

## Types of Irish Companies



The most common form of business entity in Ireland is a company. Relevant legislation is contained in the Companies Act 2014.

The Companies Act regulates such matters as the formation and dissolution of companies, share capital and its protection, dividends, duties and conduct of directors, publication of financial statements and the management and administration of companies.

### Types of Companies

The most common forms of business organisations operating in Ireland are:

- A Limited Company
- An Unlimited Company
- Investment Funds

Irish company law also provides for the use of the Societas Europaea or SE's which is a European public limited company.

### Limited Companies

In a limited company, the liability of the shareholder is limited to the amount agreed to be paid in respect of the issue of the share or the nominal value of the share, whichever is greater and/or is limited to the amount guaranteed by the shareholder.

A limited company may be either a 'public limited company' (PLC) or a 'private company'. A PLC may seek subscriptions from the public and can apply to have its shares quoted on any stock exchange.

All companies must have at least one shareholder. The majority of Irish companies are private companies limited by shares. A private company is one which restricts the right to transfer its shares, limits the number of shareholders to 149 and prohibits any invitation to the public to subscribe for any shares or debentures of the company.



## Company Types

There are a number of types of limited companies including:

### ■ Private Company Limited by Shares (“LTD”)

A simplified entity, a LTD has the capacity of a natural person and can have one director if required and a separate secretary.

### ■ Designated Activity Company (“DAC”)

A private company, a DAC’s activities is limited to its objects as set out in its memorandum of association and it must have at least two directors. Suitable for joint ventures and special purposes vehicles or where there is a corporate governance requirement for a restriction on its activities.

### ■ Company Limited by Guarantee having a Share Capital (“DAC limited by guarantee”)

A private company, whereby the shareholders have liability under two headings; firstly, the amount, if any, that is unpaid on the shares they hold, and secondly, the amount they have undertaken to contribute to the assets of the company, in the event that it is wound up, being not less than €1. Its activities are limited to its objects as set out in its memorandum of association and it must have at least two directors.

### ■ Company Limited by Guarantee not having a Share Capital (“CLG”)

A public company, whereby the shareholders’ liability is limited to the amount they have undertaken to contribute to the assets of the company, in the event it is wound up, not

exceeding a specified amount and subject to a minimum of €1. Suitable for charitable and professional bodies who wish to secure the benefits of separate legal personality and of limited liability but do not require funds from the shareholders. Its activities are limited to its objects as set out in its memorandum of association. A CLG must have at least two directors.

### ■ Public Limited Company (PLC)

Permitted to have shares listed on a stock exchange and offered to the public. Its activities are limited to its objects as set out in its memorandum of association. A PLC must have at least two directors, a statutory minimum share capital of €25,000 of which at least 25% must be paid on issue.

- Every company, other than a LTD, must have at least two directors and a secretary, who may be one of the directors. Additionally, there is a requirement to have at least one director resident in a member state of the European Economic Area or have a surety bond to the value of €25,000 or neither if the Irish Registrar of Companies issues a certificate that the company has a real and continuous link with one or more economic activities in Ireland. Unless required by the company’s Constitution, a director need not be a shareholder.
- A Constitution is required for the formation of a company. It consists, in all cases other than a LTD, of a memorandum of association, which sets out the company’s objectives, and the articles of association which regulates the manner in which the affairs of the company are to be conducted.

In the case of a LTD, as it has the capacity of a natural person, it does not need a memorandum of association and its Constitution sets out its governance provisions.

In all cases, it is possible for the Constitution to provide that the governance provisions of the Companies Act 2014 apply, thereby avoiding the need for detailed Constitutions. It is also possible for the Constitution to disapply or amend certain governance provisions of the Companies Act 2014.

Companies are required to keep adequate accounting records which must contain the information necessary to give a 'true and fair view' of the company's affairs and to explain its transactions. Financial statements of all companies must be audited by independent accountants, except for small limited companies and groups with a turnover not exceeding €8,800,000 and which fulfil a number of other conditions.

All limited companies and certain unlimited companies must file their financial statements with the Registrar of Companies for public inspection.

### Unlimited Companies

Unlimited companies are similar to limited companies except that the shareholders' liability is unlimited.

There are three types of unlimited companies:

- A private unlimited company with a share capital (ULC)
- A public unlimited company with a share capital (PUC); and
- A public unlimited company not having a share capital (PULC)

### Investment Funds

An investment fund generally is an entity that pools investors' funds to provide the investors with professional investment management. Typically, an investment fund sells its shares, invests the proceeds to achieve its investment objectives, and distributes to its shareholders the net income and net gains realised on the sale of its investment. Investment funds also result in a diversification of investment risk for the individual investor and reduced broker costs due to economies of scale. The basic legal structure of a fund can take one of several forms and can include companies:

#### i) Investment Companies

Investment companies are a form of PLC established under Irish law. There are two types of investment company:

##### a) Variable Capital Company

A variable capital company is an investment company with a variable share capital. The share capital does not have a nominal value, but rather the capital of the company is stated to be at all times equal to the net value of its assets. The company has the unrestricted right to redeem its own shares at the request of the shareholders. The fund's assets are the property of the company and must have a separate custodian to hold them.



##### b) Fixed Capital Investment Company

A fixed capital investment company is an investment company which is characterised by a limited number of shares sold at the inception of the fund. Subsequently the shares are not redeemable from the fund but can be traded on an exchange or over-the-counter.

#### ii) Irish Collective Asset-Management Company (the "ICAV")

The ICAV is a new form of collective investment vehicle for UCITS funds and Alternative Investment Funds ("AIFs") which is similar in many respects to an investment company. It is not governed by the Companies Act 2014 but is instead governed by the Irish Collective Asset-Management Vehicles Act 2015. It is intended to provide managers and promoters with a corporate structure that is designed specifically for investment funds and which is not subject to rules or requirements designed for other forms of company (thereby helping to reduce administrative burden and cost). Like an investment company, an ICAV is a corporate entity that will be governed by a board of directors and owned by shareholders. However, while ICAVs are bodies corporate, unlike an investment company they can make a "check the box" election for US federal income tax purposes, thereby allowing them to be treated as "pass through" entities for US tax purposes.

## KPMG Legal Services

We understand the need for proper advice and assessment of all the factors to help you decide on the type of company best suited to your needs.

We have a dedicated team of Chartered Secretaries and Lawyers that can advise you all the steps to be taken, the timeframes to be met and provide you with the required documentation.

For more information on company types or any of our Legal Services, please contact:



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