



Since the introduction of the LPA2007, solicitors looking to open a practice have much more flexibility as to the business structure of their practice. In addition to partnerships and sole practice, solicitors can now opt to practice through a corporate structure or through a multi-disciplinary partnership. There is also more flexibility re the sharing of receipts than previously, both through corporate and other structures.

Practitioners do not need to seek approval from Queensland Law Society on the structure of their practice – it is the responsibility of each law practice to ensure that its structure complies with the law, and Queensland Law Society does not and cannot give, and should not be perceived as giving legal, structuring, financial, tax or duty advice.

A diverse matrix 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
- possible transition costs: stamp duty, CGT, stationery, employment contracts, etc.

Because of the complexity of the factors above, it is the strong recommendation of Queensland Law Society that practitioners seek their own **independent advice** about their specific structure.

A summary of the main requirements, advantages and disadvantages of different practice structures are detailed overleaf in the table of major business structures.

## Trust structures 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. Whilst incorporation does offer some advantages in this respect, it should be noted that there is nothing to prevent principals in a traditional law firm structure (sole practitioners or partnerships) from sharing receipts (subject to the provisions of s33 of the *Legal Profession (Solicitors) Rule 2007* (which relate to disqualified persons).

Prior to the introduction of the LPA2007, s78 of the *Queensland Law Society Rules 1987* required solicitors to make an application to the Council of the Queensland Law Society for approval to share receipts with non-lawyers. With the introduction of the LPA2007, this restriction has been removed, meaning solicitors are free to share receipts with non-lawyers (subject to s33 of the *Legal Profession (Solicitors) Rule 2007*) and can therefore share receipts with family members and others, and can establish themselves as individual trustees with distributions going to trusts.

Further guidance and information is available from the QLS ILP and MDP Information Kits, or from Giles Watson, QLS Legal Practice Consultant on 07 3842 5853/[g.watson@qls.com.au](mailto:g.watson@qls.com.au).



### Table of major business structures

Structure	Requirements	Main advantages	Main disadvantages
<b>Sole Practitioner</b>	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.
<b>Partnership</b>	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, problematic decision-making.
<b>ILP</b>	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 practice as a corporation (QLS form 23).	Asset protection, greater flexibility for raising and retaining capital, greater flexibility for remunerating 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 both legislation applying to company's, and the requirement to implement Appropriate Management Systems, higher payroll costs, loss of status for partners who do not become directors.
<b>MDP</b>	Must have at least one legal practitioner partner, who holds a principal practising certificate, and at least one non-lawyer partner and 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

One particular example of a query the Society receives is whether solicitors may practice as a partnership of corporate trustees (of trusts). The Society's view is that, having regard to the definitions of 'law practice' and 'law firm' in the *Legal Profession Act 2007*, 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', the Society 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 s284; 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 –

- (e) Australian legal practitioners; or
- (f) 1 or more Australian legal practitioners and 1 or more Australian-registered foreign lawyers.

### Common practice structures

The result of the above is that law firms may be structured under the LPA as:

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