

# Australian Institute of Conveyancers NSW Division

## **Decide What Business Structure You Intend To Use:**

You should probably consult your accountant before you decide what structure to use for your business. There are many things to take into consideration such as taxation implications, cost of establishment, financial exposure and liability.

There are several structures that can be considered, sole trader, partnership or a company structure.

### **Sole Trader**

As a sole trader you have complete control of the business and receive all profits but are completely responsible for any losses or debts.

This is the simplest business structure. It is the cheapest to establish. The reporting requirements are simple. Losses can be offset against other income.

You are personally responsible for all debts. Tax is payable at personal income rate. Options to raise finance may be restricted. Your business only operates if you work.

### **Partnership:**

Each partner must be licensed, unless the Commissioner for Fair Trading has given approval for a partnership with an unlicensed person (see section 27 of the Act).

Each partner is liable for the business and profits or losses are shared. A partnership agreement should be drawn up, especially if the partnership is not in equal shares.

A partnership is not expensive to set up. Responsibility is shared. Losses may be offset by other incomes of the partners. Raising finance could be easier than for a sole trader.

Each partner is liable for the total debts of the business. The ability to distribute profits from property is restricted.

### **Proprietary Limited Company:**

A corporation can hold a **corporation licence** provided:

- each director of the corporation is a fit and proper person
- neither the corporation nor a director or executive officer of it is a disqualified person
- the corporation must contribute to the compensation fund (this is paid with the licence application fee)

At least one director of the corporation must hold an individual conveyancer's licence.

This business structure is governed by Corporation Law, this provides for how the company shall operate and director duties.

The Corporation Law was updated as the Corporations Act 2001. Under the Corporations Act 2001 it is now possible for a proprietary company to operate with only one director.

A company must register with the Australian Securities and Investments Commission (ASIC). There are good publications available from the Commission to assist with the setting up and running of a company structure.

- Profits are taxed at the company tax rate.
- As a legal entity a company can enter agreements, and can be sued or sue debtors etc.
- Ownership can be simply changed.
- Profits are taxed at the company tax rate.
- Administrative and set up can be expensive.
- There are several statutory requirements to be attended to.
- Any losses cannot be offset against shareholders' incomes.

**Business Names:**

To conduct a business under a name other than your own name, the name must be approved by the Commissioner for Fair Trading. You can request this approval when you apply for the licence. The name will also need to be registered under the Business Names Act 2002