RTLEGAL PTY LTD

Business Structures: Company

When commencing a business venture, it is necessary to consider the most appropriate type of business structure to put in place. Different business structures have different benefits and disadvantages. This article looks at companies - how to set one up and the pros and cons of a company structure.

Key Features

A company is a separate legal entity capable of holding assets in its own name and liable for its own obligations. A company is owned by shareholders. The liability of shareholders is usually limited to the amount of their shareholding guarantee. This means that shareholders can limit their personal liability and are not generally liable for the debts of the company.

Directors manage the day to day business affairs of the company. There are a number of duties and obligations for company directors including an obligation that a director must act in the best interests of the company.

In Australia, the most common forms of company are:

- Private company (or a proprietary limited company): this is a company which does not sell its shares to the public and cannot raise money from the general public through share issue.
- Public company: is a company whose shares are owned by the public at large, with the company's shares usually listed for trade on a stock exchange.

Companies are regulated by the Australian Securities Investment Commission (ASIC) and governed by the Corporations Law.

How to Set up a Company

An Australian company must be registered with ASIC. When ASIC registers a company, the company will be given an Australian Company Number (ACN). An application must nominate a principal place of business and registered office for the company.

Prior to lodging an application for registration, consideration should be given to:

- the proposed company name. A check should be undertaken to confirm the availability of the proposed name. If no name is specified in the application, the company will be referred to by its ACN.
- what rules will apply to govern the company. This can generally be the replaceable rules from the Corporations Act (which means that the company does not require its own written constitution), a constitution or a combination of the two.
- who will be the shareholders and directors of the company.

A company needs its own Tax File Number, which can be obtained online from the Australian Taxation Office (ATO) and an annual tax return must be filed.

A company must be registered for GST if its annual turnover is $75,000 or more. An Australian Business Number (ABN) is required to register for GST and can be obtained online through the Australian Business Register.

Pros and Cons

The advantages of forming a company include:

- liability for shareholders is limited
- easier to raise finance for expansion
- ownership can be easily transferred
- taxation rates can be favourable

The disadvantages include:

- expensive to form, maintain and wind up
- reporting requirements can be complex
- must publicly disclose key information
- owners cannot offset losses against other income

Conclusion

A company might be a suitable business structure for unrelated parties who want to commence a business venture together, where there is a degree of risk and limited liability is wanted or where there is a desire to list the company on the stock exchange.

Establishment of a company and ongoing administrative and compliance costs associated with the Corporations Law can be high. An accountant or lawyer can help you understand the cost and risks of a company and explain whether a company structure would be suitable for your business going forward.

If you or someone you know wants more information or needs help or advice, please contact us on (03) 9459 5764 or email admin@rtlegal.com.au.