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# CONCEPTS OF CORPORATIONS LAW

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## Types of Business Structures

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- Consider and compare the following types of business structures:
  - Sole trader;
  - Trust;
  - Joint venture;
  - Not-for-profit association; or
  - Partnership.

### Sole Trader

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- **Simplest business structure:**
  - Natural person, not an artificial entity;
  - Do not need to register it, unless you have a business name;
  - No formalities to be adhered to;
  - One person 'owns' the business;
  - Assets and liabilities of business are not separated from those of the owner.
- **Advantages:**
  - Simplicity and control;
  - Profits don't have to be shared (but also get all the losses if no profit);
  - Minimal disclosure requirements / external regulation; simply lodge individual tax return as usual.
- **Disadvantages:**
  - Personal liability;
  - Directly exposed to regulatory constraints;
  - Tax inefficiency;
  - Problems on retirement / death.

### Trust

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A trust involves one or more persons (trustee) holding property for the benefit of another person(s) (beneficiary).

- Trustee is the legal owner of the property, and the beneficiary has the 'equitable' ownership of the property. Trustee holds legal title.
- Trust is a creature of equity now recognised by statute.
- Role and powers of the trustee may be express or implied.

### Attributes of Trust Structure

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- Simple to establish; may arise in circumstances where equity determines a fiduciary duty should exist. Court may impose a constructive trust.
- Trust itself is not a separate legal entity.
- Trustee bears all legal liabilities subject to right of indemnity from trust fund (right to be reimbursed for costs incurred in the administration of trust if they have carried out their duties correctly).
- Onerous fiduciary duties, such as duty to act in good faith or duty to act in interests of the beneficiaries, otherwise court may interfere.
- May have tax benefits.
- No limits on number of beneficiaries.
- Trusts governed by each State and Territory and not the Commonwealth.

### Joint Venture

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- A joint venture involves two or more persons agreeing to engage in some form of business activity together but not a partnership.
  - Can potentially also be a partnership if potential overlap: see *UDC v Brian*.
    - Sharing of profits and losses is a determinative indicia that suggests a joint venture may be a partnership.
- May involve:
  - Ownership of property as tenants in common;
  - Deriving separate, not joint profits;
  - Sharing of output, and costs, but not profits;
  - Separate tax treatment for each venturer;
  - No agency;
  - Several, but not joint or joint and several, liability.
- Joint ventures are critical to the prosperity of WA as most mining, oil and gas ventures involving two or more participants are carried on as a joint venture.
- Note: joint venture is not a legal entity.

- **Differences with a partnership:**
  - Joint venture that is not a partnership is of a specific duration.
  - Can dispose of interest in joint venture without seeking permission of other joint venturer.
  - Not agents and not in a fiduciary relationships with each other.

## Not-for-Profit

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- The not-for-profit can be:
  - A club (example: an unincorporated group); or
  - A corporation,
 carrying on an activity (which can involve business elements):
  - but not having the objective of making profits distributable to its participants;
  - which may be a charitable activity.
- An **unincorporated group** (example: a sporting club/association) is:
  - Not a separate legal entity; and
  - Unable to limit liability.
    - Example: Sporting clubs: members pull resources together for funds.
- **Incorporated not-for-profits** are usually either:
  - a company limited by guarantee; or
  - an incorporated association, under State association legislation.

However, both are companies with all the attributes of:

- separate legal personality / entity;
- separation of ownership and management; and
- limits on liability.

## Basic Concepts

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- A 'company' is a type of 'corporation' or a 'body corporate'.
- Legal device by which legal rights, powers, privileges, duties, liabilities may be attributed to an artificial legal personality recognised by the law.
  - Artificial: not natural person or individual.
  - Company acts through director/s, employee or agents.
  - Can sue or be sued as it is a separate entity.