

# **Business Structures: Overview & Requirements**

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*Basic Corporate Procedures for Legal Support Staff*

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## **INTRODUCTION<sup>1</sup>**

This paper is intended as a general overview of the more common business structures a client may choose when deciding to start a business. We will also examine how such business structures are created and maintained, including a discussion on what filings and registrations are required.

## **TYPES OF BUSINESS STRUCTURES**

### **Sole Proprietorships**

#### *Attributes of a Sole Proprietorship*

A sole proprietorship is a type of business where an individual conducts business in their own personal capacity for their own benefit. In this type of business structure, the individual does not involve any other business entity or other individuals, apart from employees. The sole proprietor is the sole owner of the business.

#### *Advantages & Disadvantages*

Advantages of this type of business structure are that the sole proprietorship is easy and inexpensive to set up and maintain and owners have, generally speaking, complete control over the business activities and accrue all profits of the business.

The most significant disadvantage of a sole proprietorship is the unlimited liability on the business owner. The sole proprietorship takes sole responsibility for all of the debts, obligations and liabilities of the business. Further, in addition to all business assets, all personal assets of the sole proprietorship are at risk to fulfill business obligations and liabilities. For example, if the sole proprietor was to take out a loan, even if it were unrelated to the business, and the business owner defaulted, the unpaid lender would be able to seek compensation from either the business or personal assets of the sole proprietor.

#### *Creation of a Sole Proprietorship*

There is no statutory law that governs sole proprietorships per se. However, depending upon the nature of the business there may be governing legislation, which impacts the business itself or particular licensing requirements, which must be complied with. There

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<sup>1</sup> The writer gratefully acknowledges the assistance of Angela Hubble, paralegal, of Field LLP in the preparation of this paper.

are no formal documents or filings (other than perhaps a name registration, or business license required for the creation of a sole proprietorship).

#### *Name of the Sole Proprietorship*

If an individual chooses to carry on their business under a name that is not their own, or under their own name with a word or phrase such as “and company”, under **section 110 of the Partnership Act of Alberta, R.S.A. 2000, c. P-3** (the “**Partnership Act**”), the individual must register a Trade Name with the Registrar of Corporations by filing a Declaration of Trade Name through an authorized service provider. A Trade Name cannot contained the legal elements found in corporate names being “Limited”, “Incorporated”, “Corporation” by way of example.

It is important to know that many people can use the same Trade Name. Registering a Trade Name in Alberta does not mean that you own that name. When choosing a Trade Name, it is prudent that a client conduct a NUANs search so as to assist them in choosing such name carefully with an analysis of whether the Trade Name is the same, or nearly the same, as an existing Trade Name, partnership name, corporation name, or trade mark. This is prudent so as to avoid legal problems with the use of the Trade Name later on, for example, a claim of infringement from a Trademark owner.

#### *Maintenance of the Sole Proprietorship*

While the corporation may have annual obligations, which may apply (accounting, regulatory for example), there is no annual maintenance for a Trade Name as Trade Names do not expire, cannot be amended nor do they require annual filings.

### **General Partnerships**

#### *Attributes of a General Partnership*

A general partnership can best be described as two or more persons carrying on a business relationship together with a view to a profit. Each partner is an agent of the partnership and can bind the partnership when such partner is acting in the usual course of business. A general partnership is not a separate and distinct person from its partners and it is the partners, not the partnership that enters into contracts with others.

#### *Advantages & Disadvantages*

The advantages of a general partnership are that they are easy to set up and maintain. Further, in contrast to a sole proprietorship that relies on the expertise of one business