



Corporate Law

Business

Info
Kit

Corporate Law is a broad area of the legal system that oversees the conduct of business.

Managing your commercial affairs correctly will protect your interests, can reduce your tax and avoid or resolve disputes promptly.

From initially setting up the right structure to exiting your position, you will want to ensure that each step on your business and investment journey is done right. We have structured this fact sheet into three categories: 1) setting up your business, 2) running your business, and 3) selling or transitioning your business.

The contents of each section provides a general oversight on the legal items to consider during each phase of your business' lifecycle. Retaining a relationship with a qualified law firm will ensure your dealings are above board, meet compliance and ensure you operate efficiently.

Good to know

- Please feel free to contact us to discuss your specific corporate and commercial legal needs in a no-obligation initial consultation so we can provide you tailored advice.



At Altria, we provide advice you can understand, in a straightforward, clear and concise manner.

This fact sheet provides an overview of Corporate Law, which covers a broad array of legal issues.

If you require more details or wish to discuss your business legal needs, please call or email us on
Tel- (02) 9134 5851
Em- info@altrialaw.com

The law is on your side

altria

1. Setting up your business

Starting off in the right way is essential for commercial success and to avoid legal pitfalls.

Structuring your venture

One of the most important steps as you start is to ensure that you have the right corporate structure in place. Choosing wisely will reduce your tax burdens and personal liabilities, and provide the right protections of all owners.



SOLE TRADER

An individual operating as the sole person legally responsible for the business. You can employ staff.

Legal considerations – Responsible for all business liabilities; no division between personal and company assets, meaning your assets could be used to settle damages; require indemnity contracts while conducting business.



COMPANY

A separate legal entity with similar rights as a person. 'Proprietary Limited' companies are privately owned, while 'Limited' companies are publicly traded.

Legal considerations – Can remove personal liability; directors have obligations and may be liable; listed companies operate in a highly regulated and public environment so legal compliance is critical.



PARTNERSHIP

An association of people or entities running a business together but not as a company structure.

Legal considerations – Partners are responsible for all business liabilities; partners must operate per their Partnership Agreement; partners are responsible for their own tax.



TRUST

An entity that holds property or income for the benefit of others.

Legal considerations – Legality of the trust structure; protects against personal liability of assets in the trust; must operate per the trust deed; requirements for who can be settlors, trustees and beneficiaries; tax reporting and compliance.

FRANCHISING

This is where the 'franchisor' provides the business systems and processes, licensed IP and marketing plan to the 'franchisee' to run an outlet of the brand. Risk can be reduced due to the system of the franchisor's network.

Legal considerations – Conducting business per the ACCC's 'Franchising Code'; operate with good faith between franchisor and franchisee.

Regulations

Fair trade, employment, health and safety, environmental, intellectual property, insurance and tax considerations all need to be addressed. Each business and industry is different and your lawyer can assist you maintain compliance. They will identify risks and provide guidance to reduce and insure you against any liabilities.

TRADEMARKING YOUR BUSINESS AND PRODUCT NAMES



You will want to ensure any name is available and consider protecting it with a trademark. Registering a domain name or business name does not mean you have the intellectual property rights to it. Your lawyer can help choose the right approach to protect your IP, as well as searching to ensure no infringement.

2. Running your business

Having the right legal advice and documentation in place allows you to operate a successful enterprise through good business dealings, meeting compliance and protecting your interests.

Employment contracts



Covering full and part time employees, contractors and freelancers, it makes good sense that your employment contracts are drafted by a lawyer to be comprehensive and within the law. Meeting workplace obligations and entitlements are minimum requirements set by the Federal Government, and your lawyer can assist you meet compliance. Good employment contracts also set out the terms of resolving performance issues, errors, misjudgements or conflicts, as well as setting out any non-compete periods or exclusivity.

Typical business contracts

CONFIDENTIALITY AGREEMENTS

Also referred to as non-disclosure agreements (NDAs), these contracts are essential to protect your intellectual property and sensitive business know-how. Drafted correctly they form an important legal protection so you can operate your business without fear of having your competitive advantages stolen.

SUPPLIER AGREEMENTS

Dealing with suppliers, clients or customers, you will want to ensure proper protection. Having clear and agreed terms of trade and service levels ensures that you have a legal foot hold in any dealing or dispute. You may be signing other's terms, so you'll want to ensure the fairness of any trade you enter.

PRIVACY POLICY AND TERMS OF USE

If you have any online presence, you will want to ensure the site is under a proper Privacy Policy as well as Terms of Use for how a user interacts with your website and its content, and your business terms, including refunds and returns.

INDEMNITY AGREEMENT

An Indemnity Agreement is where one party agrees to indemnify or '*hold harmless*' another party against anticipated losses, claims or lawsuits. An accident or unforeseen circumstance may arise, and you will want to ensure that you are not liable.

DISPUTES



Disputes in business can take a variety of forms, from internal disputes with employees or business partners, to external matters with shareholders, suppliers, customers or the government. Going to court can be a costly option, so you should first seek to resolve the matter out of court, including negotiation or mediation channels. Good commercial contracts outline the various steps that are required to be taken before going to court as a final step.

SUING OR BEING SUED

Resolving a commercial dispute through litigation can be a time of high emotion and anger. Having a level headed lawyer in your corner ensures that you get the right advice and representation on the matter to avoid the dispute and reduce the damages if defending a claim, or to seek maximum damages if prosecuting a wrong.

Company structures work to reduce personal liability and protect personal assets. But, if you have acted contrary to the law or in a personal capacity as a company director your private assets may be subject to litigation.

3. Transitioning or selling your business

As your business evolves, you will want to take advantage of opportunities to grow, expand, spin off or wind down.

Trade sales, mergers and acquisitions



While there are many financial considerations in selling, merging with or taking over an entity, it makes good business sense to work with your law firm early on. From the start of conversations and beyond, your lawyer can assist you in the many steps it takes to make a successful transaction.

This includes due diligence, pre-sale documents including heads of agreement, MOUs and letters of intent, sale and purchase negotiations and agreements, and licensing and transfer of intellectual property. There are a number of regulatory bodies who can help you navigate during the transaction, including ASIC, ACCC, ASX, Takeovers Panel and Foreign Investment Review Board.

Insolvency

In Australia, there are three avenues to resolve insolvency if a business is in dire straits. Insolvency is a very serious matter, and needs to be dealt with professionally and efficiently.

<p>VOLUNTARY ADMINISTRATION</p> <p>Where the company or major creditor appoint an external administrator to turn things around.</p>	<p>LIQUIDATION</p> <p>Where the company sells off its assets and distributes the proceeds among creditors and shareholders.</p>	<p>RECEIVERSHIP</p> <p>Where a receiver is appointed by a major creditor to sell company assets and repay debts to the creditor.</p>
--	--	---

Where your lawyer can advise you during insolvency:

<p>FOR COMPANY DIRECTORS</p> <p>A lawyer can advise you on the best course of action, your obligations and remaining on the right side of the law:</p> <ul style="list-style-type: none"> ✓ Avenues to avoid insolvency ✓ Minimising personal liability ✓ Restrain you from trading while insolvent ✓ Curbing preference payments 	<p>FOR CREDITORS</p> <p>A lawyer will work to recoup any money owed to you from the debtor via several legal avenues:</p> <ul style="list-style-type: none"> ✓ Statement of claim ✓ Statutory demand ✓ Litigation ✓ Defending preference payments
--	--

Restructuring your company in times of distress is an option you may consider before taking steps of insolvency. Your lawyer can assist in finding the correct manner to reorganise to trade out of your situation and help with creditor negotiations so you remain solvent, as well as protecting you personally and the company during the process.

Succession planning

Succession is when you plan for the business to be wound down or spun off, such as when you retire. Structuring the business ready for exit should start early. Your lawyer can guide you on succession to family members, and on gradual hand over such as profit sharing agreements. They can also guide you on tax, pension and superannuation implications of any trade.

Changing business structure

A change in structure may be due to changing ownership, adding partners or changing the legal, operational or other aspects of the business. There are many different legal, tax and compliance obligations for the various business structures available, so it's smart to choose the right structure wisely.

Your lawyer will help you review your current set up and can advise you on the pro's and con's of any change. They will navigate the process for you, including the necessary steps with the various agencies including the ATO, ASIC and IP Australia. Your business structure can determine your tax liabilities, your responsibilities and liabilities, protection over your assets and the cost and paperwork to operate your business.

How much will it cost?

Corporate Law covers a range of legal, regulatory and compliance areas. It is wise to have a law firm on your side to assist you from the very beginning that understands your operation and industry intimately.

Our services cover a broad spectrum of corporate and commercial needs, and so our fees structures vary. We can offer fixed fees for items such as business set up and contracts, and will operate on a time basis for more complex and open ended services such as contract negotiation with another party.

While many businesses consider professional lawyers expensive, it does not need to be prohibitive. De-risking your operation with sound legal advice will help you avoid costly business and personal losses in the future.

How Altria can help you

Altria's corporate law team approaches each case with an outcome-driven focus, to provide cost-effective legal solutions. We represent both private and public companies, entrepreneurs, investors, governments, institutions, as well as small and medium sized businesses. Our full range of corporate and commercial services include:

- Confidentiality Agreements
- Advice on buying and selling a business
- Mergers and acquisitions (M&A)
- Partnership Agreements
- Incorporation of company structures
- Private equity
- Insolvency
- Dispute resolution
- Property law
- Employment contracts

Contact Altria today on (02) 9134 5851, or email us at info@altrialaw.com