

MURPHY BOYCE
S O L I C I T O R S

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Martina Murphy and Etain Boyce are the partners in this modern and dynamic legal firm.

Murphy Boyce Solicitors are committed to providing a high level of legal expertise and professionalism to all of our clients in an accessible and friendly manner.

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Litigation . Conveyancing . Wills and Probate . Family Law . Employment Law .
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Liability . Debt Collection . Criminal Law . Redress Board Claims . Medical
Negligence

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Company –v- Sole Trader

As the dole queues grow longer, the amount of people taking the opportunity to open new businesses have grown rapidly. Many people who have received redundancy are using some or all of the money to launch new enterprises and are availing of the wide range of support services available from the various government agencies.

The first question any person thinking of setting up a new business should ask is whether they will set it up as a sole trader or whether they will form a limited liability company to run the business on their behalf. There are key advantages and disadvantages to each and it is worth taking the time deciding which kind of business entity you wish to set up at the outset. In this article I will deal with the legal points involved but anyone setting up a business and deciding which route to take should also seek the advice of their accountant.

What does it mean to be a sole trader?

A Sole Trader is someone who starts up a business on their own. It is the simplest of businesses to set up as there are very little legal formalities, obligations or constraints attached.

A sole trader is an individual who provides the capital for his firm or business; he/she makes all the decisions and is personally liable for all legal actions and debts. His/her liability is unlimited; if the business fails, debtors can call upon his/her private assets and even their family home. The profit the sole trader makes belongs solely to the individual. It is effectively his/her salary.

The characteristics of and requirements for a sole trader is that the person:

(a) is legally obliged under the Registration of Business Names Act to register the business name under which he/she is trading if such trading name is not carried on under his/her own name

(b) is legally obliged to register as a sole trader for central tax purposes with the Revenue Commissioners and

(c) will be operating his/her business concern with full and total personal liability and responsibility for any and all outstanding debts, charges, fines and

or litigation matters that the business may incur from time to time and or at the time of business closure.

An advantage of being a sole trader is that apart from normal tax returns, which every taxable person must make, a sole trader is not required to make any information about their business public.

The downside of being a sole trader is that you have no protection if your business fails. All your assets become available to pay off your creditors. This is called unlimited liability.

What are Private Limited Companies?

These are the most common types of businesses that are set up in Ireland.

Private Limited Companies may have between 2 and 50 members (shareholders). There is no minimum capitalisation requirement. A Shareholder's liability is limited to the amount of share capital contributed by them.

The Advantages of a Limited Liability Company over a sole trader or partnership are:

- Limited liability status
- Separate legal identity to individual members
- The only income taxable on the owners of the business is any salaries or dividends taken from the business
- Scope for tax planning.

The Disadvantages of a Limited Liability Company includes:

- The cost of Company formation together with expenses
- The general requirement for an annual audit (not required for companies limited by shares where turnover is under €317,000, the balance sheet total is under €1.9 million and there are less than 50 employees)
- The public filing of sometimes sensitive commercial financial information with the Companies Registration Office.

- The need for accounts to comply with Companies Acts together with auditing and accounting standards
- Business losses may not be set against personal income
- Possibility of further taxation on capital gains if appreciating assets are withdrawn from the business at a later date

For more information on any aspect of setting up a business including employment law, health & safety, purchase or lease of a premises, service agreements etc please do not hesitate to contact the offices of Murphy Boyce Solicitors.

Martina Murphy
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