

TRAINING & DEVELOPMENT PROGRAMME

# Knowledge Network

Webinar Series

## Corporate Structure: Fit for Purpose?

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**Paul Heffernan**

Consultant

+353 1 607 1326

Paul.Heffernan

@mccannfitzgerald.com

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# Corporate Structure: Fit for Purpose?

1 June 2022

Paul Heffernan, Consultant



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# Objectives and Scope

Objectives: To consider the characteristics and legal features of the principal types of corporate entity:

- as a reminder of key concepts and issues
- to identify issues to consider when dealing with a particular corporate type
- to help identify some appropriate considerations in selecting a corporate form for a transaction or as a business vehicle.

Scope: the principal types of corporate body in Irish and EU law.

# Why a corporate structure?

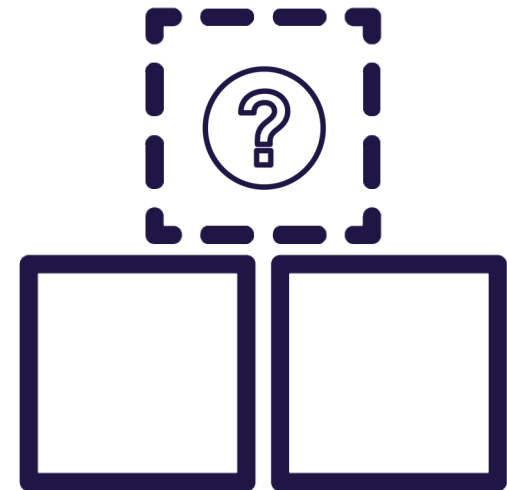
## Some advantages of incorporation

- separate identity
- succession
- limited liability of members
- ability to raise capital (borrowings and give security)

## Some Disadvantages of Incorporation

- cost
- regulation
- publicity

Does legal structure matter?



# Section 1435 Companies Act 2014

No company, association or partnership consisting of more than 20 persons shall be formed for the purpose of carrying on any business (other than the business of banking), that has for its object the acquisition of gain by the company, association or partnership, or by the individual members thereof, unless

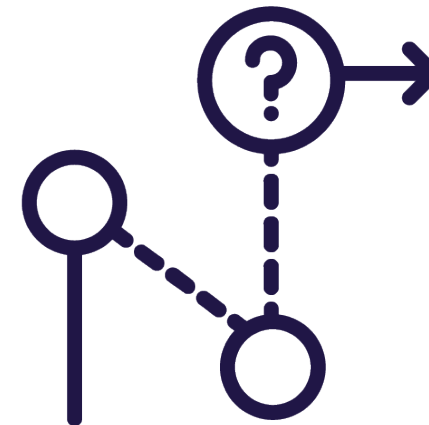
- a) It is registered as a company under this Act;
- b) It is formed in pursuance of some other statute.
- c) It is a partnership:
  - i. of accountants in a case where each partner is a statutory auditor;
  - ii. of solicitors in a case where each partner is a solicitor;
  - iii. carrying on promoting the business of thoroughbred horse breeding, being a partnership to which the Limited P/ship Act 1907 relates;
  - iv. providing investment and loan finance and ancillary facilities and services to persons engaged in industrial or commercial activities, being a partnership that consists of not more than 50 persons and to which the Limited P/ship Act 1907 relates; or
  - v. excluded by Ministerial regulation.

S1435 does not apply to limited partnerships under 1994 Act.

Limit on partners in 1907 Act does not apply to partnerships excluded from s1435.

# Which form of Structure?

- Purpose of entity and any statutory requirements
- Establishment costs
- Familiarity to stakeholders
- Degree of regulation
- Flexibility (including cross border trade)
- Possibility of conversion to other type
- Facilitate change in members
- Weighed votes
- Tax considerations



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# A typology of Bodies Corporate (and unincorporated) in Irish and EU law

## Bodies corporate in Irish law

- Statutory corporations/chartered corporations
- Companies Act companies (also statutory companies and unregistered companies)

## Bodies corporate in EU law

- SE, CE, EEIG

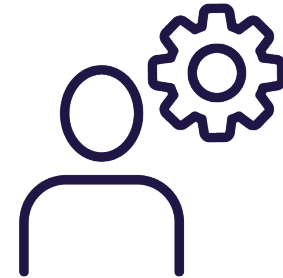
## Unincorporated entities and partnerships (some partners can be limited, some limits on p/ship size)

## Bodies corporate other than companies

- Building societies, friendly societies
- Co-operatives, credit unions
- ICAVs

## Some General Principles and Concepts

- The nature of limited liability
- A “Companies Act “ company
- Corporate groups
- Directors and secretary
- Members
- Capital maintenance





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## Principal Irish and EU Companies:

- Companies registered prior to Companies Act 2014
- Companies Act 2014
  - a) LTD
  - b) DAC
  - c) PLC
  - d) CLG (limited by guarantee)
  - e) UL (unlimited, can have share capital, can be public)
  - f) Investment companies
- European Public Company (SE) - minimum capital and treated like PLCs
- European Economic Interest Grouping (EEIG) – can only operate as ancillary body to further members' businesses

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## Companies Act companies in more detail

### LTD/DAC

- Ltd can have one director, limit on members (149) no bearer shares and no listing of debt, DAC has objects clause (could be limited by guarantee)

### CLG

- Used mainly in not for profit/charities

### PLC

- (EU creature, minimum capital, restrictions on commencing business) Most heavily regulated company type

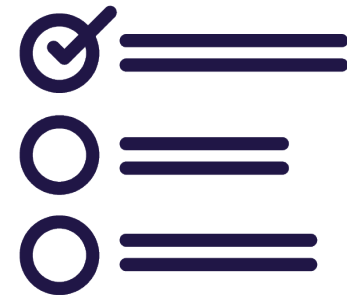
### UL (public and private)

- Capital maintenance rules, distribution rules and directors' compliance statements don't apply. Some restrictions re involvement in mergers. Most now need to file accounts

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## Some key Procedures and Considerations

- capital maintenance and reduction, distribution of profits
- converting the corporate form
- accounting and financial transparency
- relocating corporate domicile



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# Q&A



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Consultant

+353 1 607 1326

Paul.Heffernan

@mccannfitzgerald.com



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**Principal Office**

Riverside One, Sir John Rogerson's Quay  
Dublin 2 D02 X576  
+353 1 829 0000

**London**

Tower 42, Level 38C, 25 Old Broad Street  
London EC2N 1HQ  
+44 20 7621 1000

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**New York**

One Rockefeller Plaza, 30th Floor  
New York, NY 10020  
+1 646 952 6001

**Brussels**

40 Square de Meeûs, 1000 Brussels  
+32 2 740 0370

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