

## NEWSLETTER

### Legal Up-Date

January 2004

#### CELEBRATING 25 YEARS

Norbert Schweizer was admitted as a solicitor in March 1972. He then spent over three years travelling and working in Europe. In January 1979, the legal practice of N.J. Schweizer & Co was established. Since then the firm has grown significantly, both in size and in areas of practice.

The firm was originally located in the historic Trust Building on the corner of King and Castlereagh Streets, Sydney. From 1988 to 1997, we occupied offices in Parramatta in order to be closer to many of our clients based in Western Sydney.

Growth in our European client base led to the firm's relocation to Pitt Street, Sydney in January 1998. With continued expansion, larger premises were acquired in O'Connell Street, Sydney in March 2003. These premises also allow for further growth.

Schweizer Kobras is headed by two partners, Norbert Schweizer and Michael Kobras, both of whom are accredited specialists in business law and public notaries. Michael Kobras is also admitted in Germany. The partners are supported by seven other lawyers and senior para-legals, three of whom also have dual qualifications in Australia and also Germany, Switzerland or Austria.

The firm now provides legal services and advice in a number of fields. Our areas of practice cover:

- Corporate Legal Services
- Personal Legal Services
- Foreign Law

If you would like further details about our services and specialist areas, please do not hesitate to contact us.

With this 25 years commemoration, we wish to renew our commitment to our many loyal clients. We look forward to continued growth and consolidation in our relationships with our clients, and continuing to provide first class service.

#### IS IT TIME TO PLAN YOUR ESTATE?

For most of us, estate planning is something we all know we should consider at some stage in our lives, but which we tend to put off. Regardless, one should never underestimate the importance of proper and timely estate planning.

#### What is estate planning?

Estate planning is the shorthand term given to arranging your affairs and planning the transfer or administration of your assets, after your death in an appropriate manner.

Estate planning means putting your affairs in order to ensure an efficient distribution of your estate. It involves planning and documenting your wishes for after your death. Done properly, estate planning helps to ensure that your family and beneficiaries receive the full benefit of your assets without excessive fees, taxation liabilities or disputes between them. It can also help you to better manage your affairs now, while you are alive.

#### Main Issues

The issues which should be considered in estate planning include:

- taxation, including capital gains tax ("CGT") consequences of your transfer of assets
- asset protection
- income protection
- protection of beneficiaries
- family provision issues (particularly potential exposure to claims made by spouses or partners or children)
- ownership and control of assets
- income tax and CGT consequences of the disposal of assets by beneficiaries
- other revenue issues such as stamp duty
- claims made by family members contrary to a testator's wishes
- providing for family members in special circumstances
- providing appropriate mechanisms after your death, for the ongoing administration of the assets in your estate for the benefit of the people you wish to endow.

Some of the tools used in estate planning are wills, testamentary or post-mortem trusts, family discretionary trusts, family companies, self-managed superannuation funds and insurance. If you have a blended family, which may for instance include children of a previous marriage or children of your current spouse from a previous marriage, then a mutual wills agreement may be a particularly useful tool to ensure that your intended beneficiaries receive their just entitlements.

If you have any questions regarding your estate or if you wish to discuss how you may plan the distribution of your assets, please contact one of our trusted team.

## HOW BEST TO PROTECT YOUR INTELLECTUAL PROPERTY

How does one protect something that is intangible? Many people understand the importance of protecting their real and personal property, but overlook intangible property, which are often just as valuable. This is typical of many businesses when it comes to their intellectual property.

Intellectual property may take the form of confidential information, copyright, trade marks and patents. The first step towards protection is to identify those items of intellectual property that came into existence as a result of your business activity. Once they have been identified, it will then be necessary to assess the nature of the intellectual property, as protection mechanisms differ slightly between each type of intellectual property.

### Copyright and Confidential Information

Information generated during the course of operating a business may be regarded as subject to copyright, if the information is intended to be the subject of commercial exploitation. Alternatively, if the information is of a sensitive nature or a trade secret, then such information should be protected from unauthorised disclosure. Protection of confidential information is usually done by way of a confidentiality deed or agreement. Such deeds or agreements should be signed by employees, contractors or other parties dealing with the business, as appropriate.

### Patents

Information which relates to an inventive process may be patented. Patenting an invention may be a costly process and may not be appropriate for some businesses, depending on the nature of the invention or the direction the business intends to take. In this instance, it may be more suitable to protect the information by way of a confidentiality agreement or deed.

### Trade Marks

Words, symbols or logos used by businesses in relation to goods and services may be protected by trade mark registrations. A mark will only be accepted for registration if it is capable of distinguishing the goods and services of the applicant in question. A mark which is descriptive of the type of goods and services of the applicant or is deceptively similar to other registered trade marks will not be accepted for registration. A mark that is not distinctive may nevertheless obtain registration if the applicant can provide evidence of use. A business intending to use a word, symbol or logo as a trade mark prior to registration should start using it as soon as possible and should always accompany the mark with a TM symbol to indicate that the mark is being used as a trade mark. If a mark is a registered trade mark then all uses of the mark should be accompanied with the ® symbol.

## TAXATION OF DIFFERENT BUSINESS ENTITIES

Different business structures exhibit different profiles in terms of treatment for tax. A business may take a number of forms including the following:

- sole proprietor
- partnership
- company
- trust

In this edition of Legal Up-date, we will look at the taxation treatment for sole proprietorships. We will then deal with each of the other structures in a subsequent edition of Legal Up-date.

The treatment of tax (including GST) is but one of the many factors, albeit a major factor, that one should consider when choosing a business structure. Other pertinent issues are asset protection, costs of establishing, maintaining and dismantling the structure, and the possibility of income splitting – to name a few.

A sole proprietorship is without doubt the simplest structure available. It is simple to establish and control and involves minimal reporting requirements.

In terms of its tax profile, a sole proprietorship is taxed at the personal income rate of the sole proprietor. This means that income of the business may be taxed up to the maximum rate of 48 cents in the dollar. However, the structure also offers the advantage of offsetting personal tax losses of the sole proprietor. A major advantage in this instance is the availability of negative gearing.

In terms of capital gains tax (“CGT”), a sole proprietor may claim the 50% capital gains tax discount for individuals, provided the asset in question has been held for at least 12 months. A further advantage is the availability of the small business concession, provided that the \$5m net assets and the active asset tests have been satisfied.

A main taxation disadvantage for sole proprietorships is the inability to split income. Furthermore, there is no flexibility for tax planning. In terms of asset protection, a sole proprietor also has unlimited liability.

### YOUR FEEDBACK

If you have any comments about this newsletter, suggestions for improvement or would like to see any particular areas of law which interest you covered, please drop us a line at:

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