

Corporate Law
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Introduction

Legal structures used to conduct a business:

- Close Corporation
- Company
- Partnership
- Sole Trader
- Business Trust

The Structure you choose depends on your needs:

- Who bears the risk? Limited or unlimited liability
- Capital – how it is acquired
- Possibility of expansion
- Management Structure and control
- Legal Formalities and registration formalities
- Perpetual succession
- Taxation

Summary of Business types:

- Sole Trader:
 - Unlimited liability – Owner personally bears the risk/liability for debts
 - Limited Growth and expansion as only sole traders capital
 - Business run/managed by one person (owner)
 - No registration required
 - No perpetual succession
- Partnership
 - 2 to 20 members
 - Unlimited liability – Jointly and Severally liable
 - Limited Growth and expansion as limited to 20 members
 - Business run/managed by all members usually
 - Every partner is an agent of the business and has the implied authority to enter into any contract which falls within the scope of the business
 - No perpetual succession – every change in the membership devolves the partnership; it therefore has to be formed after every change.
 - Formalities are self-imposed in the agreement, no registration formalities
 - No separate legal personality – partners sue or are sued in their personal capacities
 - Partnership also ends in any of the partners goes insolvent
- Company
 - Minimum of 1 member
 - Maximum of: 50 members for a private company and Unlimited members for a public company
 - Limited liability of members
 - Can expand easily and raise capital by issuing more shares
 - Large number of formalities and requires registration
 - Separate legal personality
 - Has perpetual succession

Company	Partnership
Separate legal personality	Mere association of people with no separate legal personality
Limited person liability of members	Personally liable for business debts
Perpetual succession	No perpetual succession
Company ends by liquidation and winding up	Partnership dissolves on agreement or change in membership
Company unaffected by members going insolvent unlike partnership	Partnership devolves if a partner goes insolvent

- Close corporation
 - 1 to 10 membership
 - Designed for small business
 - Limited liability for membership
 - Controlled by Close Corporation act 1984
 - Little potential for expansion
 - Close corporation agreement identifies agents, the roles of members and their contributions
 - Some formalities and required to be registered; less formalities than a company
 - Perpetual succession
 - Separate legal personality
 - Run similar to a partnership as each member can assist in the running of the business

- Business Trust
 - 3 Groups of people involved: Trustees, Founder and Beneficiary
 - Does not have separate legal personality but is treated as if it does
 - Limited liability of groups involved, the trust alone is responsible for its debts
 - Trustee administers assets for the benefit of the beneficiary
 - Trustee is legal owner of the assets, law states that the trustee must keep trust assets separate from his own
 - Perpetual succession – Trust deed can ensure a new trustee is appointed if the previous trustee is incapable of continued administration. Therefore a change in trustee does not necessarily effect the trust existence

*Limited liability – Members of the business are not personally liable for the businesses debts.