

Establishing Irish Operations



Incorporating a company in Ireland is a straight-forward and inexpensive process, with minimal red tape. Incorporation applications are processed by the Irish Companies Registration Office (CRO), which is the central repository for public statutory information regarding Irish companies.

Incorporating an Irish Company

What is the main type of entity used by multinational companies doing business in Ireland?

The vast majority of multinational companies choose to do business in Ireland through a private company limited by shares (LTD). The main advantage of using an LTD is that shareholders enjoy limited liability and the on-going compliance burden is low compared with a public limited company.

Some multinational companies choose to do business in Ireland through unlimited liability companies. The principal advantage of using an unlimited liability company is that it can offer privacy and flexibility from a corporate governance and compliance standpoint in certain areas. The principal disadvantage is that the shareholders could theoretically be exposed to unlimited liability for the company's debts in the event of insolvent liquidation.

Other multinational companies have opted to incorporate a public limited company (PLC) in Ireland. The advantage of using a PLC is that it can be traded on a public market, such as the main market of the Irish Stock Exchange or the New York Stock Exchange or NASDAQ. In that context, PLCs have been the vehicle of choice in the context of the inversion transactions that have become a common feature of the Irish corporate/M&A landscape in recent years.

In addition to the above, foreign companies can also do business in Ireland through certain other company types or alternatively through branches or partnerships.

What is involved in the incorporation process?

Incorporating a company in Ireland is straight-forward. Once the proposed shareholder(s) and officers have been identified, the applicant(s) must prepare an incorporation application (Form A1). The Form A1 must be filed at the CRO, together with the company's constitutional document (being a one-document constitution in the case of a LTD; and a memorandum and articles of association for all other company types) which sets out the company's parameters and regulations. Where the company will have no EEA-resident director (see further below), a non-resident bond must be obtained from a local insurer in Ireland and this must also be filed with the incorporation paperwork.

Where the CRO's express incorporation scheme is used, a company can be incorporated in as few as three to five business days.

What is the management structure of an Irish company?

Under Irish company law, the management of the business of the company is delegated to the board of directors (subject to any contrary provisions in the company's constitution and/or any directions given by resolution of the shareholders).

An LTD may have as few as one director (other company types must have at least two), however, for practical, logistical and internal governance reasons, most Irish subsidiaries of multinational companies will typically appoint at least two directors to their boards.

At least one of the directors must be resident of a member state of the European Economic Area (EEA) (that is, the EU, plus Iceland, Liechtenstein and Norway) or alternatively the company must obtain and file at the CRO a non-refundable insurance bond to the value of €25,000¹ (the purpose of the bond is to secure the company's compliance with its Irish company law obligations). A company can also avoid the EEA resident director requirement where it obtains a certificate from the CRO confirming that it has a real and continuous link with one or more economic activities in Ireland.

Every Irish company must also have a company secretary. The company secretary is essentially the chief administrative officer of the company and is responsible for maintaining (or procuring the maintenance of) the company's statutory records. The directors of the company have a duty to ensure that the secretary has the skills necessary to enable him or her to carry out his / her duties. A body corporate can act as company secretary and many multinational companies opt to delegate this function to professional company secretarial service providers.

How is the share capital of an Irish company typically structured?

Irish companies can have as few as one shareholder. The nominal share capital of an LTD can be as large or as small as the shareholder(s) wishes and many multinationals will incorporate a single-member Irish subsidiary with a paid-up share capital as low as one share of €1.00. The capital can be in any currency denomination, although typically it is expressed in Euros. Shares of different classes

can be issued and the rights and restrictions attaching to the different classes will be set out in the company's constitution.

A PLC must have a share capital of at least €25,000, of which at least 25% of the nominal value and the entire premium must be paid up.

Are there any restrictions regarding choice of company name?

An LTD must include the word "Limited" or "Ltd" (or the Irish language equivalent – "Teoranta" or "Teo") in its name. The CRO may refuse a name if it is identical to, or too similar to the name of an existing company, if it is offensive or if it would suggest Irish State sponsorship. Names which are phonetically and/or visually similar to existing company names will also be refused by the CRO. A company name may be reserved for a period of up to 56 days in advance of incorporation. Note that registration does not give the company any proprietary rights in the company name.

How are Irish companies typically funded?

As mentioned, an LTD can be incorporated with a paid up share capital of as low as €1.00. Post-incorporation, there are many options for providing additional funding to the company, if required, including share subscriptions, loans from the shareholders or external sources and capital contributions. You should speak to your legal and tax advisors prior to engaging in any funding transaction to ensure that the transaction is completed in accordance with applicable company law requirements.

How does a company set up a bank account in Ireland?

Generally, the company will be required to complete a form of bank mandate which must be formally approved by a resolution of the directors in accordance with the bank's requirements. As part of the account opening process, the company will be required to comply with the bank's "know-your-client" requirements, in line with Irish and EU anti-money laundering legislation.

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¹Bond typically costs approximately €1,600 for a 2-year period

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Directors’ Duties

What are the fiduciary duties of a director of an Irish company?

The directors of an Irish company are subject to a range of fiduciary duties under Irish law, which are codified in the Irish Companies Act 2014 (the **Companies Act**). These duties include:

- the duty to act in good faith and in the best interests of the company;
- the duty to act honestly and responsibly;
- the duty to act in accordance with the company’s constitution and exercise his/her powers only for purposes allowed by law;
- the duty not to use the company’s property, information and opportunities for his/her own benefit;
- the duty not to restrict his/her power to exercise independent judgment;
- the duty to avoid conflicts of interest; and
- the duty to exercise the care, skill and diligence of a reasonable person.

Directors are also subject to a number of statutory duties under the Companies Act.

A director will not be held liable for breach of duty for a mere error of judgment where he has otherwise acted honestly and responsibly with regard to the company. Attendance at regular board meetings (see further below) will be an important factor in demonstrating that a

director has discharged his fiduciary duties.

Can an Irish company indemnify its directors against liability?

The extent to which an Irish company can indemnify directors is limited. An Irish company may only indemnify a director for liability that does not involve negligence, default, breach of duty or breach of trust. Any provision whereby an Irish company purports to indemnify a director for such matters will be unenforceable. With that in mind, directors of Irish companies will frequently obtain a broader indemnity from another non-Irish company in the group (e.g. a US holding company) and/or any existing group directors & officers insurance coverage will be extended to cover their Irish directorships.

Board and Other Meetings

How many board meetings do we need to hold every year?

Irish company law does not prescribe a minimum number of board meetings to be held each year. However, the number of meetings must be sufficient to enable the directors to discharge their fiduciary duties to the company. Depending on a company’s activity levels, quarterly board meetings are generally considered good practice.

Irish company law permits telephonic board meetings (subject to the provisions of the company’s constitution) and also allows the directors to make unanimous written decisions in lieu of a board meeting. Minutes should be taken of all resolutions passed and proceedings taking place at board meetings and placed on the company’s minute books.

Are there any other mandatory company meetings?

An Annual General Meeting (**AGM**) of the shareholders must be held once in every calendar year. Usual business transacted at the AGM is the presentation of statutory financial statements, review by the members of the company’s affairs, the election and re-election of directors and the re-appointment of auditors.

Post-Incorporation Obligations

What are the principal company law compliance obligations that will apply to the company post-incorporation?

Maintenance of statutory registers:

An Irish company must maintain various statutory registers, including a register of members, register of directors and secretaries, register of directors' and secretaries' interests in shares and debentures, register of debenture holders and register of beneficial owners. A company also has to keep minutes of its general meetings and the directors are obliged to keep minutes of all directors' meetings. Certain of these statutory registers are open to inspection by the public on request.

Maintenance of accounting records:

An Irish company and its directors are obliged to keep adequate accounting records to ensure that the accounts of a company are up to date, accurate and allow the financial position of the company to be determined with reasonable accuracy. It is an offence for a director or any other officer to destroy or interfere with a company's books and records.

Preparation of annual audited financial statements:

The directors must arrange for the preparation of financial statements for each financial year which give a true and fair view of the state of the affairs of the company's assets, liabilities, financial position and profit or loss for that period. The directors must ensure that the financial statements are prepared in accordance with either International Financial Reporting Standards (IFRS) or in accordance with the Companies Act and accounting standards generally accepted in Ireland. The financial statements must be laid before the company's shareholders at its annual general meeting and will be publicly filed in the CRO. There are exemptions from the audit requirement for certain smaller companies or groups of companies and dormant companies.

For Irish companies over a certain size (balance sheet

of over €12.5 million and turnover which exceeds €25 million), the annual financial statements must include a directors' compliance statement in which the directors must (i) acknowledge responsibility for securing compliance by their company with tax law, and certain company law provisions, (ii) draw up a "compliance policy statement" setting out the company's compliance policies, (iii) confirm procedures are in place to secure material compliance and (iv) review during the financial year arrangements which have been put in place; and if any of (ii) or (iv) above are not done, the directors must explain why not.

Preparation of Annual Return:

Irish companies are obliged to publicly file an annual return with the CRO once a year. This document contains details of the company's directors and its issued share capital. The timing of the annual return filing depends on the company's annual return date (ARD). The first ARD for a new company will be the date which is six months after its incorporation. The annual return must be filed within 28 days of the ARD, although it is possible to change and in some cases extend a company's ARD. Subject to limited exceptions, the audited financial statements must be annexed to the annual return. These will become publicly available information on the company's file at the CRO.

Display of company name and other details:

The company's name, registered office address, registered number and the name and nationality (if not Irish) of all directors must be included on all business letters. This information (excluding director's names) must also be included on the company's website. The company name must be stated in all notices and other official publications, bills of exchange, promissory notes, endorsements, checks, orders for money, invoices, receipts and letters of credit. The company name must also be displayed on the outside of every office or place in which its business is carried on and at its registered office.

Cash repatriation:

There are several ways in which an Irish company can return cash to its shareholders including: loans, share buy-backs and redemptions, share capital reductions and dividends. You should speak to your legal and tax advisors prior to engaging in any repatriation transaction to ensure that the transaction is completed in accordance with the applicable procedures and rules set out in the Companies Act.

Other matters:

Various transactions and activities that the company may engage in from time to time may require specific notifications to be made to the CRO and/or other statutory bodies, including but not limited to:

- change of directors, secretary or auditors;
- changes in share capital (increase or reduction of share capital, transfer of shares etc.);
- change of name;
- amendment of constitution;
- change of company status (limited to unlimited; private to public, etc.);
- significant transactions with the company's directors;
- provision of financial assistance (loans etc.) in connection with the acquisition of shares in the company or its holding companies; and
- changing the company's financial year end.

Grants and Other Incentives**Are there any grants or assistance available when establishing in Ireland?**

IDA Ireland is Ireland's inward investment promotional agency with national responsibility for promoting foreign direct investment into Ireland. With offices across the US and worldwide, IDA Ireland can offer invaluable practical and logistical assistance to multinational companies considering establishing Irish operations.

In addition to practical assistance, IDA Ireland can, in certain cases, offer grant assistance to multinational companies establishing or expanding their Irish activities. For the most part, grant assistance is linked to job creation and is contingent on the company submitting a formal business plan to IDA Ireland. Any potential grant aid is negotiated on a project-by-project basis and is subject to approval of the board of IDA Ireland. Total grants are subject to ceilings as dictated by EU state aid rules.

For more information on IDA Ireland and the assistance that they can offer to multinational companies, please visit their website at: www.idaireland.com