Queensland Law Society

ethicscentre

Fact sheet

Practice structures

Introduction

Since the introduction of the *Legal Profession Act 2007* (Qld) (LPA), solicitors looking to open a practice have much more flexibility as to the business structure of their practice. In addition to sole practice and partnership, solicitors can now practise through a corporate structure or through a multi-disciplinary partnership. There is also more flexibility regarding the sharing of receipts, both through corporate and other structures.

Practitioners do not need to seek approval from the Queensland Law Society (QLS) on the structure of their practice; it is the responsibility of each law practice to ensure that its structure complies with the law.

QLS does not, cannot, and should not be perceived as providing legal, structuring, financial or tax advice.

A number of factors need to be considered in determining what business structure best suits an individual's (or a number of persons) needs at any particular point of time. These factors include but are not limited to:

- practice culture;
- asset protection;
- compliance requirements;
- wealth creation and tax;
- flexibility in employee remuneration and other HR issues;
- sharing of receipts and income splitting;
- raising and retaining capital;
- succession issues; and
- possible transition costs: stamp duty, CGT, stationery and employment contracts.

Incorporated Legal Practices and sharing of receipts

The opportunity to share receipts with non-lawyers is often cited as one of the main advantages of Incorporated Legal Practices (ILP). While incorporation does offer some advantages in this respect, principals in a traditional law firm structure (sole practitioners or partnerships) can share receipts subject to compliance with **Rule 40** of the *Australian Solicitors Conduct Rules 2012*.

For more information read the QLS Information Kit for Incorporated Legal Practices.

Summary of business structures

Structure	Requirements	Main advantages	Main disadvantages
Sole practitioner	• Must hold a principal practising certificate.	• Total control over practice. • Gain full benefits from profits. • Easy to start up.	• High management burden. • Individual carries all practice risks. • Sense of isolation.
Partnership	• All partners must hold a principal practising certificate.	• Shared capital requirements. • Opportunity to share or pool experience. • Opportunity to spread management responsibilities. • Shared liability.	• Potential for tensions and disputes. • Responsibility for debts and liabilities incurred by practice. • Potential for problematic decision-making.

Structure	Requirements	Main advantages	Main disadvantages
ILP	• Must have at least one legal practitioner director (director of company who is the holder of a principal practising certificate). • Must notify QLS of their intention to practise as a corporation (QLS Form 23).	• Asset protection, greater flexibility for raising and retaining capital. • Greater flexibility for renumerating employees. • Possible tax advantages. • Opportunity to introduce more effective management and decision-making arrangements.	• Transition costs (if transferring from existing practice). • Greater compliance burden in terms of legislation applying to companies. • Having to implement Appropriate Management Systems. • Higher payroll costs. • Loss of status for partners who do not become directors.
MDP	• Must have at least one legal practitioner partner, who holds a principal practising certificate, and at least one non-lawyer partner. • Must give notice to QLS of its intention to operate as an MDP (QLS Form 27).	• The convenience for clients and marketing advantages of a 'one stop shop'. • Ability to cross-sell or benefit from combined client bases.	• Ethical challenges. • Risk of conflicting commercial interests.

Partnerships of corporate trustees

A common query received by QLS is whether solicitors may practise as a partnership of corporate trustees (of trusts). QLS's view is that, having regard to the definitions of 'law practice' and 'law firm' in the LPA, the LPA appears to preclude this because apart from MDPs, the only partnerships included are those between individual Australian legal practitioners and/or Australian-registered foreign lawyers.

Provided a structure falls within the below definition of 'law practice', QLS is unaware of any other specific restrictions to structures featuring trusts and trustees.

law practice –

(a) for part 3.3, division 6 (Prescribed accounts and Legal Practitioner Interest on Trust Accounts Fund) – see s 284; or

(b) otherwise means –

(i) an Australian legal practitioner who is a sole practitioner; or

(ii) a law firm [see below]; or

(iii) an ILP; or

(iv) *an MDP.*

law firm means a partnership consisting only of –

(a) Australian legal practitioners; or

(b) 1 or more Australian legal practitioners and 1 or more Australian-registered foreign lawyers.

Common practice structures

Law firms may be structured under the LPA as:

- a sole trader Australian legal practitioner;
- a partnership of Australian legal practitioners, or one or more Australian legal practitioners and one or more Australian-registered foreign lawyers;
- an incorporated legal practice, either acting personally or acting as trustee of a single trust or multiple trusts; or
- a partnership of discretionary trusts with the individual trustees being Australian legal practitioners or Australian-registered foreign lawyers.

Further guidance and information is available in the QLS ILP Information Kit and the QLS MDP Information Kit, or by calling the QLS Ethics Centre's Practice Support Solicitor on 07 3842 5843.