

TRANSCRIPT: IRVING LAW VIDEO - "STARTING UP A COMPANY IN AUSTRALIA"

HI, I'M JAMES IRVING FROM IRVING LAW. THANK YOU FOR JOINING ME. A LOT OF MY CLIENTS ASK ME FOR HELP TO START THEIR OWN BUSINESSES. FOR A LOT OF THEM, FORMING A COMPANY IS THE BEST WAY FORWARD. IN THIS VIDEO I'M GOING TO EXPLAIN HOW TO START A NEW COMPANY IN AUSTRALIA.

THE STARTING POINT FOR THIS DISCUSSION IS THAT YOU HAVE ALREADY THOUGHT CAREFULLY ABOUT WHAT IS THE BEST BUSINESS STRUCTURE FOR YOU, AND HAVE DECIDED THAT HAVING A COMPANY IS RIGHT.

YOU NEED TO CHOOSE THE RIGHT BUSINESS STRUCTURE FOR YOUR BUSINESS. IF YOU HAVEN'T WORKED OUT WHICH BUSINESS STRUCTURE IS RIGHT FOR YOU YET, PLEASE ALSO SEE OUR INTRODUCTORY VIDEO ON **BUSINESS STRUCTURES IN AUSTRALIA**.

WHILE YOUR BUSINESS IS UNIQUE, THE PROPRIETARY LIMITED COMPANY IS A SIMPLE STRUCTURE THAT IS AN **EXCELLENT** BASIS FOR MOST TYPES OF BUSINESSES.

THERE ARE DIFFERENT TYPES OF COMPANIES. FOR THE AVERAGE **FOR-PROFIT** BUSINESS **THAT HAS LESS THAN 50 OWNERS**, A PROPRIETARY LIMITED COMPANY IS USUALLY THE CORRECT CHOICE.

COMPANY LAW IS A COMPLEX SUBJECT. IN THIS SHORT VIDEO, I WILL COVER ONLY THE BASICS OF WHAT A COMPANY IS AND HOW IT IS FORMED. BEFORE YOU START YOUR OWN COMPANY **AND USE IT TO OPERATE YOUR BUSINESS**, YOU SHOULD GET ADVICE FROM AN ACCOUNTANT AND A LAWYER.

THIS IS THE BASIC STRUCTURE OF A PROPRIETARY LIMITED COMPANY. THE SHAREHOLDERS, WHO ARE CALLED "MEMBERS", ARE THE OWNERS. THEY MEET TOGETHER IN "GENERAL MEETINGS". THE MEMBERS ELECT THE DIRECTORS, WHO MANAGE THE COMPANY IN BETWEEN MEMBERS' MEETINGS. THE RULES FOR HOW ALL OF THIS WORKS, WHAT POWERS THE DIRECTORS HAVE, AND SO FORTH, ARE PROVIDED EITHER BY THE CORPORATIONS ACT, OR, IF THE COMPANY HAS A CONSTITUTION, BY THE CONSTITUTION.

COMPANIES ARE LEGAL ENTITIES EQUIVALENT (IN MANY WAYS) TO HUMAN BEINGS. A COMPANY CAN OWN PROPERTY, SUE PEOPLE AND BE SUED. A COMPANY SURVIVES THE DEATH OF ITS SHAREHOLDERS. THEY ARE CREATED UNDER A LAW, THE CORPORATIONS ACT, AND ARE REGULATED BY A GOVERNMENT AGENCY CALLED **ASIC**: WHICH STANDS FOR THE "AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION".

TO START UP A NEW COMPANY IN AUSTRALIA, THE PROMOTERS MUST APPLY TO ASIC TO REGISTER THE COMPANY. THE FIRST STEP IS USUALLY TO SELECT A NAME FOR THE COMPANY THAT IS NOT LIKELY TO BE CONFUSED WITH AN EXISTING COMPANY, REGISTERED BUSINESS NAME, OR TRADE MARK.

IN THE REGISTRATION APPLICATION FORM, CALLED A FORM 201, THE PROMOTERS SUPPLY ASIC WITH A NUMBER OF KEY PIECES OF INFORMATION. THIS INCLUDES DETAILS OF WHO WILL OWN THE NEW COMPANY, IN OTHER WORDS, WHO WILL BE THE MEMBERS, HOW MANY SHARES THEY WILL OWN, AND WHAT KIND OF SHARES THEY WILL OWN. IT IS POSSIBLE TO HAVE A COMPANY WITH ONLY ONE SHAREHOLDER.

SHARES CAN BE OF DIFFERENT **CLASSES**. THE BASIC TYPE IS CALLED AN **ORDINARY** SHARE. OTHER TYPES COULD BE CREATED TO GIVE THE HOLDERS SPECIAL RIGHTS. FOR EXAMPLE, INVESTOR CLASS SHARES, FOR INVESTORS.

IN THE FORM 201, THE COMPANY PROMOTERS ALSO HAVE TO EXPLAIN WHO WILL MANAGE THE COMPANY, IN OTHER WORDS, WHO THE DIRECTORS WILL BE. THE COMPANY **SECRETARY** IS A DIRECTOR WHO HAS SPECIAL RESPONSIBILITIES. IT IS POSSIBLE TO HAVE A COMPANY WITH ONLY ONE DIRECTOR.

THE FORM ALSO EXPLAINS WHERE THE COMPANY WILL HAVE ITS REGISTERED OFFICE. ONCE THE COMPANY IS REGISTERED, THE ACT REQUIRES A SIGN TO BE PLACED IN A PROMINENT PLACE AT THE OFFICE IDENTIFYING IT AS THE COMPANY'S REGISTERED OFFICE.

EACH PERSON WHO BECOMES A MEMBER OR A DIRECTOR OF A COMPANY HAS TO CONSENT IN WRITING. IF THE COMPANY'S OFFICE WILL BE AT A LOCATION OCCUPIED BY ANOTHER PERSON OR ENTITY, THE OCCUPIER OF THAT PLACE MUST ALSO CONSENT IN WRITING.

THE FORM 201 IS SIGNED BY THE COMPANY'S REPRESENTATIVE, AND THEN IS FILED WITH ASIC, TOGETHER WITH THE REGISTRATION FEE. THE FORM CAN BE DELIVERED TO ASIC'S OFFICE OR POSTED TO ITS PROCESSING CENTRE. CURRENTLY, THE REGISTRATION FEE FOR A PROPRIETARY LIMITED COMPANY IS \$444.

A PTY LTD COMPANY CAN BE CREATED WITHOUT A CONSTITUTION, IN WHICH CASE THE CORPORATIONS ACT WILL PROVIDE THE BASIC RULES FOR OPERATING THE COMPANY. THIS SET OF RULES IS CALLED THE REPLACEABLE RULES. MANY COMPANIES, HOWEVER, DO HAVE A CONSTITUTION.

FOR A PTY LTD COMPANY, THE CONSTITUTION DOES NOT HAVE TO BE SUBMITTED TO ASIC WITH THE FORM 201. IN ADDITION TO HAVING A CONSTITUTION, MANY COMPANIES ALSO HAVE A SHAREHOLDERS AGREEMENT.

THE TOPIC OF HOW A SHAREHOLDERS AGREEMENT WORKS AND INTER-RELATES WITH THE CONSTITUTION IS TOO COMPLEX TO EXPLAIN HERE.

MANY INCORPORATION SERVICES SUPPLY A GENERIC CONSTITUTION WHEN YOU START UP A COMPANY. TO KNOW WHETHER THE CONSTITUTION IS ADEQUATE FOR YOUR PURPOSES, YOU WILL HAVE TO CHECK IT CAREFULLY.

ONCE THE COMPANY IS CREATED, THE SHAREHOLDERS AND THE DIRECTORS WILL START HAVING MEETINGS AND MAKING DECISIONS. THE MEETINGS AND THE RESOLUTIONS NEED TO BE RECORDED IN MINUTES.

THE COMPANY ALSO NEEDS TO SET UP AND MAINTAIN A REGISTER SHOWING ITS CURRENT SHAREHOLDERS AND DIRECTORS.

THAT WAS A VERY BRIEF INTRODUCTION TO WHAT IS INVOLVED IN STARTING A NEW PTY LTD COMPANY. IF YOU HAVE ANY QUESTIONS ABOUT ANYTHING IN THIS VIDEO, YOU ARE WELCOME TO EMAIL ME. THANK YOU FOR YOUR ATTENTION.

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