



Business Structure

Which Business Structure Should You Choose?

An important decision to make when starting a business is choosing the business structure that best suits your needs. Some of the factors to consider are personal financial liability, tax implications, access to business profits, establishment costs and risk exposure. Consulting your accountant and/or solicitor will assist you in making a better decision.

There are a number of business structures available, of varying complexity, each with advantages and disadvantages. The most common business structures are Sole Trader, Partnerships and Proprietary Limited Company. Set out below are the definitions and a summary of the advantages and disadvantages of each.

Sole Trader

A sole trader is an individual who runs the business without partners or a company structure. The sole trader has full control of the business including ownership of all profits and responsibility for all debts and liabilities.

Partnership

A partnership involves two or more co-owners participating together in a business. A partner may be an individual or a company and each partner shares in the responsibility and profits of the business.

It is always a good idea to have a partnership agreement to govern the rights of the partnership. In the absence of a formal written partnership agreement, the law will assume that each partner has an equal share in the business.

It is advisable to have a solicitor prepare the partnership agreement.

Limited Partnership

The *NSW Partnership Act* makes provision for a limited liability partnership structure whereby the liability of a partner contributing capital can be limited to the amount of financial contribution, provided that person does not take part in the management of the business.

The advantage of the limited liability partnership is that it allows an investor to invest in a partnership without being liable beyond the extent of their financial

investment, provided certain conditions are met.

Key Items to Include in a Partnership Agreement (not an exhaustive list)

- The commencement date and duration of the partnership.
- The treatment of partnership property and leases undertaken for the partnership.
- Conditions under which partners can assign or change their interest in the partnership.
- Apportionment method for profit, capital and losses of the partnership.
- Person/s of authority to make payments on behalf of the partnership.
- Method of valuation of assets upon dissolving or altering partnership.
- Whether majority decisions of partners govern all matters.
- Agreement to engage an independent accountant.

Proprietary Limited Company

A business may operate as a separate legal entity in the form of a company. This is a more complex form of business structure governed by Corporation Law, which covers how a company operates and the duties of the directors.

The Corporations Law was updated as the Corporations Act 2001. The effect of the Act is to substantially ease the regulatory burden applying to small business. Under the amended legislation, proprietary limited companies may have only one director and only one member.

A business operating as a company must register a company name with the Australian Securities and Investment Commission (ASIC). The Commission also publishes information sheets on company requirements and director obligations. These can be accessed from their web-site at www.asic.gov.au or from ASIC Business Centres and ASIC Info line - phone 1300 300 630.

Another useful resource is the 'Starting a Small Business' Guide available at all Australian Government Bookshops - phone 1800 202 049.

Other Business Structures

Other types of business structures include cooperatives and trusts. Information on forming a co-operative can be obtained from the 'How to form a Co-operative'

guide available at your local Business Advisory Service.

A trust is a popular structure adopted by family business or for income-splitting purposes. In family trusts the trustee is typically a member of the family and the trust can also be used as a device to split income. Trusts are considered a complex business structure. A trust is not a legal entity, however, the trustee must be a legal entity, such as a person or company, in whose names all assets of the trust are held. Each trust operates under its trust deed, which is like a book of rules for trustee obligations. Tax implications of trust structures must be considered and professional advice should be sought before forming and transferring property into a trust.

<p>Sole Trader</p> <p><u>Advantages</u></p> <ul style="list-style-type: none"> ✓ Easy to set up – less complex structure. ✓ You are your business and make all decisions. ✓ Inexpensive to establish and operate. ✓ Least reporting requirements. ✓ Your losses may be offset against any other income or future earning. 	<p><u>Disadvantages</u></p> <ul style="list-style-type: none"> ✗ You are your business – often your business will operate only if you work. ✗ You are personally liable for all business debt. ✗ You continue to pay tax at personal income tax rates. ✗ Fewer options to raise finances may limit your business.
<p>Partnership</p> <p><u>Advantages</u></p> <ul style="list-style-type: none"> ✓ Inexpensive to establish and operate. ✓ Ability to split income on level of ownership. ✓ Responsibility for the operation of the business is shared. ✓ Ability to raise finance for the business is enhanced. ✓ Capital losses may be offset by other non-business capital gains derived by the individual owners. 	<p><u>Disadvantages</u></p> <ul style="list-style-type: none"> ✗ Each partner is fully liable for the full debts of the partnership. ✗ There is limited flexibility in distributing profits from property.
<p>Company</p> <p><u>Advantages</u></p> <ul style="list-style-type: none"> ✓ Liabilities of the shareholders are limited to their subscribed share capital and any debts personally guaranteed. ✓ The company is a separate legal entity, which may enter into agreements, can be sued, can sue others. ✓ Retained profits are taxed at the company income tax rate. ✓ Ease in attaining ownership in the company by acquiring shares. ✓ Ease of ownership change. ✓ Continuity of the company's existence – not dependent on the owners. 	<p><u>Disadvantages</u></p> <ul style="list-style-type: none"> ✗ Set up, administrative and operating costs are high. ✗ Increased statutory requirements, for taxation and Corporation Law. ✗ Revenue and capital losses must be retained by the company – cannot offset owners' incomes.

Registration of a Business Name

Under the *Business Names Act 1962* every business name must be registered, except where the name is simply that of the owner's. If you alter your name, add anything to it or use a different name, then it must be registered.

You are not required to register a business name with the Office of Fair Trading if you decide to become a company under the Corporation Law (ASIC).

Businesses are registered for three years. There is a registration fee and a renewal fee for business names.

Business name registration can be done over the counter at any Office of Fair Trading Centres. To locate the nearest Centre, call 13 32 20 or log-on to the Office of Fair Trading website (www.fairtrading.nsw.gov.au).

Registration for an ABN and Taxes

All businesses are also required to register for an Australian Business Number (ABN), which is a unique business number enabling you to conduct business with government agencies and other businesses.

You may register on-line for an ABN at The Business Entry Point (www.business.gov.au). At the same time, you could also apply to register for:

- Goods and Services Tax;
- Pay As You Go Withholding; and
- Tax File Number for non-individuals.

Contacts

For advice about an appropriate business structure, you should seek the services of a solicitor, accountant or business adviser.

Solicitors and Business Law Specialists

in your area can be located through the Law Society on (02) 9926 0305 / (02) 9926 0383, or refer to the Law Society of NSW website at www.lawsocnsw.asn.au.

Accountants in your area can be located by contacting one of the following peak accounting bodies:

- CPA Australia, phone (02) 9375 6200 or visit their website at www.cpaaustralia.com.au.
- Institute of Chartered Accountants in Australia, phone (02) 9290 1344 or visit their website at www.icaa.org.au.
- Association of Taxation and Management Accountants, phone (02) 9799 6255 or visit their website at www.atma.com.au.
- National Institute of Accountants, phone (02) 9299 3052 or visit their website at www.nia.org.au.

For More Information:

Contact your local Business Advisory Service on 1300 650 058 to talk over business management issues or visit the Department of State and Regional Development's Small Business Website at www.smallbiz.nsw.gov.au.