

Can One Person form a Company?

Are you planning to operate a small business on your own? There are two business structures that may be appropriate for a small outfit like yours: a single proprietorship (sole trader) or a registered company.

While you may consider setting up a single proprietorship, the Corporations Act of 2001 does allow you to set up a company with just one person to own and run everything.

If this is the way you want to go, then all you have to do is indicate your choice in the ASIC registration application as “a proprietary company with limited liability”. You will be both the sole shareholder and the sole director of your company. Thus, your type of company is legally referred to as a sole shareholder/director proprietary company.

You may wonder why anyone would choose to register as a sole proprietary company rather than as a single proprietorship. Well, there are some real advantages to being registered as a sole shareholder/director company. Some of the reasons people choose a company over a proprietorship are:

* Legal personality of company.

Once a company is registered with the ASIC and an ACN has been issued, the company becomes a legal entity with a personality that is independent and separate from its shareholder.

This distinct personality has important legal effects: A company can enter into contracts in its own name and it can also sue, and be sued. When a company is in debt, the money owed does not automatically become the debt of the shareholder. As a result, a civil lawsuit for the collection of a sum of money against the company is not necessarily a legal action against the shareholder.

This is because the liability of a shareholder is limited to the value of his shareholdings unless he previously signed a personal guarantee in favor of the one pursuing legal action. This built-in limitation is not available in single proprietorships or for sole traders. So if you are conducting business by yourself, and you wish to limit your business liability, then the sole shareholder proprietary company is for you.

* Flexibility in ownership

If your business grows in the future and you wish to create incentives for your non-shareholder employees who have contributed to the success of your company, then a good way is to increase their involvement by transferring shares in the company to them.

This is also known as a stock option. Because of the company's structure, you are able to accommodate additional non-shareholder employees into the company shareholdings without having to terminate the company's legal status.

* Continuity

Another advantage of the independent personality of the company is that it may continue to exist for the duration of its registration, notwithstanding changes in the ownership of the company's shares.

The death or retirement of a shareholder or the sale, transfer or assignment of the rights to a company's shares will not mean the termination of a company's existence. You may one day decide to hand over the reins of the company to someone else, such as one of your experienced managers or employee-shareholders. While the director may be changed, the company continues to exist as its registered self.

It is possible to register a company online, but if this is a daunting prospect for you, ASIC has appointed registered agents, like Companies Now (www.companiesnow.com.au) who can advise and manage your online company registration.