Corporations Law Assignment

Student’s Name

Institutional Affiliation

**Answer to question 1**

A company is one of the business structures; it is possible to begin one's business as a company or transform it later from other structures like a sole trader. Michael’s restaurant began as sole trader business, and the aim at hand is to transform it into a company at least his son’s want. A company, as pointed out in the corporations Act 2001, is a legal entity. This means that a company is considered as a person in its right (Yogaratnam et al., 2016). There are several features that define a company in Australia; these include the following. First, the company can perform functions that pertain to a corporate body. Secondly, it can sue or sued; this means that owners or instead, shareholders cannot be taken to court on issues that involve the company as a corporate body. A company also has a perpetual succession, which means that unlike other business structures, its life is not determined by the shareholders whether they die or sell their shares.

Last but not least, a company as a legal entity can buy, hold, and even sell a property at its discretion. The law requires that a company has to show its legal entity status (Lipton et al., 2014). For an established company, its name has to include the term ‘proprietary,’ initials ‘Pty’ are also appropriate. For a company that has limited liability, its name should have the term ‘limited’ included at the end.

Michael and his sons should consider changing the restaurant’s business structure for a company. This is because of several advantages. However, they should be keen on the few disadvantages and technicalities that follow. The benefits lie within its features as a legal entity which treats the business separately from the owners. For instance, if a company is unable to settle its debts, the shareholder's wealth and properties are not at risk of being used to settle the debt. This aspect is known as limited liability, which may only fail to apply where shareholders have given a personal guarantee. Another benefit is on the tax rate; companies are subjected to a lower rate of taxation. Again, it has a broad capital base at its disposal through the selling of shares (Lipton et al., 2014). Above all, a company in Australia has permission to operate all around the country.

Disadvantages include the following; first, involves the cost of establishment and maintenance, which are high. Winding up or terminating a company is also expensive. Another thing is that unlike in other business structures, the financial status of a business has to be made public. There is also, the aspect of double taxation, are not only the profits of the company taxed but also the profits distributed to owners. Again, companies are required to report their statements, and this can be a complicated endeavor (Lipton et al., 2014).

Apart from company business structure, there is other business structures; sole trader, partnership, trust, and co-operative. An individual holds a Sole trader business, Michael’s restaurant is an example, unlike a company, and the owner of this type of a structure does not have limited liability. Partnership, on the other hand, involves two or more individuals who undertake business as a group again, owners are liable to the debts of the business (Lipton et al., 2014). Trust is defined by the fact that it holds income and in other cases, properties on behalf and for the benefit of other people. Co-operative, on the other hand, is a business organization formed by members; the minimum number of members required is five (Yogaratnam et al., 2016). These are the primary and common business structures

In changing the restaurant to be a company, Michael and his sons should follow the Australian securities and investments commission (ASIC) guidelines for incorporating a company. Step 1 is on contemplating on the right company to incorporate; one should choose the structure that matches their needs. Step 2 involves choosing a company name. Here one needs to look for a name that is unique and is not assumed by any other registered companies. ASIC has several characters that are allowed, and one cannot go beyond those characters. One should check on the already existing trademarks so as not to duplicate, the ‘IP Australia Website’ has a list of all the registered companies and is the best platform to check from. The third thing is to structure procedures of governance, the rules, and the constitution. The fourth step constitutes of the comprehension of the set obligation for the company’s officeholder. The next step is to get the consent of the officeholder’s members or the occupiers; consent should be in a written form. The sixth step is on registering the company, which is done through ASIC. There is a fee that is charged, and the amount may depend on the method followed. Ones the application is processed, the company is registered, a corporate key is issued and a certificate of registration. The last step is after registration; here, one has to check on the validity and correctness of the documents issued, among other things (ASIC website).

Two types of companies are common in Australia, public and proprietary companies. A limited or public company is open to public ownership. Also, public companies have to present their accounts to the ASIC on an annual basis. Proprietary companies are the most popular, unlike limited companies, the shares for these companies are not open to the public: only the current shareholders, the company’s employees who can buy more shares of the company. Subsidiary companies can also buy those shares. Another essential feature for these types of companies is that they have a limited number of shareholders who are not employees; the maximum is 50 (ASIC). The liability of shareholders does not go beyond the worth of their total shares.

Michael should take up the ideas from suggested by his two sons. We have seen the advantages that come with registering a business as a company. There is favorable taxation and not to forget about the limited liability aspect among other benefits. Operating the restaurant as a company has more to offer than letting the company remain as a sole trader entity. Since Michael want to expand the business in other regions, going as a company will avoid legal technicalities that would follow a sole trader business. This is because as we have seen earlier, a company is allowed to operate country-wide. The fact that as a company can sell shares offers an opportunity to gain for more capital which would aid in expansion as Michaels’s sons envision. This is not possible with a sole trader or partnership, and they can only borrow to raise more money for expansion. A business’s name is significant as a part of the selling strategy. Michael should agree with his sons on the best name for a right and unique name for the business. The structure of a company is precise and explains matters to do with ownership of the company. Michael still has the chance to assume the most control where he can be the director with his sons as mere shareholders, so he should not fear that he would be robbed of his control. They can also structure a constitution to address more on control of the company. It is also suitable for Michael and his sons to consider the disadvantage that comes with a company business structure and weigh on how it would affect their business.