



Relate

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The journal of developments in social services, policy and legislation in Ireland

Starting a business in Ireland

This issue of Relate highlights some of the financial and business supports available to someone thinking of starting a business in Ireland and some of the issues you may need to consider.

Starting out

Local Enterprise Offices (LEOs) provide supports to local businesses that are starting up or in development. Their role is to stimulate economic activity at a local level and to promote microenterprises (businesses with 10 or fewer employees). They provide training programmes and start your own business courses, as well as mentoring and financial support. Many LEOs run weekly business advice clinics. These clinics are free to attend and you can get general business advice and assistance. Full details of what is available from your LEO is available on localenterprise.ie.

Types of legal entity

There are three main types of business entity in Ireland. These are a sole trader, a partnership or a limited company. The type of entity you choose depends on the kind of business you are running, with whom you will be doing business and your attitude to risk. It is advisable to get the advice of a solicitor or accountant when considering the structure for your business. The Companies Registration Office (CRO) has information about these different structures on its website cro.ie.

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Sole trader

A sole trader is the simplest form of business in Ireland. It refers to one individual who owns and operates a business. A sole trader can have employees to assist with the running of the business, but it is the sole trader who owns the business. It is relatively simple to set up as a sole trader but if your business fails, your personal assets may be used to pay your creditors. Your main legal obligation is that you must register as a self-employed person with the Revenue Commissioners.

You may decide to use your own name as the business name, but if you wish to use a separate business name, you must register the name with the Companies Registration Office (CRO). If so, that business name is not a separate legal entity.

Partnership

If you set up your business with one or more other persons, you will automatically have formed a partnership. Partnerships, and how they operate, are governed by the Partnership Act 1890. The partners are jointly responsible for running the business, and if it fails, all partners are jointly responsible for the debts.

Partners can enter a partnership agreement to regulate the relationship between them and limit the effect of the Partnership Act on their partnership. The partnership agreement should be drawn up by a solicitor. It may contain clauses such as how profits will be divided between partners, what each partner's role in the partnership will be, or the procedure to be followed when a partner wants to leave a partnership.

Limited company

If you set up your business as a limited company, that company is a separate legal entity. If the company gets into debt, the creditors generally only have a claim on the assets of the company. In this way your personal assets are not exposed to the creditors of the business.

The company must be registered with the CRO and the company's annual reports and accounts must be returned to the CRO each year. Since 1 June 2015, Irish companies are regulated by the Companies Act 2014. This replaced the Companies Acts 1963 to 2013.

Companies have directors who are responsible for the day to day management of the company and its activities. Companies also have shareholders who are the actual owners of the company. Often the directors and shareholders of a private company are the same people.

A shareholders' agreement is a contract between all the shareholders which regulates the relationship between them. A shareholders' agreement may contain clauses such as how each individual shareholder is allowed to deal with their shares, for example, a shareholder may have to offer to sell his/her shares to the other existing shareholders before offering those shares to someone else. The shareholders agreement should be drawn up by a solicitor.

Financial supports and advice

There are over 170 different Government supports for Irish start-ups and small businesses. The Local Enterprise Office website has a "Supporting SMEs Online Tool" which you can use to find the most appropriate supports for your business. For a full list of these supports, visit localenterprise.ie/Discover-Business-Supports.

These include:

- Local Enterprise Office
- Microfinance Ireland
- Strategic Banking Corporation of Ireland
- JobsPlus
- Trading Online Voucher Scheme
- Credit Guarantee Scheme
- Credit Review Office
- Chartered Accountants Voluntary Advice service

Local Enterprise Office

Local Enterprise Offices offer financial assistance to businesses, sole traders, partnerships and limited companies, through a variety of grants. Full details of the grants available from LEOs are available online on localenterprise.ie.

In order to qualify for financial assistance from the Local Enterprise Office, projects must:

- Prove that a market exists for the proposed product or service
- Demonstrate potential for economic growth within a reasonable timeframe and potential for new job creation
- Employ up to a maximum of 10 people
- Operate within the area of the Local Enterprise Office to which you are applying for the grant
- Operate in the areas of manufacturing (including software development) and/or internationally traded services (that is, businesses which export or which have the real potential to do so) or whose activities attract tourism to Ireland. Retailer enterprises and local services are not eligible for LEO grant funding.

Local Enterprise Office grants

A **Priming Grant** is a business start-up grant available to microenterprises within the first 18 months of start-up. In general, the maximum Priming Grant payable must not exceed 50% of the investment, or €80,000 excluding VAT, whichever is the lesser. A maximum grant of up to €15,000 per full-time job applies to jobs with a salary of more than €40,000.

Expenditure may be considered under the following headings:

- Capital items
- Salary costs
- Consultancy/Innovation/Marketing costs
- General overhead costs

A **Feasibility Study Grant** is designed to assist with researching market demand for a product or service and examining its sustainability. Expenditure may be considered under the following headings:

- Market research
- Consultancy costs
- Technical development, prototype, innovation
- Salary, own labour research
- Miscellaneous costs

A **Business Expansion Grant** is designed to assist businesses in the growth phase, after the initial 18 month start-up period. Microenterprises that have availed of a Priming Grant are ineligible to apply for a Business Expansion Grant until 12 months after the final drawdown date of the Priming Grant, whichever is the later.

Expenditure may be considered under the following headings:

- Capital items
- Salary costs
- Consultancy, innovation, marketing costs
- General overhead costs

Microfinance Ireland

Under a partnership with the Local Enterprise Office, Microfinance Ireland provides loans to new and existing microenterprises with no more than 10 employees and an annual turnover of less than €2 million. The loans are provided and underwritten by Microfinance Ireland but the application is made through the LEO office.

Microfinance Ireland will consider applications for loans by businesses who have been refused loans from banks, or who have an existing bank loan but require additional credit. The loans, of between €2,000 and €25,000, are for

commercially viable proposals from any business type (sole trader, partnership, limited company) which is starting a new business or expanding an existing business.

Approved Microfinance loan applicants can also benefit from mentoring services, arranged through the Local Enterprise Offices. Unlike some of the other financial supports available from LEOs, all business sectors are eligible to apply. Loans can be used to fund start-ups, existing and growth microenterprises and can be used for working capital or the hiring of new employees, the purchase of stock, equipment, machinery and business vehicles. There are several different loan packages to suit the needs and the type of borrower, each with varying terms and conditions.

Strategic Banking Corporation of Ireland

The Strategic Banking Corporation of Ireland was launched in October 2014 to provide long-term, lower-cost finance to small businesses via traditional bank lenders and other credit providers. An SME can borrow up to €5 million.

The terms of an SBCI loan may be more flexible than those of traditional lenders, including longer maturities and payment flexibility (subject to credit approval). SMEs benefit from SBCI's reduced funding costs as these will be passed directly on to the SME borrower via the lending bank.

To qualify for SBCI funding a business must:

- Employ fewer than 250 employees
- Have an annual turnover not exceeding €50 million, and/or an annual balance sheet total not exceeding €43 million
- Be an independent, autonomous entity (or, if part of a wider group of enterprises, the entire group must qualify as an SME)
- Have less than 25% of capital or voting rights held by public bodies
- Have a significant presence in Ireland

JobsPlus

JobsPlus is an employer incentive which encourages and rewards employers who employ jobseekers from the Live Register. There are two levels of incentive: €7,500 for recruits unemployed for more than 12 but less than 24 months, and €10,000 for recruits unemployed for more than 24 months. Since 1 January 2015, under JobsPlus Youth, the qualifying period for JobsPlus for jobseekers aged under 25 has been reduced to four months. It remains at 12 months for other jobseekers.

Trading Online Voucher Scheme

The Trading Online Voucher Scheme is available through the LEO to help small businesses to trade online. Eligible businesses can apply for a voucher to invest in developing their e-commerce capability. The voucher value can be up to €2,500 (or 50% of eligible expenditure, whichever is the lesser).

The vouchers are targeted at businesses that have a limited online trading presence, and to qualify a business must:

- Have fewer than 10 employees
- Have a turnover of less than €2 million
- Be registered and trading for a minimum of 12 months
- Be located in the region of the Local Enterprise Office to which they are applying

Projects with charitable status, commercial semi-state companies, not-for-profit organisations, trade associations and company representation bodies such as Chambers of Commerce are not eligible.

Vouchers cannot be used to develop brochure websites, purchase non-internet related software or anything other than online trading related activity.

Credit Guarantee Scheme

This scheme is a Government initiative to encourage additional lending to commercially viable SMEs which, under normal lending criteria, are unable to obtain new or additional facilities from their bank. The scheme facilitates this by providing banks (current participating lenders are AIB, Bank of Ireland and Ulster Bank) with a Government-backed guarantee for 75% of the facility value.

The SME borrower pays a 2% annual premium to the Government in addition to the interest rate or fee charged by the lending bank. For the SME, the lower cost of the SBCI loan (see page 3) will partially offset the cost of the premium of the Credit Guarantee Scheme.

Since 3 March 2017, changes to the Credit Guarantee Scheme extend the definition of loan agreements to include certain non-credit products such as overdrafts. The scope of the scheme also extends to cover other financial product providers, for example, lessors.

Credit Review Office

Delivery of the Credit Guarantee Scheme is fully delegated to the participating lenders. The lender assesses viability, that is, whether the business will be able to make the necessary repayments on the credit, according to its normal assessment criteria and the decision of the lender in terms of assessing viability is final.

If you have a micro, small or medium-sized business and your application for credit is refused by one of the participating banks you may apply to the Credit Review Office to have your case reviewed.

When a decision on an application for review is not given by the participating bank within 15 working days, this shall be regarded as constructive refusal, and the borrower may appeal to the Credit Review Office. Likewise, where the borrower considers that the terms or conditions attached to a credit facility or its price are so onerous as to amount to a constructive refusal, the borrower is entitled to apply for a review.

The initial step will always be for the refusal to be reviewed internally using the bank's own review procedure.

To be eligible for a review, your application must have been in writing. The application form is available on the Credit Review Office website creditreview.ie. The fee for the review ranges from €100 up to a maximum of €250 depending on the value of the loan request under review.

Chartered Accountants Voluntary Advice service

The Chartered Accountants Voluntary Advice service provides advice to business people in financial difficulty. If you are having difficulties with your creditors the CAVA can give free advice and assistance on your business affairs. Contact your local Citizens Information Service or Money Advice and Budgeting Service (MABS) for referral to your local CAVA service.

Additional supports

Local Enterprise Office

The role of the LEO is to stimulate economic activity at local level and to promote microenterprises (10 or fewer employees).

As well as financial support, LEOs offer a range of services and assistance to microenterprises and small businesses including:

- Business information, advisory services, mentorship and enterprise support
- Training such as how to start your own business, financial management, and strategy and business planning
- Signposting the services and State resources most relevant to support the growth and development of your business
- Providing advice on local authority regulations, planning, accessibility, environment, procurement and other issues affecting your business

Enterprise Ireland

Enterprise Ireland (EI) is the government organisation responsible for the development and growth of Irish enterprises in world markets. EI works in partnership with Irish enterprises to help them start, grow, innovate and win export sales in global markets.

EI provides a range of services including:

- Funding supports
- Export assistance, including the provision of in-market services, local market information and the facilities of an international office network
- Supports to develop competitiveness
- Incentives and assistance with research and development, for example, new product, service and process development, liaising with research institutions
- Connections and introductions to international customers

Enterprise Ireland also coordinates and funds a programme called "New Frontiers" which is delivered through 16 incubation centres in Institutes of Technology throughout Ireland.

Unemployed and starting a business

If you are unemployed and you plan to start a business, you may be eligible for the Back to Work Enterprise Allowance or the Short-Term Enterprise Allowance.

Back to Work Enterprise Allowance

The Back to Work Enterprise Allowance (BTWEA) scheme encourages people who are receiving certain social welfare payments to become self-employed. If you take part in the BTWEA scheme you can keep a percentage of your social welfare payment for up to two years. If you have previously participated in the BTWEA scheme and used up your entitlement, you can participate a second time after five years.

Short-Term Enterprise Allowance

The Short-Term Enterprise Allowance (STEA) gives support to people who have lost their job and want to start their own business. To qualify you must be getting Jobseeker's Benefit. There is no qualifying period, which means you do not need to have been getting Jobseeker's Benefit for a certain period of time. However, you will not qualify if you are getting Jobseeker's Benefit and have seasonal, temporary or part-time work. The STEA is paid instead of your Jobseeker's Benefit until your entitlement to Jobseeker's Benefit ends (either nine or six months).

Enterprise Support Grant

In addition to income support (your weekly payment), you can also get financial support with the costs of setting up your business. These supports are provided under a scheme called the Enterprise Support Grant (ESG). You can only get the full ESG if you have been approved for the BTWEA. The business plan you submit as part of your application for the scheme must set out the rationale and requirement for financial support. The ESG can pay a total of €2,500 in any 24-month period. You must be able to make a matching contribution of at least 20% to access grant support.

The ESG is paid to people getting the Short-Term Enterprise Allowance on a pro-rata basis.

Claiming social welfare when self-employed

If you find yourself unemployed or your business is not providing you with a sufficient income, you may qualify for either a jobseeker's payment or be eligible to pay voluntary contributions.

How you pay your tax and what class of Pay Related Social Insurance (PRSI) you pay depends on whether you are employed or self-employed. Your PRSI class affects your entitlement to certain social welfare payments. If you are self-employed, you pay Class S PRSI. People who pay Class S PRSI include farmers, professional people, certain company directors, people in business, and people with income from investments. Employees who are also self-employed in a trade or profession pay Class S PRSI on that income as well as their Class A PRSI contribution as an employee.

Jobseeker's Benefit

Class S PRSI does not cover you for Jobseeker's Benefit. However, if you worked as an employee in the last four years, you may have paid Class A PRSI and should apply to your local Intreo Centre or social welfare branch office for Jobseeker's Benefit.

If you work part-time, you may qualify for Jobseeker's Benefit. However, you must have lost at least one day of employment and as a result of this loss be unemployed for at least four days out of seven days. Your earnings must also have been reduced because of the loss of employment.

For example, if you are engaged under a contract for service to work (on a self-employed basis) for three days per week and unemployed for the remainder of the week, you may qualify for Jobseeker's Benefit. Your Jobseeker's Benefit may be taxable and you should make enquiries with your local Revenue office.

If you do not qualify for Jobseeker's Benefit, you may get Jobseeker's Allowance. When you apply for Jobseeker's Benefit you will be asked if you want to be assessed for Jobseeker's Allowance if your claim for Jobseeker's Benefit is unsuccessful.

Jobseeker's Allowance

If you are self-employed, you may be entitled to Jobseeker's Allowance depending on the earnings from your business. You do not need to close your business or stop working as self-employed in order to get Jobseeker's Allowance.

The earnings from your business will be assessed as part of the means test for Jobseeker's Allowance. The assessment must reflect the income you may reasonably be expected to get from your business over the next 12 months. Income for the last 12 months will be taken as a guide but allowing for any factors which it is known will vary.

Earnings are assessed as gross income less work-related expenses over 12 months. Your expected annual earnings from self-employment is divided by 52 to find your weekly means from self-employment. Any drawings you take from the business is not an allowable expense. If your drawings from the business are greater than the level of income calculated, the drawings are assessed as cash income.

The following are the main allowable expenses in most cases:

- Materials (supplies costs)
- Motor running costs (portion applicable to business)
- Depreciation of machinery or equipment
- Insurance relating to the business
- Telephone (portion applicable to business)
- Lighting and heating (for business and not domestic use)
- Advertising
- Bank charges
- Stationery
- Van leasing
- Any other costs associated with running the business (household running costs are not allowed as deductions against business profit)

To prove the level of income from your business you must provide the receipts and payments relating to your business or provide a set of audited accounts. For example, if you apply for Jobseeker's Allowance in April 2017 you will be asked for your receipts and payments from January to April 2017 and for 2016.

You may qualify for Supplementary Welfare Allowance while you are waiting to be assessed for a jobseeker's payment or if you don't qualify for a jobseeker's payment.

Supplementary Welfare Allowance

Supplementary Welfare Allowance provides a basic weekly allowance to eligible people whose weekly income is below the Supplementary Welfare Allowance rate for the relevant family size. You cannot get Supplementary Welfare Allowance if you are working more than 30 hours per week.

Treatment Benefit Scheme

From 27 March 2017, the Treatment Benefit Scheme has been extended to also cover self-employed people who pay Class S PRSI. The amount of social insurance contributions you need depends on your age. Under the Treatment Benefit Scheme, you may qualify for:

- Dental benefit
- Optical benefit
- Hearing aids

Voluntary contributions

If you do not qualify for a social welfare payment you may be eligible to pay voluntary contributions. Voluntary contributions can help maintain your social insurance record and help you to qualify for social insurance payments in the future. They cover long-term benefits such as pensions. They do not cover short-term benefits for illness, maternity or jobseekers.

In any year, former PAYE employees pay voluntary contributions at a percentage of their preceding year's income. People who were self-employed pay a fixed special rate.

To be eligible to make voluntary contributions you must:

- Have at least 520 PRSI contributions paid under compulsory insurance in either employment or self-employment
- Apply to make your voluntary contribution within 60 months (5 years) of the end of the last completed tax year (contribution year) during which you last paid compulsory insurance or you were last awarded a credited contribution. (From February 2017, the time limit for making voluntary contributions is extended from 12 months to 60 months.)
- Agree to pay voluntary contributions from the start of the contribution week that follows the week in which you leave compulsory insurance

If you only have Class S PRSI contributions in the last two complete tax years, and you can no longer pay any PRSI because of illness, unemployment or if your income from self-employment falls below a specific amount, you do not qualify for credits. However, if you have also had Class A contributions within the last two tax years, you may qualify for credits.

Tax and social welfare matters are complicated and you should always contact the relevant government department to discuss your specific situation.

Tax

The following are some of the tax incentives available to new businesses:

Earned Income tax credit

In 2016, taxpayers earning income from self-employment could claim an Earned Income tax credit of €550. In 2017, the Earned Income tax credit increased to €950 for self-employed taxpayers. It is also available for business owners or managers who are not eligible for a PAYE credit on their salary income. If a taxpayer also qualifies for the PAYE tax credit, the combined value of these two tax credits cannot exceed €1,650.

Start Up Refunds for Entrepreneurs

The Start Up Refunds for Entrepreneurs (SURE) is a tax refund scheme that allows eligible people to get a refund of up to 41% of the capital they invest in starting a business. Under the SURE scheme, you may be entitled to a refund of PAYE income tax that you paid over the six years before the year in which you invest.

Tax relief for start-up companies

New companies may get tax relief on the first three years of corporation tax and the value of the relief will be linked to the amount of employers' PRSI paid by a company in an accounting period subject to a maximum of €5,000 per employee. In the Finance Act 2013, the tax relief was extended to allow any unused relief arising in the first three years of trading to be carried forward for use in subsequent years. The relief was extended to companies that started trading in 2012, 2013, 2014 or 2015 and, in the Finance Act 2015, to companies that start trading in 2016, 2017 or 2018.

Start Your Own Business Relief

Start Your Own Business Relief provides relief from income tax (up to €40,000 per year) to people who are unemployed for at least 12 months and who set up a qualifying business. It runs from 25 October 2013 to 31 December 2018. This only applies to income tax payable on the profits from your business. It does not extend to PRSI and Universal Social Charge (USC) so you will be liable

to pay PRSI and USC on any profits earned in your new business. You can claim the Start Your Own Business Relief when you make your income tax return.

Other considerations

Employing staff

The relationship between an employer and their employees is governed by various and detailed employment legislation. Employers are responsible for ensuring all their employees receive certain basic employment rights. If you are setting up a business that will employ people, you need to be familiar with your responsibilities and your employees' rights.

You can get more information from the Workplace Relations Commission's website workplacerelations.ie and download a range of guides including "Employment Law Explained" and "Guide to Employment, Labour and Equality Law".

You can also get assistance from bodies representing the employers' sector such as IBEC (Irish Business and Employers Confederation) or ISME (Irish Small and Medium Enterprises Association) or the Small Firms Association (SFA). The Employers' Disability Information (EDI) service provides information and advice for employers on employing staff with disabilities.

Intreo is a service from the Department of Social Protection that provides a single point of contact for all employment and income supports. It has a range of services for employers including:

- The Jobs Ireland employment service giving employers access to jobseekers
- Financial support for employers creating new and additional jobs through JobsPlus (see page 3) and similar schemes
- Workplace supports to assist employees with disabilities including the Wage Subsidy Scheme and the Employee Retention Scheme

As an employer you are required to keep certain records relating to your employees. This is to show that you are compliant with employment legislation. Workplace Relations Commission inspectors will require access to these records during an inspection (see Data Protection below).

Under the Safety, Health and Welfare at Work Act 2005, employers have a duty to ensure employees' safety, health and welfare at work as far as is reasonably practicable. The Health and Safety Authority provides tools to help you with these tasks.

The Citizens Information Board provides independent information, advice and advocacy on public and social services through citizensinformation.ie, the Citizens Information Phone Service and the network of Citizens Information Services. It is responsible for the Money Advice and Budgeting Service and provides advocacy services for people with disabilities.

Head office t 0761 07 9000
Ground Floor f 01 605 9099
George's Quay House e info@ciboard.ie
43 Townsend Street w citizensinformationboard.ie
Dublin 2
D02 VK65

Intellectual Property

Intellectual property is the means by which a business person or company can exercise ownership over its ideas and its brand.

There are several different categories of intellectual property including patents, trademarks, designs and copyright.

The Patents Office is responsible for the granting of patents, the registration of industrial designs and trademarks, the provision of information on patents, designs and trademarks, and it has certain limited functions under the Copyright and Related Rights Act 2000 in relation to copyright disputes.

Data Protection

Most businesses, no matter how small, are responsible for collecting and maintaining personal information about others. This information, known as data, might concern employees, customers or other users of your product or service. For example, a coffee shop might operate a loyalty system where customers' personal information is stored on a computer file.

The individual or organisation which controls and is responsible for the keeping and use of personal information, is known as a data controller.

If your business collects or processes data you must:

- Obtain and process the data fairly
- Keep the data only for one or more specified and lawful purposes
- Process the data only in ways compatible with the purposes for which it was given to you initially
- Keep the data safe and secure
- Keep the data accurate and up-to-date
- Ensure that the data is adequate, relevant and not excessive
- Retain the data no longer than is necessary for the specified purpose or purposes
- Give a copy of a person's personal data to that individual, on request

The Data Protection Commissioner is responsible for upholding the rights of individuals as set out in the Data Protection Acts 1988 and 2003, and enforcing the obligations of data controllers.

Consumer Protection Rights

The rights of consumers of goods and services are protected by Irish and EU laws. Consumer law aims to ensure that consumers have enough information about prices and quality

of products and services to make suitable choices on what to

buy. Consumer law also aims to ensure that goods are safe and are manufactured to an acceptable standard.

If you are planning to sell your product or service to consumers (as opposed to selling to other businesses) you should consider what obligations you have to your customers. These obligations will depend on many factors such as the type of product you will be selling and the method by which you will be selling, for example, from a shop, online, or door to door.

Under the Consumer Protection Act 2007, it is an offence for any retailer or professional to make a false or misleading claim about goods, services and prices. It is also an offence to sell goods which bear a false or misleading description.

The Competition and Consumer Protection Commission (CCPC) is responsible for providing advice and information to consumers on their rights. In addition, the CCPC is responsible for the enforcement of a wide range of consumer protection laws.

Action Plan for Jobs

The Action Plan for Jobs is an initiative under which all Government departments and agencies are working together to deliver the agreed measures.

The Action Plan for Jobs 2017 includes the following measures:

- Several responses to Brexit e.g. working with those companies most exposed to Brexit to develop growth plans which will help them to consolidate and grow exports in the UK
- A toolkit for employers and employees to engage in workplace innovation and a pilot programme roll-out
- Roll out of the Design4Growth initiative which is a scheme to help small enterprises utilise strategic design to improve their business
- A Competitive Start Fund for female entrepreneurs or female-led start-ups, active in the manufacturing and internationally traded services sectors. From 2017, such business must be less than three years old.

The information in *Relate* is intended as a general guide only and is not a legal interpretation