.

Company Secretary

Obligation placed on directors of company to appoint a suitably qualified company secretary, who has the skills or resources necessary to carry out the role. Company secretaries no longer have an obligation to ensure compliance with company law, this rests squarely with the directors.



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Disclosure of Shareholdings

Directors are obliged to disclose certain interests in shares or debentures in a company and associated companies (pre-existing obligation).

New exemption from disclosure – if shares of Director, aggregated with those of connected persons (spouse, child) amount to less than 1% interest in nominal value of company's issued share capital or a class carrying voting rights, there is no requirement for disclosure.

Loans to Directors

Prohibition relaxed by the Act, but loans should be properly documented. If not, it will be presumed that the loan will bear interest and be repayable on demand. For this reason, companies should look to document any loans to or from Directors.

Accounts and Audit

The Act makes a number of changes to the filing of accounts and audit requirements:

- Directors will also need to make a statement confirming there is no relevant audit information not disclosed to the company's auditors;
- Each director must confirm that they have taken all the steps they ought to have in order to make themselves aware of any relevant audit information and to establish that the company's statutory auditors have that information;
- Small companies will only be required to meet two of the three size criteria (turnover of under €8.8m, balance sheet of under €4.4m and less than 50 employees) to qualify for an audit exemption;
- Only necessary for the directors to sign the balance sheet and not the profit and loss account;
- A company may now only change its financial year once every 5 years.

For more information on setting up a private limited company or discussing any of the above points, or matters relating to the Companies Act 2014, please contact us per the details below, to arrange a consultation.

Paul Brady & Co. Solicitors

046-9028011/9028046

info@paulbradysolicitors.ie