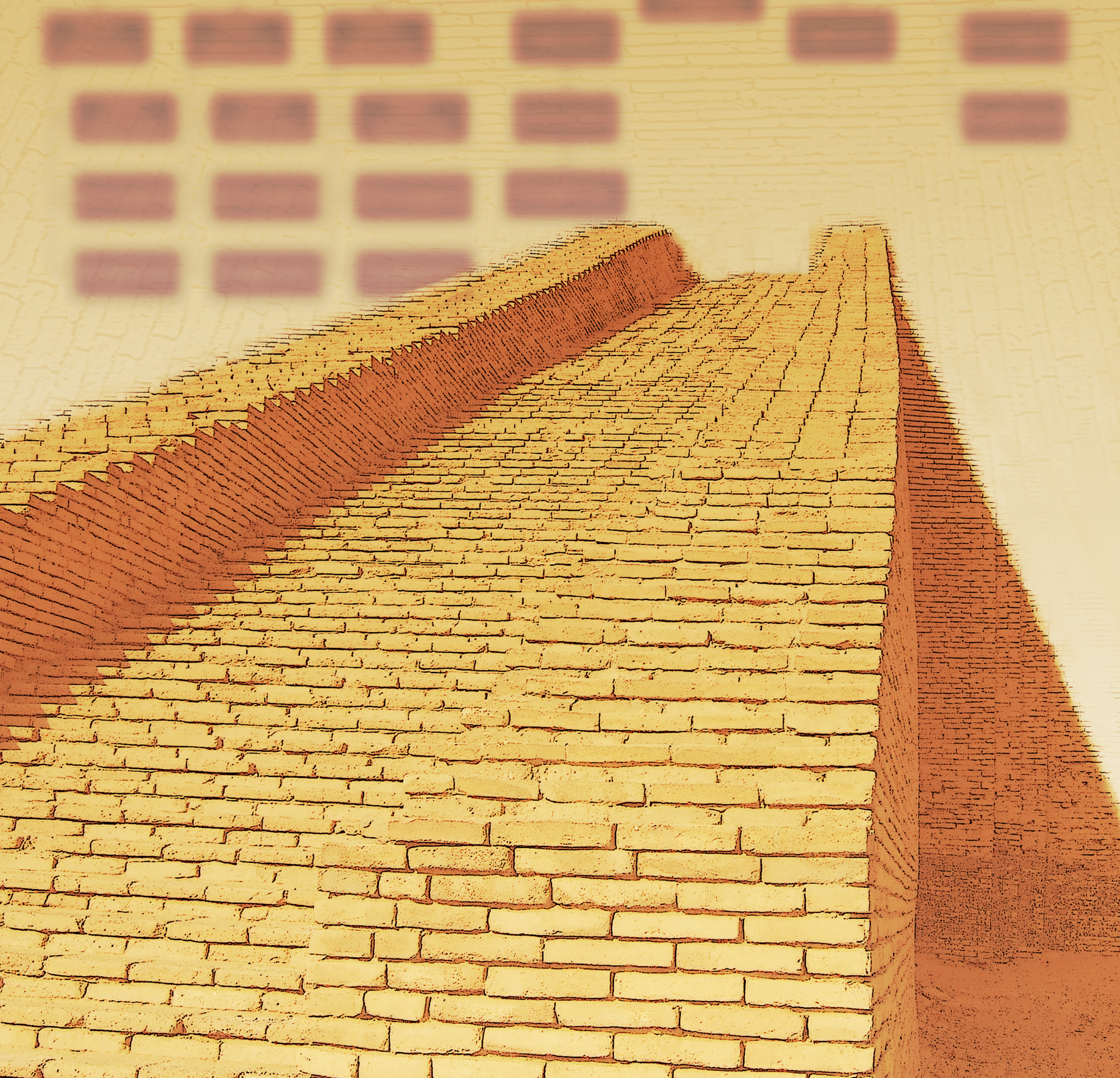
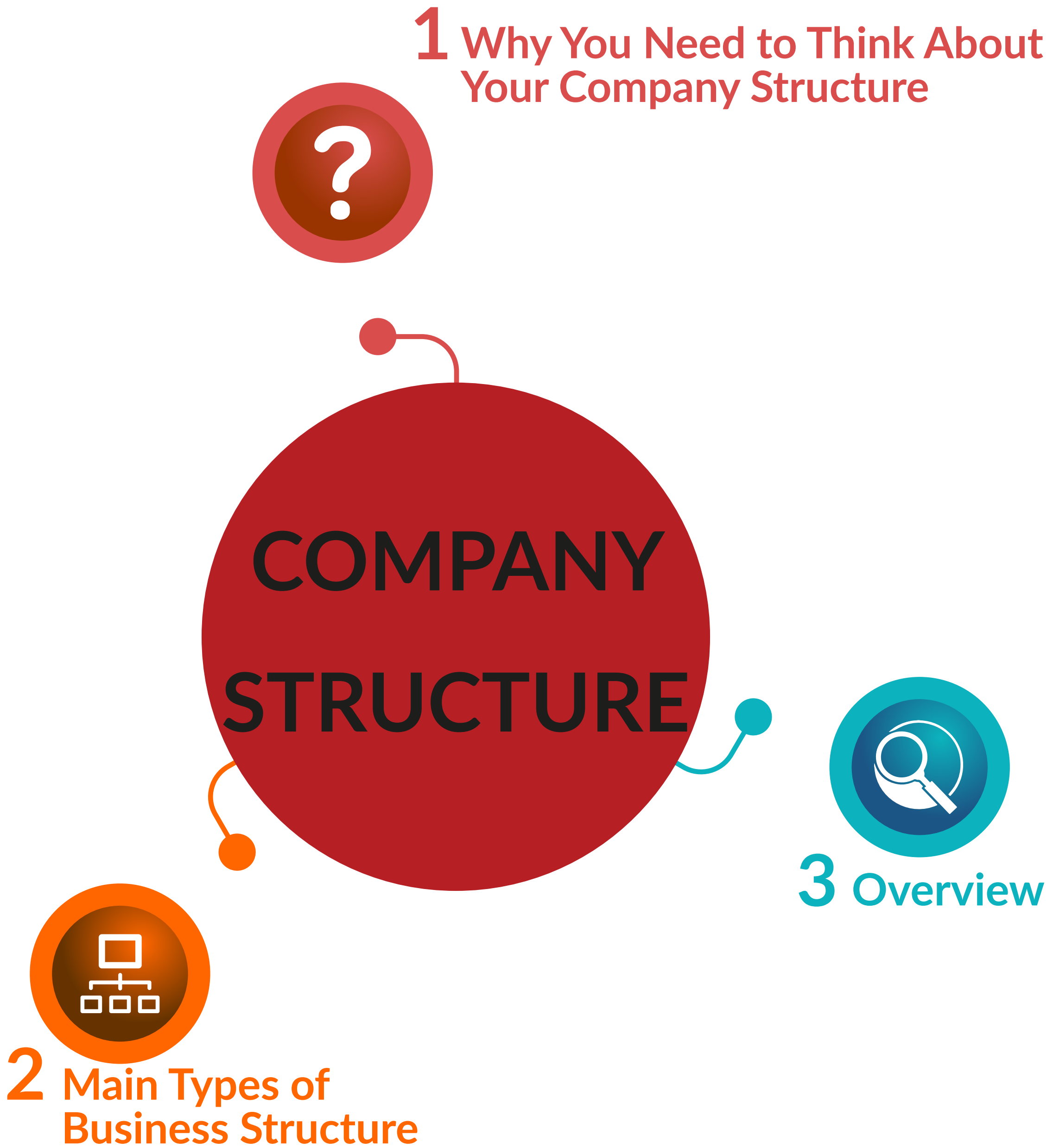
# COMPANY STRUCTURE



# Introduction

The main reason behind the writing of these guides is to help entrepreneurs to make the correct decisions regarding fundamental aspects of starting up and managing their own company. The small business community is littered with thousands of business owners that rushed headlong into business without first anchoring the business to some key fundamentals.

One of these key fundamentals is company structure and this guide will provide good guardrails to help you make the right decision.



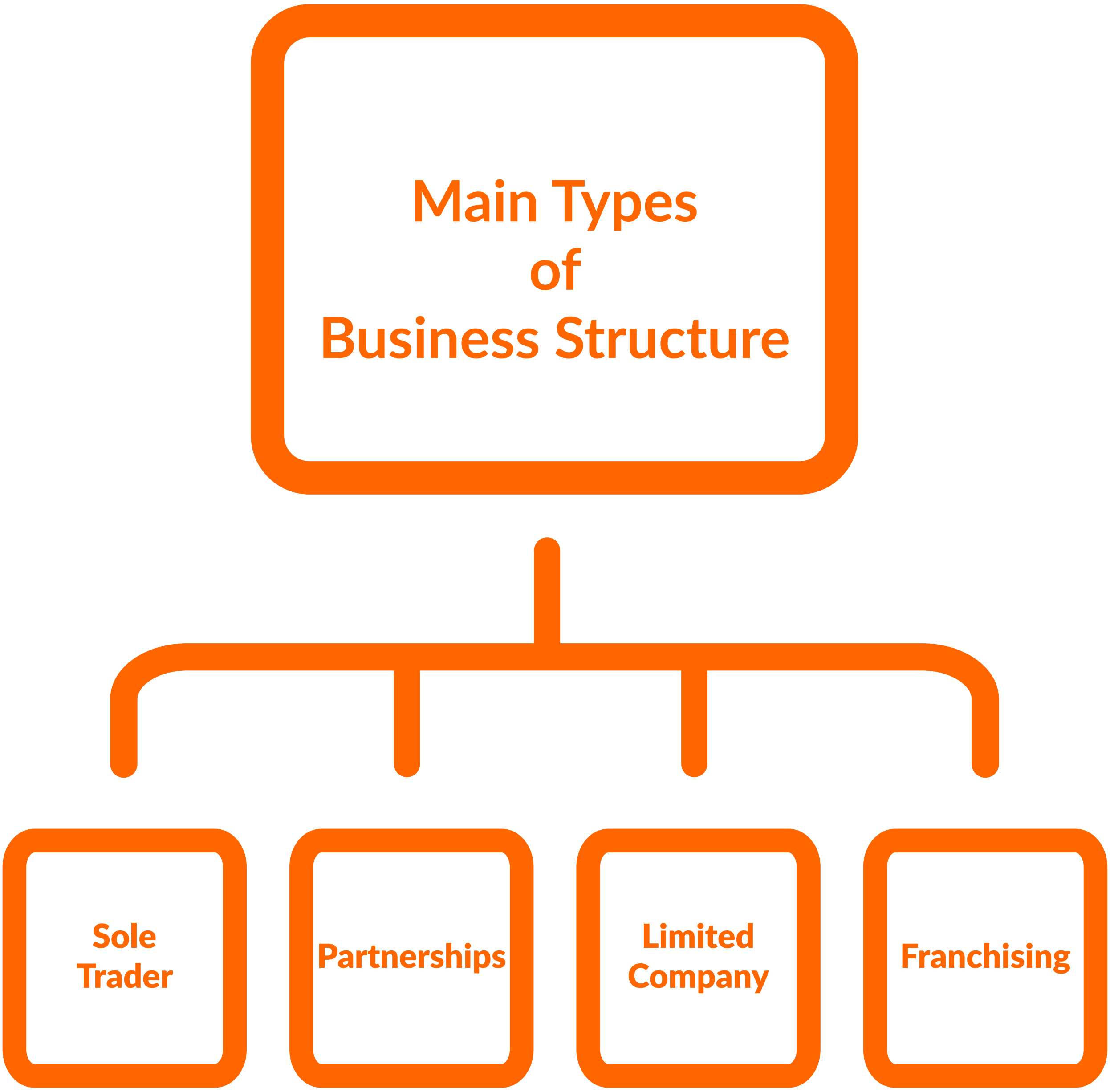
# Why You Need to Think About Your Company Structure

Taking the leap to establish your own business and becoming self-employed is a daunting decision. Once that leap has been made, there are fundamental decisions to make concerning the structure of your business. For example, will you operate as a sole trader, a partnership or as a limited company? In many cases, the structure you establish could have long-term implications on how the business might grow, so it is important to conduct your research before making the final decision. There are also legal implications you need to be aware of to ensure that your business is compliant.

Whatever structure you establish will have implications on how you interact with the business on a day-to-day basis. Being an owner or director brings much responsibility, and you will have to make many decisions including how to deal with tax, PRSI, employing staff, taking any profits and managing any losses.

# Main Types of Business Structure

There are four structures to consider when entering business:



## Sole Trader

Better known as self-employment, this structure allows a business person to remain in control of the business, even though in many cases other people may be employed. Whatever profits the business makes you are entitled to keep, but you will be required to pay income tax on them. This type of structure is suited to an individual who has started small and would like to remain small: they may even work from their own home. For example, it is favoured by the proprietors of small retail outlets, pubs and small business services such as consultancy, hairdressers, taxi-drivers, painters and carpenters.

A sole trader is not normally required to register their company, file accounts or have an annual audit, apart from the usual requirements for income tax, PRSI and VAT purposes. However, if the business name is different from the proprietor's name, (for example, Mr Michael McLaughlin owns a carpentry business trading as Southside Carpentry Services), it must be registered with the Register of Business Names.

Ownership and control remain with one person. The business' profits remain with one person. Easier administration because fewer legal obligations to administer.

Personal liability for bills, debt and losses. Raising finance. Succession. Self-assessment for tax compliance. Personal legal responsibility so insurance is essential in case of any claims.

## Partnerships

Whenever two or more people carry on any form of business together with a view to profit but without incorporating as a limited company, they form a partnership, even where this may be unintended. It is the involvement of multiple people that differentiates its status from that of a sole trader. A partner can be an individual person or a limited company.

Partnerships offer the same advantages as sole trading plus they spread the risk and responsibility. Responsibilities differ according to the type of partnership. An 'unlimited' partnership is defined by the equal sharing of responsibility for bills and losses. In the case of 'limited' partnerships, responsibility is unequally shared by the partners who can be 'general', and therefore liable in the ordinary way, or 'limited', thus liable up to the amount they initially contribute to the business. By law, a limited partnership must have at least one 'general' partner whose liability is unlimited. With 'limited liability' partnerships, all the partners are liable only up to the amount they have invested.

When establishing a partnership, from the very beginning it is important to draw up a formal agreement between each partner. For example, this will define individual responsibilities, profit shares, voting rights and the plan of action if and when difficulties arise: for example, retirement or death of existing partners, the incorporation of new partners or trading difficulties.

Ownership and control remain with a defined number of people (by law, between two and twenty). Shared responsibility, thus avoiding problems if one or more are absent due to sickness or holiday entitlements. With 'limited' and 'limited liability' partnerships there is better protection from financial danger and better flexibility re allocation of profits.

Not being incorporated at the Company Registration Office may act as a barrier to new business opportunities. Like sole traders, raising finance could also be problematic. As it is not a separate legal entity, partners can be sued in their own names. Since individual partners are liable for the debts of the partnership without limit, in the legal sense, a partner is personally liable for another partner whom they may never have met. As partnerships have no 'limited liability', a floating charge over assets cannot be created. A partner may not transfer their holding in a partnership to another person or entity. A partner's assets are not protected or 'ring-fenced' if any claims arise.

In Ireland, professionals such as accountants and lawyers operate in partnerships as they are prohibited from forming companies. By law, they must be personally liable to their clients. They choose the 'limited' form of partnership.

Unlimited partnerships are generally formed by small to medium sized businesses (SMEs), such as building and domestic service firms.

## Limited Company

With this structure, the company is formally recognised as a separate legal entity to run the business and governed by company law. Unlike sole trader and partnerships, liability is limited to the company, making shareholders only liable for whatever amount of share capital they subscribe to. It must have a minimum of two directors and company secretary (the secretary can be a director or an outside agent such as an accountant or solicitor). It can be created from scratch or an 'off-the-shelf' name may be purchased from a registration agent. However, the name must be approved and registered with the Registrar of Companies. In this process, it will file two documents: the Memorandum of Association and the Articles of Association (the latter includes a Certificate of Incorporation, which must be filed before a limited company can commence trading).

The people who own a limited company are known as 'members'. These can either be individuals or organisations that own shares in the company.

Generally, once a business grows beyond a certain size or income level, or has plans to expand rapidly requiring investment, this is when it's time to consider establishing it as a limited company. It is the structure chosen by 'micro-businesses' employing a small number of people to large corporations employing thousands. Interestingly, of the 161,071 limited companies registered in Ireland in January 2014, over 70,000 operated as one-man-band outfits.

Resources are pooled, thus reducing financial risk and market exposure. It offers large companies the opportunity to rapidly expand nationally and internationally. The use of a known brand name or system should help to recruit customers (and staff). The franchise is generally restricted to a particular area or region, thus limiting competition. Group buying may lower operating costs. Expansion can normally be well managed. Capital investment is lower.

Revenue is lower from such businesses when compared to company-owned outlets. Poor publicity in one region or country could negatively affect the brand in another, unaffected region. The franchise is generally restricted to a particular area or region, thus inhibiting expansion. Restrictions on purchasing locally-produced goods or services. The franchisee's expansion plans could clash with that of the franchisor. Tight controls could stop the franchisee from putting a personal stamp on the business.

To supplement these specific structures, there exists a number of situations were an organisation is not concerned with profit making. For example, these would include sports clubs or voluntary groups. They may exist to provide a community service in the shape of a football or soccer club, or perhaps to oversee the development of an amenity within a local community (and thus administer the awarding of a subvention or grant), but 'profit-making' is not their objective. These would fall under the headings of unincorporated associations or community-interest companies.

# Overview

Whereas there are some general considerations for establishing the structure of a business, in many cases businesses adapt as they grow or contract. Depending on the level of administration required or expected, the original structure should reflect your financial and tax needs. Indeed, the 'big plan' will certainly affect the structure chosen. For example, someone with a product that has the potential to sell world-wide, will probably create a limited company from the beginning, whereas a person with a product that doesn't travel very well (fresh food, for example), may be less inclined to select limited company status until the business has a sound basis.

Remembering to regularly assess the business as it develops – which might include taking the advice of independent financial advisors, solicitors or accountants – is a common mantra across all business structures, as it will probably save you money in the long term.

# WHO WE ARE

Big Red Book is the largest and longest establish Irish company that supplies accounting software to the small business market.

Big Red Book is designed for ease of use so you can spend more time running your business rather than worrying about the accounts.

We understand that doing accounts can be a challenge so we provide free training. We also have an expert customer service team to ready to take your call and help you with any support issues.

In addition to Big Red Book accounts software, we also supply an easy to use payroll solution – Big Red Book Payroll. For those companies that want to use a cloud based accounts solution, we offer Big Red Cloud.

With over 20 years' experience providing accounting software and support to over 39,000 Irish businesses, we invite you to join our business community.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