COMPANIES

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WHAT IS A COMPANY

A company is a legal entity that is separate from its members. When you form a company you form an imaginary legal person which can hold and dispose of property, take legal action and sign documents. Because it is a separate legal entity a company can have assets and liabilities and make profits and losses quite separate from its members.

There are a number of different types of companies but the most common in the small business context is a proprietary limited company.

PROPRIETARY LIMITED COMPANIES

A proprietary limited company is a private company registered by the Australian Securities and Investments Commission (ASIC). At least one person is required to form a proprietary limited company who must fill the role of both Director and Secretary. A proprietary limited company cannot invite the public to invest or deposit money with it.

The essential feature of a proprietary limited company is that the shareholders' liability is limited to any unpaid money on the issue of shares.

Shares held in a company can be gifted to beneficiaries by a Will. The assets owned by the Company itself however cannot be gifted in a Will.

ADVANTAGES OF A PTY LTD COMPANY OVER OTHER FORMS OF BUSINESS STRUCTURES

1. *Limited Liability.* Your liability for the debts of the business is limited to the money you have invested in the business (unless you personally guarantee debts). You have no personal liability for debts unless the debts are reckless, negligent or fraudulent. This means that invididuals can carry on business without exposing their personal assets should the business fail or be otherwise unable to meet its debts.
2. *Flexibility.* You can own and operate as the sole shareholder and director.
3. *Ownership.* A company can own property in its own right.
4. *Continued existence.* Transfer of ownership is done by transferring shares in the Company to someone else. Changes in membership do not affect the company.
5. *Shareholder's Rights*. You can have different classes of shares with different rights eg. Class A shares may have voting rights but Class B shares may not.

DISADVANTAGES OF A COMPANY

1. *Cost and complexity.* There are large initial establishment fees and complex establishment rules. There are higher annual expenses.
2. *Strict Regulations.* Companies are highly regulated through the Corporations Law (Cth), Trade Practices Act (Cth) and various other Commonwealth and State Acts.
3. *Tax.* Your business will be subject to company tax. You will be an employee of your business so workcover and superannuation rules would apply.
4. *Limitations.* Limitations on who can buy shares can make it difficult for shareholders to recover their investment.
5. *Less Privacy.* The ASIC, members and the public can search company records.
6. If you are an equal 50% or minor Shareholder and wish to get out of the company it can be very difficult to sell your shares if the other shareholders are uncooperative.

7. To close down the business may require the liquidation of the Company which can be expensive.

ESTABLISHING A COMPANY

Once you have decided on the name of your company, you can form it by

1. Applying to ASIC and completing the required forms;

2. Buying a shelf company and changing its details to those of your company; or

3. Having your solicitor or accountant do it for you

CHOOSING THE RIGHT BUSINESS STRUCTURE

When commencing a business you should take advice from a solicitor and your accountant as to the correct business structure to use to run the business. For many new businesses a sole trader or partnership may be more suitable. However, if asset protection is a concern then incorporating a company is likely to be the best option.

The taxation of each business structure is different and it is important to get the groundwork set correctly so as to avoid future difficulties which may prove costly to correct.

CONSITUTION OF A COMPANY

When incorporated a company has a constitution which sets down the rules about the powers of the company and its directors and shareholders in certain circumstances. For many companies incorporated a long time ago, these rules are outdated in many respects and should be reviewed and amended so as to comply with current legislation.

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