

## Business Structures: Selecting the best vehicle for your business

**A legal structure that is tailored to the needs of your business can be a vital tool to meet your business goals. All too often, clients come to us having already formed a company as their "default" business vehicle, without having considered any alternative legal structures that could be more suited to their needs.**

### What is the best legal vehicle for your business?

A number of things should drive your decision. Some of the key drivers are limited liability, flexibility, complexity and administration costs.

Another key factor will be tax. For that reason, we strongly advise seeking out the assistance of both a lawyer and an accountant at the initial stages of your business venture, and certainly well before you decide on a structure.

Here are some options you might consider:

#### **Company**

A company is the most common business vehicle, and for good reason. It offers limited liability protection and a familiar structure. But there are disadvantages. These include on-going administration costs, inflexibility in terms of changing the structure of profit distribution, ownership and control.

There is also a limited ability to keep ownership information confidential, due to the requirement to maintain up-to-date public records.

#### **Partnership**

A partnership is not a separate legal structure, but a relationship between two or more people who carry on a business in common with a view to profit.

The advantages of a partnership include:

- No requirement to register the partnership, so it is very easy to form and there are limited on-going administration costs.
- Profits and losses flow directly through to the partners, allowing each partner to offset partnership profits and losses against other losses or income.
- A lot of flexibility in how the structure operates compared to a company.

A key disadvantage of a partnership is unlimited liability – essentially, you can be personally liable for the debts and liabilities incurred by the other partners.

Something to keep in mind when you are doing business in collaboration with others is that you can inadvertently fall into a partnership by meeting the legal definition, even if you don't intend to create that relationship. Entering into formal written agreements is crucial to avoid this risk.

#### **Limited Partnership with a corporate general partner**

A limited partnership is an internationally-recognised legal entity, introduced into the New Zealand market in 2008 to provide a passive investment vehicle to facilitate the growth of New Zealand's venture capital industry. Since then, limited partnerships have proven a valuable vehicle for a much wider range of business trading structures.

A limited partnership must have a written partnership agreement and meet company-like administration requirements, including filing annual returns. Despite the start-up and ongoing reporting costs, however, it might be a smart vehicle if your business is over a certain scale, and the advantages compared to a company are important to you.

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## Business structures: Selecting the best vehicle for your business (Continued)

Those advantages include:

- A lot of flexibility in structure (similar to that of a partnership).
- The limited liability protection of a company for limited partners.
- Privacy about ownership (limited partners are not publicly disclosed).
- Flow through tax treatment for limited partners.

### **Joint venture**

When it comes to joint ventures, we always advise our clients to exercise caution.

A traditional unincorporated joint venture is similar to a partnership, but each party retains ownership to its assets or services. Any fiduciary duties such as those that exist between partners can be excluded as a matter of contract. But a joint venture is only as good as its contract; there is no governing Act to fill in the gaps.

Our experience is that the joint venture terminology is often confused. Depending on how the business assets are owned, what parties intend to be a joint venture could actually be a partnership, with all the tax and personal liability consequences that entails.

It is also possible to have an incorporated joint venture which can be a very similar company with a shareholders agreement or a limited partnership.

### **Want to know more?**

Discussing the drivers of your business with a lawyer and an accountant before you decide on a business structure can save you significant time and money in the long term.

Anderson Lloyd has expertise across a range of business structures, from SME vehicles to more complex multi-party structuring arrangements.

If you wish to discuss what legal structure is right for your business, please contact our specialist [commercial law team](#).