



## **SELECTING AN ENTITY FOR OWNING PROPERTY**

Persons who intend to acquire property should first decide which business entity will best suit their needs. Each entity has different legal and tax implications for the property owner. The entity chosen will be dependent on the type of property owned and whether income is derived therefrom.

If at the time of signing any offer for purchase of a property you are not certain of the appropriate entity you should seek professional advice or make the offer in your own name "or nominee".

The term entity refers to any natural or legal person who is to own the property (eg a sole trader, company or close corporation) or any group of persons who will jointly own the property (eg a partnership or business trust).

### **Sole Proprietorship**

A sole proprietorship does not have to be formed. It begins whenever a natural person buys property in his/her own name. The sole proprietorship is not a separate legal entity and terminates if the property is sold. A sole proprietor is responsible for any debt required to fund the property.

### **Partnership**

A partnership is formed when partners agree to do so. There are no formal requirements that must be met.

A partnership is not a separate legal person and has no rights and duties distinct from the partners. The partnership does not have perpetual succession and will terminate if the partners agree thereto or one of the partners changes. The property will be held jointly by the partners (in individual shares) and each partner cannot deal with the authority from the partnership. Partners are jointly and severally liable for any debt of the partnership.

### **Close Corporation**

A close corporation is formed when a founding statement is registered. The corporation is a separate and distinct legal person and has perpetual succession even if the members change. The property will be owned by the corporation and not the members. The members are entitled to take part in the management of the corporation and have the necessary legal capacity to act on behalf of and represent the corporation. The members will make

initial contributions to the corporation and may not freely dispense of their interests. The debts relating to the property belong to the corporation and not the members. The members might however be required to sign personal sureties for the corporation's debts. All the members must be natural persons, therefore a company or trust may not be a member of a corporation.

### **Company**

A company is formed upon registration of the memorandum and articles of association with CIPRO. The company becomes a distinct and separate legal person when registered and enjoys perpetual succession until deregistration or dissolution. The property will be owned by the company and not the shareholders. A company may have natural person or legal persons as shareholders. The directors represent the company and act on its behalf. The debts of the company are its own and are not debts of the shareholders.

### **Trust**

A trust is normally formed by agreement between the founder and the trustees. The trust's existence depends on the terms of the trust deed which is registered with the Master of the Supreme Court. The trustees are responsible for dealing with the property in the manner prescribed in the trust deed.

### **Insolvency**

The insolvency of a corporation, company or trust will not lead to the sequestration of the members/shareholders/trustees or beneficiaries. The insolvency of a partnership may result in the partners' estates being sequestrated.

### **Taxpayer**

A corporation, company or trust is a separate taxable entity while partners or a sole proprietor are taxed on the profits earned by the property, in their own capacity.

### **Tax Rates**

A corporation and company are taxed at a flat rate which currently is 28%. A partner who is a natural person, a trust or a sole proprietor is taxed on a sliding scale of rates varying between 18% and 40%.

### **Stamp Duty**



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Stamp duties are payable when members' interests are transferred and when shares are issued or transferred. Stamp duties are payable in respect of written partnership agreements and trust deeds.

#### **Transfer Duty**

Close corporations, companies and trusts pay transfer duty at a flat rate of 10% of the purchase consideration. Partnerships and sole proprietors pay transfer duty based on a sliding scale from 1% to 8%. No transfer duty is payable on transactions subject to VAT.

Due to the continuing changes in laws and rates, professional advice should be obtained when choosing a specific entity for property owning.