brennan law partners

Guide to Business Structures

The Pros and Cons

Evaluating your options

Starting a new business can be overwhelming. There is a multitude of different things to think of and options to consider – business name, logo, location, staff, finance – the list goes on.

However, one thing that is crucial to the long-term success, profitability and protection of your new business, but which can sometimes not be afforded the attention it deserves, is determining the appropriate corporate structure.

Don't worry, we get it! The differences between the varying structures and the associated benefits and negatives can be confusing. That's why we have put together a BLP Brief guide to the strengths and weaknesses of some of the corporate structures available to establish your new business (or restructure an existing one).

This guide will assist you to make a decision about the structure of your new business. With luck (and some hard work on your part), the early adoption of the appropriate structure will pay dividends in the future.

Limited Companies (Ltd)

Limited companies are public companies and commonly trade on the Australian Stock Exchange. The companies are owned by public shareholders and must have a minimum of 3 directors.

Limited companies are separate legal entities. They are able to buy and sell property and assets, enter into contractual arrangements and litigate disputes in their own name.

The establishment and registration of a Limited company can be complex and expensive.

Benefits	Negatives
• Limited liability – creditors cannot recover debts from shareholders personally • Easier to raise capital for the business - simply issue more shares • Tax benefits • Perpetual succession – entity carries on even when members change • No restriction on the size of the company	• More expensive to establish • Greater compliance requirements (ASIC, ATO) • Heavily regulated • Must hold Annual General Meetings for all members

Proprietary Limited Companies (Pty Ltd)

Proprietary Limited Companies are the most common structure adopted by small business owners. Pty Ltd companies are not public companies. Pty Ltd companies are owned by shareholders in their respective proportions.

Most small businesses in Australia adopt this structure, with the owner(s) being the shareholder(s). As only 1 director is required, the ownership and share structure can be very simple.

The costs of establishment are relatively low, although they are more complex and expensive than a partnership or sole trader.

Benefits	Negatives
• Limited liability – creditors cannot recover debts from shareholders personally • Tax benefits • Perpetual succession – entity carries on even when members change	• More expensive to establish than a partnership or sole trader • Greater compliance requirements than a partnership or sole trader • Can be no more than 50 non-employee shareholders

Incorporated Entities (Inc.)

Associations incorporated under the *Associations Incorporation Act 1981* (Vic) are a form of incorporated entity but are not a company. Incorporated entities are not for profit entities, commonly clubs, charities, schools and community groups.

An incorporated association is a separate legal entity, thereby allowing it to purchase assets, enter into contracts, litigate disputes but the members of the association are protected from legal liabilities. However, the association cannot distribute profits to its members – the association must be a not for profit entity.

Benefits	Negatives
• The association must have at least 5 members • The association is a separate legal entity • The members and office-holders are protected against personal liability • Government grants and funding may available to an incorporated association	• The association cannot distribute profits to members • The association must comply with auditing, accounting and annual reporting requirements under the *Associations Incorporation Reform Act 2012* • There are greater costs involved with establishment

Trust

A trust is not a legal entity. A trust is a structure for holding and managing assets for the benefit of other persons or entities. A trust is established by a Deed and is managed by a Trustee (either a person or a company). The Deed sets out the rules that the Trustee is to abide by when managing the trust assets.

Benefits	Negatives
• Flexibility as to the distribution of profits • Tax benefits • Provides asset protection • Limits liability from operating the business	• Complex structure which will cost more to set up than a partnership or sole trader • Not a perpetual entity – can exist for a maximum of 80 years • Trustee may be liable for debts of trust

Sole Traders

Being a sole trader is the easiest option available in terms of set up and establishment. A sole trader establishes their business in their own name. A sole trader only needs to obtain an ABN and they can commence trading.

Benefits	Negatives
• Quick, easy and cheap to establish • No compliance requirements • Quick and easy decision making • Full control of the business and its assets • Ongoing administration costs are low	• Unlimited liability - the sole trader's personal assets are at risk • Business debts are personal debts • No real tax benefit unless your income is low

Partnerships

A partnership is a business structure whereby a number of people carry on business together and are bound by the partnership agreement they sign. The agreement sets out the scope and breakdown of the partnership, the nature of the business and what each partner's rights and responsibilities are.

A partnership is not a separate legal entity. Therefore, all partners are jointly and severally liable for the debts of the business.

Benefits	Negatives
• Relatively quick, easy and cheap to establish • The partnership does not pay tax – only the partners pay income tax on their distributions • Ongoing administration costs are low	• Unlimited liability for each of the partners • Business debts are personal debts • Can be no more than 20 partners • Each partner is responsible for their own superannuation arrangements • No real tax benefit unless your income is low

How can Brennan Law Partners assist?

We can provide assistance and advice with respect to:

- Advice on establishing your new business
- Setting up your new business
- Advising on matters arising from your business ownership and governance

If you have any questions regarding any information in this BLP Guide, we welcome you to contact us at any time.