

Practice Notes: Good Business Practise

PN52: Alternative Business Structures

PN68: Nomenclature on Company emails, letterheads etc.

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PN 52 - Alternative business structures for consulting engineering practices:



PURPOSE:

- To introduce start-up Members to alternative vehicles through which consulting services can be offered, and
- To highlighting alternative restructuring strategies to established Members



What are your Strategic Objectives?

CESA Membership Requirements

- ◆ A natural person or legal entity
- ◆ A sole practitioner, partnership, close corporation, or company.
- ◆ Derive a substantial proportion of its income from providing impartial consulting services in the built environment
- ◆ Managed by people whose professional qualifications are in keeping with the (CESA) Constitution and its by-laws
- ◆ Largely owned and managed by built environment professionals.
- ◆ In the case of a sole practitioner, the person must be registered with ECSA.
- ◆ In the case of a partnership or company, at least one third of the Principals must be registered with ECSA.

Personal
Liability
Company Inc

Partnership

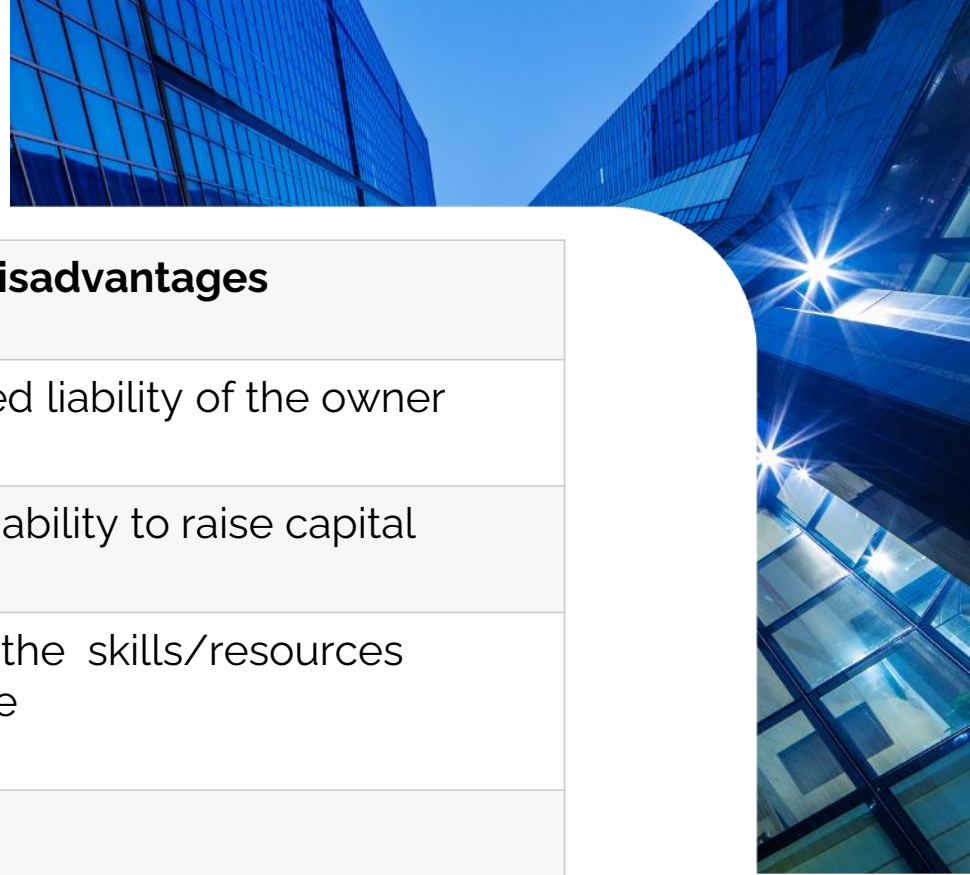
Sole
Proprietor

Alternative
Forms of
Business

Private
Company
(Pty) Ltd

Close
Corporation
cc

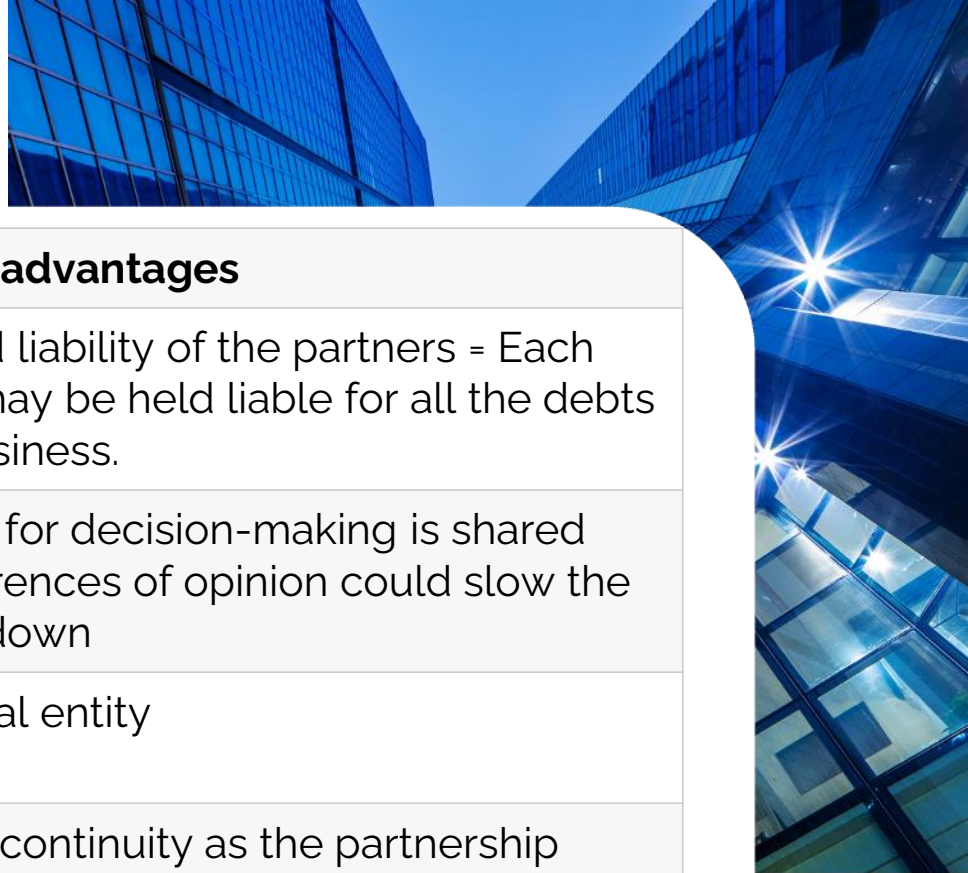
Sole Proprietorship



Some advantages	Some disadvantages
Simple to establish and operate	Unlimited liability of the owner
Owner is free to make decisions	Limited ability to raise capital
Minimum of legal requirements	Limit to the skills/resources available
Owner receives all the profits	
Easy to discontinue the business	



Partnership



Some advantages	Some disadvantages
Easy to establish and operate. There are no statutory audit requirements	Unlimited liability of the partners = Each partner may be held liable for all the debts of the business.
Greater financial strength	Authority for decision-making is shared and differences of opinion could slow the process down
Combines the different skills of the partners	Not a legal entity
Each partner has a personal interest in the business	Business continuity as the partnership technically dissolves every time a partner joins or leaves the partnership



Close Corporation (cc)



- Prior to Companies Act 2008, favoured for start-ups
- However, no new close corporations may be incorporated since the promulgation of the Companies Act.
- CC's in existence prior to 1 May 2011 may continue indefinitely
- Limited to 10 members, so many CC's have converted to Private Companies



Personal Liability Company (Inc)



ADVANTAGES

- Separate Legal Entity
- Limited Liability - Shareholders' liability is limited, they cannot be held accountable for the debt or actions of the personal liability company.
- Sale of Ownership - Transfer of ownership can be achieved with little regulation.
- Life Span - last indefinitely, which provides security to the owners of the company.
- Flexibility - Owners are free to decide how they want to distribute the profits to the members of the company.

DISADVANTAGES

- Director's Liability - Directors can be held personally liable for the debts and actions of a personal liability company. (Excludes delictual liability)
- Legal requirements - subject to many legal requirements and regulations
- Cost - it is more costly and regulated than establishing a Sole Proprietorship or partnership.
- Audits - private companies require their annual financial statements to be audited, once their "public interest score" (a measure of size), exceeds certain thresholds



Private Company (Pty) Ltd



ADVANTAGES

- Separate Legal Entity
- Limited Liability - Shareholders' liability is limited, they cannot be held accountable for the debt or actions of the private company.
- Sale of Ownership - Transfer of ownership can be achieved with little regulation.
- Perpetual existence – so it continues uninterrupted as shareholders change
- Flexibility - can work regardless of the size of your business
- Annual financial statements are not filed and are therefore not available to the public

DISADVANTAGES

- Director's Liability - Directors can be held personally liable for the debts and actions of a personal liability company. (Excludes delictual liability)
- Subject to many legal requirements and regulations
- Cost - it is more costly and regulated than establishing a sole proprietorship or partnership.
- Audits - private companies require their annual financial statements to be audited, once their "public interest score" (a measure of size), exceeds certain thresholds





PN 67 Nomenclature on Company emails/letterheads etc.

PURPOSE:

- To clarify the implications of a partnership, company, or close corporation as the corporate structure of a consulting engineering practice,
- Provide recommendations as to the information appearing on a letterhead/website/email signature/social media sites i.e. electronic communication.

Titles on Company emails/letterheads etc.

- It is important that members recognise the implications of titles appearing on the letterheads, emails and other media (ie social media) of their firms.
- Certain liabilities and responsibilities attach to individuals whose names appear on these media and these may occasionally exceed those intended to apply to the particular individuals.

Broad Principles

In any partnership, company, or close corporation the following broad principles should be applied:

1. The letterhead should contain all the relevant information which is required by South African Law.
2. Partners, Directors or Members should be clearly indicated in a prominent position on the letterhead. The use of position descriptions is not recommended.
3. The names of the Principals should not appear at the end of email signatures. These should be reserved for formal letterheads.
4. The chairman and/or managing director should be indicated by the addition of the words, in brackets, after their name, degree and other official titles, e.g. (Chairman), (Managing).

Partnerships

- Under the word "Partners" the principals of that partnership should be clearly listed so that there is no doubt in a reader's mind as to the legal position of any such person listed.
- The use of the words "associate" partner, "junior" partner, "alternate" partner, does not avoid their liability as a partner, as they are still partners. Their use is therefore not advisable.

Personal Liability and Private Companies

- The designation "Director" should include only those persons who are intended to bear the responsibilities and liabilities of a director
- Titles such as "Associate Director", "Financial Director", "HR Director", would not reduce their liability as a director to any third party and to the company.

Close Corporations

- Its members must be clearly designated under the heading "Members"
- As with directors of companies, members of a close corporation can in certain circumstances incur personal liability.
- The liabilities of a person purporting to be a "Member" would be the same as those of a Member.
- Similarly, affixing any descriptive designation to such a "Member" would not reduce his/her responsibility.

Other recommended designations

- “Associate” is a word that is commonly acceptable to members of CESA and, as such, is appropriate to be used to indicate those people who are in rank just below that of Partner, Director or Member but should not be used with the word Partner, Director or Member .
- More appropriate nomenclature are Technical Specialist or Technical Manager, Project Principal, or other appropriate designations.

Thank You!

‘Your Partner in enabling
Consulting Engineering
Excellence’