

Straightforward transfer of ownership law company business partnership essay

[Law](#)



As Nicole and May are partner in the business there could be concerns regarding debts and liabilities and the rental lease of business place as the both are the signers of the lease documents. Partnerships in formation of the companies are good, they provide opportunities to grow whereas also raises concerns about the future if one of the partner decides to leave. Based on the above scenario the best suitable formation of corporation for Nicole and May would be S-Corporation, An S Corporation is a corporation that is treated, for federal tax purposes, as a pass-through entity through an election made with the Internal Revenue Service (IRS) to be considered an S Corporation. As a corporation, an S corporation is created through filing Articles of Incorporation with the Secretary of State or similar government body. It issues stock and is governed as a corporation. The owners, who are called shareholders, have the same protection from liability as shareholders of a C corporation. An S corporation shareholder's personal assets, such as personal bank accounts, cannot be seized to satisfy business liabilities. However, like a sole proprietorship or a partnership, an S corporation passes through most of its income and loss items to the shareholders. Unlike a regular corporation, there is no " double taxation," once at the corporate level and again on the individual shareholder level. Each shareholder is subject to his or her own individual tax rate on the income (or losses) passed through to him or her. The advantages and Disadvantages of S Corporation are as follow

Advantages

Eliminating double taxation:

In an S corporation, profits and losses are passed through to shareholders, and taxes are only paid once. Check with your state to see how it handles S Corporations. Some states do not recognize S Corporations and will tax such businesses as a regular C Corporation. Some states charge S Corporations a state tax, although the corporation will not have to pay federal tax.

Protection from liability:

As the owner of an S Corporation, your personal assets are separate from the business's assets and are therefore protected in case any judgments occur against the business.

Straightforward transfer of ownership

Interests in an S corporation can be freely transferred without triggering adverse tax consequences. (In a partnership or an LLC, the transfer of more than a 50-percent interest can trigger the termination of the entity.) The S corporation does not need to make adjustments to property basis or comply with complicated accounting rules when an ownership interest is transferred.

Easier accounting rules:

S Corporations without any inventory can use the cash method of accounting, which is much simpler than the accrual method. Check with your accountant about which option makes sense for your business.

Disadvantages

Rules and fees:

Like a C Corporation, S Corporations are required to file a number of official state and federal documents, including Articles of Incorporation and corporate minutes. They must also hold regular shareholder meetings and pay the required government fees.

Shareholder restrictions:

Realize that if an S Corporation has shareholders, the shareholders will be taxed for any income the company has, even if they did not receive any portion of that income. (In a C Corporation, shareholders are taxed only if they receive dividends.) In addition, S Corporations are only allowed to issue one class of stock, which may discourage some investors.

Salary requirements:

The Internal Revenue Service requires all officers and owners of an S Corporation to make a salary, even if the company is not yet making a profit. This could be problematic for new businesses struggling to make payroll. A "reasonable salary" is what a person with the appropriate skills needed for the position would be paid on the free market.

Conclusion

Based on the above analysis on Nicole and May Business Expansion Opportunity we recommend the formation of the corporation in S Corporation as it addresses all the concerns that Nicole has and would benefit both in terms of taxation, capital requirement and future obligations if any of the two partners decide to leave.

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Answer 2

If Australian Securities and Investments Commission discover Marcia fraud it would categorise her and the company on the following attributes Directors cheating or defrauding Directors publishing false statements Directors cheating or defrauding The maximum penalty for the offence of directors cheating or defrauding is ten years imprisonment Directors publishing false statements The maximum penalty for directors publishing false statements is ten years imprisonment. Whosoever, being a director of anybody corporate, or public company, makes, circulates, or publishes, or concurs in making, circulating, or publishing, any written statement, or account, which he or she knows to be false in any material particular, with intent to deceive, or defraud, any member, shareholder, or creditor, of such body corporate, or company, or with intent to induce any person to become a shareholder, or partner therein, or to in trust, or advance, any property to such body corporate, or company, or to enter into any security for the benefit thereof, shall be liable to imprisonment for 10 years. Yes, she can register the company. However it is not guaranteed that she will be able to register with the same name, if someone else has registered the company with the same name then her chances of doing so are merely impossible. However she can reserve a company name with ASIC for 2 month and may apply to extend the two month period by lodging a second application with the fee. This second application must be lodged before the first two-month reservation period has passed. Yes she must register her company name with ASIC and obtain an Australian Company Number (ACN) and have a registered office. She should also have written permission from her parents to use their residence for

business purposes. Nowadays, people are much more accepting of the idea of operating a business from home, but it's taken some time for everyone to get past the stereotypical image of the home based entrepreneur waltzing around the house in bunny slippers and making frequent visits to the refrigerator. Still, it pays ones to every advantage in starting a business, so it pays to look as professional as possible. Using Residential property for business purposes requires certain rules to be followed as directed by the ASIC, which includes display the company name at every place at which your company carries business and that is open to the public. Also, a public company must display its name and the words ' registered office' prominently at its registered office. In addition to the above following requirements need to be fulfilled by Marcia if she chose to operate her business from her parents house

- Displaying of company name, the words ' Australian Company Number' (or ' ACN') or ' Australian Business Number' (or ' ABN')
- Displaying of Company name on every public document of the company
- Displaying of Company name on every negotiable instrument (e. g. cheque, promissory note) of the company
- Displaying of Company name on all documents lodged with ASIC.
- Record keeping of registers of members (shareholders)
- Record keeping of registers of option holders (if you have them)
- Record keeping of minutes of general meetings
- Record keeping of minutes of meetings of directors
- Record keeping of registers of charges created by the company over company property (s271 of the Corporations Act was removed from registration under the Personal Property Securities Act 2009).

Answer 3

Director refers to a rank in management. A director is a person who leads, or supervises a certain area of a company, a program, or a project. The director usually reports directly to a Vice President or to the CEO. In companies with advanced ranks within director, the next rank is usually Senior Director, followed by Executive Director. Large organizations also sometimes have Assistant Directors. Director commonly refers to the lowest level of executive in an organization, but many large companies are designating titles of Associate Directors more frequently. Mr. Shifty is the only eligible candidate who is most suitable for director's position as the other two candidates are not eligible. Ms Avoider cannot become a director due to her past conviction and is still serving time for falsifying company accounts. As per the Australian Corporation act Based on the Sec 588G of Corporations law, the Directors are compelled to the duty to discourage the incidence of insolvent trading in the company. A director can be held liable by the court if at the time of the incident of the debt he or she had knowledge of the fact that the company was previously bankrupt or might become one due to the result of the transaction. A Director is also held responsible if he/she suspected that the company is bankrupt at the time transaction was taking place. The act of failure of Director to stop the occurrence of such transaction is considered dishonest. Mr Shifty with a track of inheriting debt and has been unable to pay the debt to unsecured creditors for the past 2 companies with a time span of just 9 months. It is Mr shifty's duty to take all necessary measures to avoid any such failure to pay otherwise they might be reprimanded by the court for bankrupt trading.

The objectives of these rules can be summarized as follows

Directors must make certain the books of accounts are maintained adequately by complying the requirements of the particular accounting standards they follow and also the requirements of the regulatory authorities. This would always keep them informed about the financial viability of the company and they would be able to assess the effect of incurring further debt (ASIC 2010). However only looking at the financial reports at the end of each fiscal year is not sufficient to fulfil the objective. They must monitor the preparation of cash flow statements, the speed with which the company repays its dues etc (ASIC 2010). If the Directors suspect that the company is running into default, they have to take cautious steps for any transactions with the probability or creating further debts to take place (ASIC 2010). This also ensures that the members of the company do not take any undue advantage of the 'veil of incorporation' principle. Because this principle induces the directors to undertake any transaction for their own benefits and escape under the cover of the fact that company having a separate legal entity would be brought under litigation rather than defaulters. Since no wrongdoing were find on Mr. Shifty's account so therefore he will not be prosecuted, however the company might be filling for bankruptcy and business activity will be stopped for the future trading.