Companies

Their duties and powers

A quick guide

Oifig an Stiúrthóra um
Fhorfheidhmiú Corparáideach

Office of the Director
of Corporate Enforcement

Plain English
Approved by NALA

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About this guide

We have produced this quick guide to explain some of the legal rules for managing a company under the Companies Act.

What is a company?

A company is a legal structure created by one or more people to manage and run a business or social enterprise. The company is separate from the people who own and manage it. This means that the company can sign agreements, own property, have debts and take legal action.

Companies may be described as:

- limited or unlimited (this refers to the extent of the owners' responsibility for repaying the company's debt); and
- public or private (this refers to their ownership).

Limited and unlimited liability companies

All companies are liable for their debts. This means that they are responsible for paying the money they owe. The difference between limited and unlimited liability companies relates to the responsibility of the owners (known as members) for the debts of the company.

If an unlimited liability company cannot pay its debts, the owners are responsible for paying the debts.

If a limited liability company is unable to pay its debts, the members are responsible only for the amount unpaid on the shares they hold. Let's say, for example, that a limited liability company is set up with each member agreeing to pay €50 for shares in the company. Once they have paid the €50 to the company for the shares, they have no further responsibility (liability) to meet the company's debts.

As people may lose money when they deal with limited liability companies, the companies must provide reliable information about their finances to the Companies Registration Office so that people can decide if they want to deal with them.

Private and public companies

One of the main differences between private and public companies is how the company proposes to raise money (capital) to operate its business.

Public companies raise capital by selling shares to the public. A private company is not allowed to do this. A private company raises capital from the money its owners (members) invest in the company in exchange for a share in the ownership of the company.

Types of company

The Companies Act allows people to set up different types of companies. The main types are:

- Private company limited by shares (LTD);
- Designated activity company (DAC);
- Company limited by guarantee (CLG); and
- Public limited company (PLC).

A private limited company (LTD) is the company structure most often used for private, commercial businesses. An LTD is limited by the number of shares it can issue and by the liability of its members (owners) for the company's debts. It can be set up with one or more members. It can choose not to hold an AGM and may not need to have its financial statements audited. A LTD can operate with just one director.

A DAC is a private company that can be limited by shares or by guarantee. This structure is useful where the owners want to make sure the company only carries out a certain type of activity or activities. It can be set up by one member but must have at least two directors. It must hold an annual general meeting (AGM) if there is more than one member.

A CLG is a company limited by guarantee without a share capital. This means the liability of members is limited to the amount the members agree (guarantee) to pay to the assets of the company if or when the company is wound up. It is a structure most often used by charities, trade associations and sports clubs. It must have two directors and hold an AGM. In some circumstances, it may not need to have its accounts audited.

A PLC is a public limited company with an authorised share capital of at least €25,000. It is allowed to raise capital by selling shares to the public and it may be listed on the stock exchange. It must have at least two directors, hold AGMs and have its financial statements audited.

Registering a company

To register a company in Ireland, you must give the following information – together with the required fee – to the Companies Registration Office (CRO):

- the company name;
- a statement that the company will do business in Ireland;
- the addresses of its registered office and the location where it plans to conduct its business;
- evidence that at least one director of the company lives in the European Economic Area (EEA)[1] although there are some exceptions to this; and
- the company's constitution (known as a memorandum of association and articles of association). This describes how the company will conduct its business.

The CRO will register the company and send you a Certificate of Incorporation. This is proof that the company has been properly registered. You can find out more about registering a company at *www.cro.ie*.

Some businesses, known as company formation agents, will do all of this for you and you can then buy the newly formed company from them instead of setting it up yourself.

[1] The EEA includes the European Union, Iceland, Norway and Liechtenstein.

Constitution of a company

The constitution sets out the written legal rules within which the company must operate. There are different forms of constitution, depending on the type of company. Normally, they contain the following points:

- the company's name;
- the company type (LTD, DAC, CLG, PLC or other);
- what the company will do (its purpose or object);
- whether the company is a limited or unlimited liability company;
- the maximum number of shares the company can issue (known as the company's authorised share capital);
- a statement giving the members' names, addresses and the number of shares they each own; and
- the internal rules of the company which set out how the members should act in relation to the company and to each other. This is separate to the rules required by company law.

Company directors

All companies must appoint directors. A LTD company must have at least one director. Other company types must have at least two directors. The company's members choose the directors to manage the company for them. The directors need not be company members.

Company secretary

Every company must have a company secretary. This is a high-level position which involves helping to make sure that the company carries out its business according to company law.

Legal duties of a company

Companies have various legal duties which are outlined below. They include:

- keeping adequate accounting records;
- preparing annual financial statements;
- arranging the annual audit (some companies do not have to have an annual audit);
- organising general meetings of the company;
- keeping registers and other information; and
- sending certain documents to the CRO.

Keeping adequate accounting records

Every company must correctly record and explain any payments to or from the company, its customers and suppliers. The records should also show the company's financial position accurately.

Preparing annual financial statements

Companies must prepare financial statements every year using the information in their accounting records and other relevant information. The statements should give 'a true and fair view' of the company's financial position.

Financial statements normally include:

- a profit and loss account that records the company's income and expenditure (what the company spends) and shows if the company has made a profit or loss;
- a balance sheet that shows the company's assets (property, money and belongings) and liabilities (money owed) at the end of the year; and
- a directors' report that tells members about the company's business and performance.

Arranging annual audits

Companies must have their financial statements audited annually. An audit is when an independent expert (called an auditor) examines the company's financial statements and gives an opinion to the members as to whether the financial statements give 'a true and fair view' of the company's finances and agree with its accounting records.

Audit exemption

Small private companies and some CLGs do not have to have an audit if they meet two of the following conditions:

- a turnover of €8.8 million or less;
- a balance sheet total of €4.4 million or less; and
- 50 or fewer employees.

In addition, the company must have filed its annual return for both the current year and the previous year on time with the Registrar of Companies.

Even if a company is not required to have an audit, it must still keep adequate accounting records, prepare annual financial statements, give the financial statements to the members and send a copy with the company's annual return to the Companies Registration Office (CRO).

Holding general meetings

Companies must hold an annual general meeting (AGM). The only exceptions are private limited companies (LTDs) and companies with just one member. Special rules apply where a company decides not to hold an AGM. Sometimes a company may need to call an extraordinary general meeting (EGM).

Keeping registers

Every company must keep certain documents.

These include:

- registers of directors, company secretaries and members as well as details of the directors' and company secretary's shares and other interests in the company;
- a minute book for recording what was said and decided at general meetings, board meetings and board sub-committee meetings; and
- details of any money that the company borrows and any assets that it gives as security for borrowing money.

Disclosing information to the CRO

Companies must send certain documents to the CRO. These include:

- the company's annual return which includes its financial statements;
- notice of a change of registered office, director, company secretary and their details;
- details of any mortgage or charge on the company's property; and
- statements that any loans have been repaid (if this applies).

Anyone can look at documents sent to the CRO.

Powers of a company

In general, a company may carry out any activity unless its constitution says otherwise.

Where can I get more information?

You can find more detailed information on companies on our website, *www.odce.ie*.

If you are unsure about company procedures and what you need to do under the law, you should get independent professional advice.

Disclaimer

This Quick Guide sets out some of the basic legal duties of companies. It is not a legal interpretation of any part of the Companies Act. The Director of Corporate Enforcement accepts no responsibility or liability for any errors, inaccuracies or omissions in this guide.

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Tá leagan Gaeilge den leabhrán seo ar fáil
An Irish version of this booklet is available