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I am thinking of starting a business. Should I incorporate a company?

A

There are a number of methods of carrying on a business including: sole proprietorship; partnership; co-ownership; corporations; joint ventures; and not for profit organizations.

It is important to speak to a business lawyer and your accountant in determining the best way to start your business. In most cases, even if you are a single business person, incorporating a company makes the most sense. Some considerations in determining which option work for you include:

i. What is legally possible? Not all legal arrangements are possible in each case. Your lawyer will have to determine if you are able to carry out your business in any particular vehicle;

ii. Limited Liability. Sole proprietors and most partners are personally liable and exposed, whereas a shareholder is not personally exposed to the creditors. However, corporations have directors who are personally exposed to certain types of liabilities;

iii. Desirability of perpetual existence. Unless the partnership agreement provides to the contrary, death or disagreement amongst the partners can result in the dissolution of the partnership. A corporation continues to live even if a shareholder withdraws or dies. A corporation with a perpetual existence may be preferable to a partnership or sole proprietorship that relies for its existence on the survival of the individuals;

iv. Income splitting. It may be preferable to use a method that provides financial benefit to family members while keeping the business under your control. For instance, if you have children over 18 or you are married, you may want to set up a corporation and give your family members non-voting shares of a corporation in order to properly income split;

v. Number of proposed proprietors. Where there will be a large number of owners, incorporation is preferable since the responsibility of one shareholder for the acts of the other shareholders is not there. In a partnership, each partner is 'jointly and severally' responsible for the acts of their fellow partners; and

vi. Income Tax. Unquestionably the most important factor will be the impact of income tax directly and indirectly on the business person. How will the business income be taxed? Should I take a salary or receive dividends? These and other questions must be determined to answer whether you should incorporate or not.

Although the costs of creating and maintaining a corporation is higher than the cost of setting up and maintaining a partnership or a sole proprietorship, in most cases, the advantages of incorporating outweigh the disadvantages. Shareholders often benefit from not being personally exposed and obtain preferential tax treatment.

It is important to contact your business lawyer to determine the best method for you to start or expand your business.



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