

## Set up as a company

A company is seen by the law as being a legal entity separate to its shareholders. Like any individual person (a natural entity), a company (a corporate entity) can own property and can sue and be sued. In Australia, companies are more regulated than other structures.

The most common types of companies are public companies and proprietary companies:

**Public companies** (denoted by *Limited* or *Ltd* after their name) are usually formed to raise or borrow public money through listing the company's shares on a stock exchange and selling these shares. Public companies require at least one shareholder (or member) and three directors. All companies are governed by the Australian Securities and Investments Commission (ASIC) and public companies are also subject to the rules of the Australian Stock Exchange.

**Proprietary companies** (denoted by *Pty Ltd* after their name) on the other hand do not and cannot raise money from the general public and only require one director and one shareholder (or member). Small businesses structured as companies usually operate as proprietary companies (rather than public companies). For this reason, this fact sheet focuses on proprietary companies. If you wish to structure your business as a public company you should consult with a solicitor.

### Advantages

- 1. Limited liability:** One of the biggest advantages of the company structure is that the legal liability of your company's shareholders is limited to their share capital (that is, how much money they pay for their shares in the company). This means that, in most cases, the personal assets of shareholders cannot be seized to pay company debts. Rather, only the assets of the company can be used to pay the company's debts. However, company directors may still be liable for any debts, liabilities and legal actions held against their company, in certain circumstances, such as when the directors have allowed the company to continue trading when insolvent.
- 2. Pay less tax:** Companies may also pay less tax than other business structures such as trusts or partnerships. Companies are taxed on their profits at the company tax rate which may be lower than the marginal tax rates of its individual shareholders. Furthermore, when shareholders receive company dividends that the company has already paid tax on, they will often receive tax credits through the company imputation tax system. This means that the tax paid by the company is already taken out and shareholders' dividends are given credits for the tax already paid by the company.
- 3. Continuity:** A company structure can also ensure continuity of management and ownership in the event of the death or disability of key people of the business because shares in companies are easily transferable.
- 4. Control:** You can also use a company structure to effectively separate the management and ownership aspects of the business. For example, the managers of the business can be appointed directors of the business and the owners of the business can be shareholders of the company.



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- 5. Australia-wide:** Under the *Corporations Act 2001 (Cwlth)*, once your company is registered in one state you are free to trade in all states, provided you have your Australian Business Number (ABN) on all business stationery.

## Disadvantages

- 1. High Set-up and Operating Costs:** The cost of establishing a company is usually between \$1,000 and \$2,000. There is also an ongoing cost of compliance with the *Corporations Act 2001 (Cwlth)* requirements, such as the costs of preparing and submitting annual statements, keeping ASIC informed of any changes to the company's structure, officeholders or operations and any fees for accounting and legal services. Company administration can require the directors and more particularly the company secretary, to spend a lot of time attending to company paperwork.
- 2. Responsibilities of Directors:** The directors of the company have certain legal obligations. If directors fail to meet these requirements they may be held personally liable for the debts of the company.

There will be other advantages and disadvantages to using a company structure for your business. These will depend on the specific nature of your business and other aspects of your financial affairs. For more personalised guidance about whether a company structure is the best structure for your business, we recommend that you consult with your legal and taxation advisors.

## Are there any special laws for companies?

Yes, companies are uniformly governed by the *Corporations Act 2001 (Cwlth)* which has strict rules relating to company structures, its operations, the activities of officeholders (such as directors) and annual reporting.

## How do I form a company?

To form a company you will require the services of your legal and accounting professional advisors. You will have to lodge with ASIC a form listing your proposed company name, the names of the companies officeholders (ie the Director/s and the Company Secretary) together with supporting documentation and pay a lodging fee. Following this, you are also required to keep a register of your company's officeholders and internal documentation at your business premises.

Further information about forming a company is discussed in available on ASIC's internet site [www.asic.gov.au](http://www.asic.gov.au) or by calling ASIC's information service on 03 5177 3988.

## Further information

The following fact sheets provide further information about these issues:

- Duties and responsibilities of company directors
- Legal aspects of succession planning
- Tax implications of a company



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## Who can help?

Your solicitor and accountant will help you decide whether a company is the best structure for your business based on your personal circumstances. They can also give you specialist advice and assistance relating to operating a company.

You can receive general information about companies and the *Corporations Act 2001 (Cwlth)* by contacting:

- ASIC on telephone 03 5177 3988 or [www.asic.gov.au](http://www.asic.gov.au).
- Australian Institute of Company Directors (AICD) on telephone 07 3222 5500 or [www.companydirectors.com.au](http://www.companydirectors.com.au).
- ASIC Publications and Business Centres.

