Corporate Law

Exam Notes

Contents

Corporate Structures

Step 1: Look at the facts and consider the factors that are likely to influence the structure

The factors you will need to consider include:

1. Predicted cost of the structure
2. Regulatory burden associated with the structure
3. Any tax implications
4. Legal liability of the owners
5. Desired longevity of the business
6. If there is a desire to sell – consider if this will be easy to achieve
7. Ability to raise capital
8. Ability to exercise control
9. Nature of the business (manufacturing, retail, hospitality)
10. Number of persons wishing to be involved

Step 2: Consider which structure is appropriate given the above assessment

1. **Sole Trader Ownership**
    - It is a business owned and operated by an individual
    - Advantages include:
        - Owner has total control over the operation of the business
        - Owner will retain all of the profits
        - There is little need for sole traders to disclose the details of their business
        - Low cost
            - Must register their business name unless it is their full name: ASIC Regulatory Guide 235
            - Approximately $34 for one year OR $79 for three years
        - Low regulatory burden
        - Tax burden is the same as the individual marginal tax rate
    - Disadvantages include:
        - Owner subjected to unlimited liability, meaning that they are responsible for every liability their business incurs
        - Not a separate legal entity
        - Will probably have trouble raising finance to start business or continue business from the bank, unless the owner has adequate assets
        - No perpetual succession
            - If the owner dies or becomes permanently incapacitated, the business will cease to operate

2. **Partnership**
    - A partnership is a relation which subsists between persons carrying on a business in common with a view to profit: *Partnership Act 1891 (SA)* s 1
        - 'between persons' = must be more than 1 person, but below 20 persons: s 150 *CA*
        - 'carrying on a business' = must be an element of repetition or intention to repeat activities (i.e., not a single transaction)
        - 'in common' = each partner must be a principle in the business
        - 'business' = any trade, occupation or profession
        - 'view to profit' = profit intended to be generated from being in the partnership (i.e., it is not a not-for-profit organisation)
    - Advantages include:
        - No extensive formalities required
            - However, a written partnership agreement is recommended
        - Inexpensive to establish and maintain
            - However, must comply with tax requirements and register the business name if different from other partners
        - Flexible decision-making
    - Disadvantages include: