

Company: An artificial person created by law. The function of a company in a legal sense is to hold assets and to carry on a business or other activities as a person separate from the participants in that business or activity.

- An artificial person separate from owners
- Comes into existence through the registration with ASIC
- Recognized as a person at law
- Can hold property and enter into contracts in its own name, because it has its own legal identity
- Can commence & defend legal proceedings in its own name
- Abides by the Corporation Act
- Ends with a company deregistering
- Limited Liability

Advantages:

- Limited Liability: The debts of the company are its own and the members have no personal liability except as agreed. Limited liability transfers, the risk of business failure from the company's members to its creditors.
- Perpetual Succession: A company's existence continues indefinitely until it is brought to an end, notwithstanding change in its owners or managers.
- Transferability of ownership: The owner's interest is in the form of shares and it is considered a valuable right to transfer the shares.
- Unlimited Investors: No limit on the number of investors in the company.
- Contractual Capacity: A company can own property and enter into transactions and engage in legal proceedings in its own name.
- Formalised rules of internal management: Company law provides a set of default rules governing the internal relationships among the company, the owners and the managers.
- Taxation: Depending on the tax laws, companies pay income tax at a lower marginal rate than individuals.

Disadvantages:

- Compliance Costs: There are costs associated with the establishment of a company as well as ongoing administrative obligations with which a company must comply.
- Disclosure: Companies are required to disclose certain information about themselves, their owners and managers to ASIC. Once this information is with ASIC, it is generally available to the public.
- Enforcement: The Corporations Act is enforced by ASIC. The company's activities and those of its owners and managers can be scrutinised by the regulator. This can lead to criminal and civil penalty sanctions.
- Lifting the corporate veil: The separate legal doctrine is not inviolate. There may be situations where the benefit of incorporation will be lost.
- Privilege against self-incrimination: A company is not entitled to a privilege against self-incrimination.
- Private guarantees: As limited liability is considered such an advantage to the owners, at the risk of the creditors, creditors who are in a strong commercial position can insist on the owners and managers providing personal guarantees for the debts of the company. These private contracting arrangements can negate the benefits of limited liability.

Partnership: Business is carried on by two or more owners, sharing in profits and losses. No particular formality is required. Partnership Act regulates the relationships in the absence of an agreement. Partners have personal liability for all business debts and obligation, the right to participate in the management of the business and an individual partner can bind the whole partnership. Agency.

Advantages:

- Partners are owners: The partners can make their own decisions, unlike companies.
- Compliance Costs: Cheaper costs of establishment and ongoing expenses than a company