

Choosing a Business Structure which is Right for You

If you are starting out in business or changing the nature of your business, how are you going to choose which business structure is the best for you? Three ways of organising and operating a business are set out below to help you compare the benefits and advantages of each. If you want more information on Partnerships or Proprietary Companies you should refer to the separate BIZFACT sheets available.

Who is a sole proprietor?

This is a person who owns and manages a business on their own, either under a business name or their own name.

What are the advantages of being a sole proprietor?

It gives the owner total control of the business management, the assets and the profits and is simple and inexpensive to establish, with minimal legal requirements. Record-keeping and reporting are required for taxation and legal purposes. The business can be discontinued easily or may be sold without needing the consent of others.

What are the disadvantages of being a Sole Proprietor?

Business development is limited to the expertise, capital resources and capabilities of the owner. The owner is taxed at the marginal personal rate. Unlimited legal liability applies to the owner and this can make other assets vulnerable to loss if the business fails or incurs heavy debts.

What is a partnership?

This is an agreement between at least two and up to 20 people to contribute time, money and talent to make a profit from a continuing venture. They may trade under a business name or under the names of the partners. The rights of partners are set out in an agreement or the Partnership Act.

What are the advantages of trading in a Partnership?

Partnerships are simple and relatively inexpensive to establish and can make more capital available from personal sources and financial services. A wider pool of expertise is available and it is possible to divide the

business operation by specialist roles. Partners can decide on how the control of the business and division of profits is to be shared under formal agreements, which can also provide for future or unforeseeable difficulties.

What disadvantages do Partnerships have?

They have a life that lasts only as long as the original partners agree to trade together.

Death and bankruptcy dissolves a partnership. If the venture is to continue it must be re-formed.

Partners have both a joint and individual liability for debts and actions and there is unlimited legal liability for all partners.

It may be difficult to operate if personal or partnership problems arise, or there are disagreements over management authority. Transfer of ownership is complicated and taking on a new partner requires the consent of all parties.

What is a Proprietary Company?

The Corporations Law governs the setting up and operation of a Proprietary Company. The Company has a separate legal identity from the people who own and manage the business.

What are the advantages in setting up a proprietary company?

The liability of shareholders is limited because the company is seen as separate from the people involved. The personal assets of shareholders are not threatened by company losses or debts except where shareholders are guarantors for the performance of the company.

There may be taxation advantages. Company taxation is at a fixed rate. A company is managed by appointed directors, secretaries and managers – all of whom have set responsibilities. It is also able to have employees, who may include shareholders and directors. Transfer of company ownership may be a simple process and the company does not have to be wound up upon the disability, death or retirement of any one of the persons involved.

What are the disadvantages of a proprietary company?

Forming a company is complicated and may be expensive and may take as long as six weeks to complete the legal requirements.

There is greater regulation by government under the Corporations Act, and through the Australian Securities and Investments Commission. More record-keeping and reporting is required. Formation of a company requires legal and accounting advice.

Where can you get more information?

If you require further information on any of the above business structures, consult an accountant or lawyer.

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