



SELECTING A BUSINESS ENTITY

Selecting a business entity involves considering legal and tax implications as well as the personal preferences of the individuals concerned. All the entities described below may carry on any type of business activity. The choice of entity is often limited by the number and nature of persons involved.

Choice of Business Entity

A Sole Proprietorship

This is the simplest form of business and has no existence aside from the owner who is called the proprietor. This type of business has a minimum of legal requirements. Any profits accrue to the proprietor who is legally liable for all the debts of the business. This entity might suit the needs of an individual starting a new business venture.

Partnership

A partnership should be considered where between two and twenty natural or legal persons want to carry on a business, trade or profession jointly. The partnership will not have perpetual succession and all the partners will have joint and several liability for the debts of the partnership. The partnership has a distinct legal status. The profits/losses of the partnership are shared between the partners on any agreed basis, and taxed in their hands.

Close Corporation

A Close Corporation has its own legal personality distinct from its members who are the owners of the Close Corporation. Membership is restricted to natural persons. Profits are taxed at the company's rate, which is presently 28%. An audit is not required by law, but an Accounting Officer must perform an accounting review, which is more limited in scope. Close Corporations are inexpensive to form and are regulated by the relatively simple provisions of the Close Corporations Act. A Close Corporation should be considered if up to ten natural persons want to

incorporate their business in order to benefit from limited liability and perpetual succession.

Private Company

A company is a legal entity which is separated and apart from its owners (shareholders). Both natural and legal persons may be shareholders. The number of shareholders for a private company ranges from one to fifty. The Directors of a company must all be natural persons. Directors need not be shareholders. A company is required by law to have an annual audit. The legal formalities of a company are more onerous than those of a Close Corporation. Taxation is paid on the profits of the company at rate of 28%. A company would be suitable in the following instances:

- (i) Where limited liability is required because of business risk.
- (ii) Where there is or might be a need to register two or more people as owners of an asset that cannot be subdivided.
- (iii) Where a sole proprietor wishes to give an employee an interest in the business or status of a director.
- (iv) Where required to protect investors.

Registration Requirements

Sole Proprietor

No registration is required.

Partnership

A partnership is formed when the partners enter into a partnership agreement. This should but does not have to be in writing. There are no other formal requirements that must be met.

Close Corporation

A founding statement must be completed and lodged with the Registrar (CIPRO). The name of the Close Corporation should be reserved beforehand.



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Private Company

The first step is to reserve the name of the proposed company. Thereafter the Memorandum and Articles of Association must be drawn up in the prescribed form, and signed by one or more of the subscribers and lodged with the Registrar (CIPRO).

Trading Names / Name Protection

Any person wishing to protect the goodwill attaching to its trade name may apply to CIPRO to register any name as a defensive name, which is not in the opinion of the Registrar undesirable and in respect of which he has furnished proof to the satisfaction of the Registrar that he has a direct and material interest. Registrations are for a period of two years. A name might also be protected by means of registering a trademark. This can be a lengthy and costly business.

If a trading name is not protected by one or more of the above means the trading entity may still have common law rights to prevent competitors from usurping its goodwill.

Other Registrations

Once formed the trading entity should register with appropriate authorities.

Typically these might include:

- SA Revenue Services
 - As a taxpayer
 - As an employer
 - As a VAT vendor
- Unemployment Insurance Fund
- Workmen's Compensation Commissioner