

BUSINESS STRUCTURES

Options when setting up a business...

Sole trader, partnership, limited liability companies, registering trademarks and company names

Small businesses generally employ one of three business structures in New Zealand.

Sole Trader

A sole trader operates the business on his or her own. He or she:

- Controls, manages and owns the business
- Is personally entitled to all profits
- Is personally liable for all business taxes and debts

Usually a sole trader can begin the business without following any formal or legal processes to establish it. He or she may employ other people to help run the business. Large numbers of business operate as sole traders. No registration is required to start a business as a sole trader.

Partnership

In a partnership, two or more people run a business together. Each partner:

- Shares responsibility for running the business
- Shares in any profit or loss equally, unless the partnership agreement states otherwise
- Is liable for any debt within the partnership.
- Many partnerships are established with a formal partnership agreement

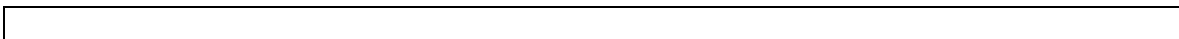
The partnership itself does not pay income tax. Instead it distributes the partnership income to the partners. The partners then pay tax on their own share. No registration is required to start a business as a partnership.

Limited liability Company

A company exists as a formal and legal entity in its own right. It is separate from its shareholders (or owners).

- To register (incorporate) a company under the Companies Act, you need to:
- Reserve the name and incorporate the company online at www.companies.govt.nz. Total cost is approximately \$60.00 plus GST
- The business is then established, a person, or a group of people, own shares in the registered company.
- The company:
- Owns the assets and liabilities of the business
- Is responsible for any debts

The shareholders' liability for losses is limited to their share of ownership of the company, *except when Company directors have given personal guarantees for company debts or where a company has been trading insolvently or is considered to be trading recklessly.*



Business Names

Proprietors of new businesses often expend a great deal of energy deciding upon a name for their business attempting to ensure exclusive use of that name, when such exclusivity is in practice very difficult to obtain and expensive to enforce.

The reality is that sole traders and partnerships are free to use any business name they choose, but if it is the same as a Registered Trademark, or a Limited Liability Company's registered name, they run the very real risk of litigation from the owners of the Registered Name or Trademark. This litigation process through the civil courts, while slow and expensive, will inevitably result in forcing the sole trader or partnership to stop using the registered name.

In New Zealand, unlike some other countries, a business name cannot be 'registered' in isolation from a Limited Liability Company. If a Limited Liability Company is formed the first step is registering a name and the Companies Office moderates the applications and will reject a new company name that is too similar to an existing registered name. This is the process that ensures no two Limited Liability Companies have the same name, and there is a parallel process within the Intellectual Property Office regarding new Trademarks.

In effect if you create a Limited Liability Company you can be certain that another Limited Liability Company cannot be formed with a name exactly the same as yours, but you have no immediate control over existing or new businesses operating as sole traders or partnerships that choose to use your name. You can take them to court to force them to stop using your name but that will take time and money.

Similarly if you create a Trademark you can be certain that another Trademark cannot be formed with a name and image exactly the same as yours, but you have no immediate control over existing or new businesses operating as sole traders or partnerships that choose to use your name. You can take them to court to force them to stop using your name but that will take time and money.

If you operate as a sole trader or a partnership it is quite possible that someone else will use the same name and there is nothing you can do about that. In many sectors sole traders in different towns use the same name e.g. businesses called Budget Tyres exist in Palmerston North, Wanganui, Lower Hutt and Whakatane, who are apparently all separate sole traders, and they live with it.

Trade marks

The Intellectual Property Office (www.iponz.govt.nz) has information on creating Trademarks, which cost from \$112.50 per registration and, because of international agreements, take six months to be finally registered. Due to the complexity of Trademarks it is worthwhile downloading "Introduction to Trade Marks" and "Application Guide: Making a Trade Mark Application Online" or obtain copies by calling the toll free number 0508 447 669.

Companies

The Companies office (www.companies.govt.nz) has information on registering a Company, which costs from \$60 when done on line and becomes effective immediately the Certificate of Incorporation is issued, commonly the same trading day. It is worthwhile downloading a copy of "FAQ's – Form a Company" and "Training Guide: Incorporating a Company Online" or obtain a copy of the Training Guide by calling the toll free number 0508 266 726.

Other business structures

In addition to sole traders, partnerships and limited liability companies there are other, less frequently used, business structures. These include trading trusts, cooperatives and provident societies, and they require the guidance of qualified professionals while being established due to their complexity.

For further information, see "Other Entity Registers eg Incorporated Societies" at the Information Library of the Companies Office website (www.companies.govt.nz).

