



Business Structuring Advice and Asset Protection



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It is an exciting time for people who are starting up or purchasing a business for the first time. No doubt the excitement is mixed with some apprehension as to whether the business will be successful. It is very important that anyone contemplating starting up or purchasing a new business receives expert legal and accounting advice concerning the structure that they should use for conducting their business.

Many business clients start off as a sole trader or husband and wife partnership. Although either of these options may be suitable when the business is relatively small and not earning much income, this will change if the business is successful and more flexibility is required in relation to the distribution of the income. The other disadvantage of a sole trader or husband and wife partnership is that the partners have direct personal liability for all creditors and other people that you contract with. This means that if your business is sued or becomes insolvent, you will be personally liable for these debts or any damages that are awarded against you in court actions. This would put your personal assets at risk, including your family home and any other assets that you own in your own names.

If you wish to have more flexibility in relation to distribution of the income of the business and protect your personally owned assets, we recommend that you consider using a corporate structure as your trading entity for your business. There are various options available ranging from a simple shelf company with a sole director and shareholder to more complicated structures involving trusts and a trustee company. Some of the advantages of a corporate structure are as follows:-

Limited liability of a company

Providing the company does not trade whilst it is insolvent, the company is only liable to its trading partners and creditors for the value of its assets or shares. If the assets of the company are only its shares of \$1.00 each, the total amount that any creditor could obtain from the company is \$2.00. The director of the company is not personally liable for any debts or actions unless the company trades whilst it is insolvent;

Reduce your Tax

A corporate structure, either through a company or a trust, has flexibility in relation to the distribution of the income generated through the business. The husband and wife and other family members can be used to distribute income. There is also the ability to pay franked dividends through the company and limit the tax payable to the corporate tax rate (currently 30%);

Contracts are with the company - not you personally

Providing no personal guarantees have been given by the director/s, in any contractual dealings with trading parties, the contract is entered into in the name of the company and therefore in any contractual disputes, the right of action is against the company and not against the director/s or the family members personally. This means that if the company is sued and a large judgment is obtain against it for damages for breach of contract, the successful party can only extract the value of the shares from the company (i.e. \$2.00). There is no action against the director/s personally in these circumstances.

Companies and trusts dont "die"

No succession issues - a company cannot "die". If the director of the company dies, the company continues operating as it did as normal. The only requirement is that a new director take the place of the deceased director. The same logic applies to a trust. It does not cease to operate because the director of the trustee company passes away. Normally, the spouse or partner of the deceased director will take their place in the company or the trust and continue to operate the business entity on behalf of the family.

Ensuring that your business structures marry up with your estate planning

Most people don't realise that their companies and trusts continue on even when they die. It is therefore important that your Wills accurately reflect your business entities and your asset ownership. Simple Wills quite often cannot take these entities into account and, to a large extent, the Wills are useless.

If a director of a company or the person who controls the trust dies, it is essential that appropriate Powers of Attorney or succession provisions are built in to the documents to ensure that the partner or spouse of the deceased can operate the business entities without interruption.

For enquiries regarding **Business Structuring and Asset Protection** please contact **Christine Martin** on (07) 5506 8245 or by email cmartin@attwoodmarshall.com.au.



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