

Business Structures

Small Business Development Corporation

When commencing a business, one of the most important decisions to be made is the choice of your business structure. It is suggested that you consult your accountant or other professional adviser before you decide.

The options available are:

- sole trader
- partnership
- proprietary company
- trust, or
- some combination of the above.

Your choice should take into account the following:

- anticipated profit of the business
- involvement of family in the business
- financial status of the individuals who will be part of the business
- exposure to financial risk
- cost/benefit associated with establishing the chosen structure. Companies and trusts are more costly to establish than operating as a sole trader or a partnership
- tax position of the business owners and their dependents
- capital gains tax issues
- changes to tax laws
- industrial relations laws.

Companies

There is extensive information on companies on the Australian Securities and Investments Commission website, www.asic.gov.au under small business.

Taxation

The Australian Taxation Office publication, *Tax basics for small business*, includes a section on business structures. This can be accessed at www.ato.gov.au/businesses.

Workers' compensation insurance cover

Workers' compensation insurance cover is not available for sole traders or partners. Cover is optional for working directors, and conditions apply.

If you employ

Sole traders and partnerships employing workers are covered by the state industrial relations system. Visit the Department of Commerce website www.commerce.wa.gov.au under labour relations for more information, or contact Wageline 1300 655 266. Constitutional corporations, including small businesses operating with a company structure, are covered by the federal workplace relations system. See the Fair Work Online website www.fairwork.gov.au, or contact 13 13 94.

Publications

Publications available from the Small Business Development Corporation (SBDC) Business Information Centre at Level 2, 140 William Street Perth or online at www.smallbusiness.wa.gov.au/bookshop, include the following titles:

A guide for operating a small business

PLU 407\$25.00

Business structures

(This publication is one chapter of *A guide for operating a small business*)

PLU 442\$5.50

Family trusts: a plain English guide for Australian families of average means

PLU 59\$31.95

For further information and guidance contact:

Small Business Development Corporation
 Gordon Stephenson House
 Level 2, 140 William Street
 PERTH WA 6000
 Tel: 13 12 49
 Fax: (08) 6552 3399
 Email: info@smallbusiness.wa.gov.au
www.smallbusiness.wa.gov.au

Legal structure

Comparison of sole trader, partnership, proprietary company and trust:

Sole Trader	Partnership	Proprietary Company	Trust
One person or sole proprietor.	An association of persons -no separate legal entity.	Separate legal entity from its members.	Not a separate legal entity: an obligation.
The proprietor and the business are one.	May be formed by verbal agreement, written agreement or by conduct.	Formed by procedures outlined in the <i>Corporations Act 2001</i> (Cth).	Evidenced by trust deed and governed by the <i>Trustees Act 1962</i> .
One person.	The number of partners is limited to twenty.	Proprietary companies are limited to fifty shareholders, excluding employee/shareholders.	Not limited.
Own agent.	Each partner (unless restricted) is an agent of the partnership. Partners are generally liable for acts of the other partners.	A shareholder as such is not an agent of the company and has no authority to bind the company.	Trustee has authority.
Liability unlimited.	Liability of partners is unlimited.	Liability of shareholders is generally limited to any amount unpaid on the shares held. If the shares held are all fully paid, the shareholder cannot be compelled to contribute anything further for the payment of the company's debts.	Beneficiaries of the trust are not liable. Trustees may be personally liable.

This publication is also available upon request in alternative formats such as large print, electronic format, audio, or braille.

Disclaimer

This publication has been prepared by the Small Business Development Corporation to provide general guidance and direction on aspects of business structures. The information contained herein is provided voluntarily as a service to our clients and is made available in good faith and is derived from sources believed to be reliable and accurate at the time of publishing. However, the information is provided solely on the basis that readers will be responsible for making their own assessment and that they should verify all relevant representations, statements and information. Neither the Corporation nor its officers take any responsibility for statements or representations, nor shall the Corporation or any of its officers be liable in respect of any such statement or representation, whether by reason of negligence, lack of care, or for any other reason whatsoever.

Current at November 2011

© Small Business Development Corporation 1998 - 2011