

Selecting a Business Form

When starting a business, one of the first considerations is which form that business should take. A business owner should consider factors such as the liability of the business owner, the anticipated length of the business venture, the number and relationship of proposed proprietors, and the degree of participation and assumption of financial risks by each proprietor.

In this month's article, we will explore the most common business forms, including: sole proprietorships, general partnerships, limited partnerships and corporations in relation to the above factors.

A sole proprietorship consists of one owner. This owner has all the rights and responsibilities in terms of making decisions concerning the business. For a single individual looking to start a business quickly, a sole proprietorship is easy to start and to dissolve and has modest start-up expenses. However, the owner is personally liable for any liabilities or losses incurred by the business, and if the owner has employees, the owner is also liable for the actions of employees during the course of their employment. A sole proprietorship dissolves at the discretion of the proprietor or upon the death of the proprietor.

A general partnership is defined under the Partnerships Act as "the relationship that subsists between persons carrying on a business in common with a view to a profit". In a general partnership, each partner is jointly liable with the other partners to the full extent of his or her personal assets for all debts and obligations of the partnership incurred while he or she is a partner. A written partnership agreement is not required but is generally recommended in situations where there is any possibility of disputes or differing opinions. A general partnership can be terminated by any partner giving notice, or upon death or bankruptcy of a partner. A partnership agreement can also create a partnership for a fixed term, meaning that the partnership dissolves at the expiry of that term.

A limited partnership is made up of both limited and general partners. General partners have the same rights and responsibilities as those in a general partnership. This means that they are liable to the full extent of their personal assets for the debts and obligations of the business. Limited partners are only liable to the extent of their initial capital contribution. Limited partners are also not entitled to participate in the management of the business and if they do, they may lose their status as limited partners and become liable as general partners. The effect of a limited partnership is to permit parties to invest in a limited partnership in return for a share of profits without risking unlimited liability.

A corporation is different from the above business forms in that it is a separate legal entity that is distinct from its participants. This means that a corporation can sue and can be sued in its own name and its participants are not personally liable for the debts and obligations of the corporation. A corporation can also hold property in its own name. A

corporation is made up of those who invest in the business (shareholders) and those who manage its affairs (directors). The legal obligations to create a corporation are more onerous than the other business forms, however, a corporation has a perpetual existence meaning that it will not dissolve on the death of a shareholder or director.

Thus, a business owner must consider how many people will be involved in the business, the extent to which they are willing to assume liability, and the length of their business venture when deciding on a business form. It is also important to remember that all types of businesses must be registered and that the business owner must fulfill those registration requirements before acting under a business name. More often than not, it makes sense for the business owner to incorporate a company. However, to be certain of that decision he or she should speak to their lawyer and the accountant. If you have any questions about starting your own business, please feel free to call us for more information.

In the following issue, we will explore business financing and funding alternatives for businesses.

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