LEGAL PLANNING FOR START-UPS CHOICE OF BUSINESS ENTITY

LIMITED LIABILITY ENTITIES

Prepared by Professor Donna Litman / Presented by Professor linda f. harrison

Tel: (954) 262-6190



Business Entity Options

What choices are available?

- Sole Proprietorship
- > General Partnership
 - Limited Liability Entity

General Partnership with Limited Liability ("LLP")

Corporation

Limited Liability Company ("LLC")

Limited Liability Goals

Primary Goal

Protect Owner from Business' Creditors By Limiting Owner's Personal Liability

- Secondary Goal
 - Protect Business from Owner's Creditors

By Limiting Creditors' Remedies

General Partnership with Limited Liability Florida Limited Liability Partnership ("LLP")

Management of Partnership Business

Partners manage & act as agents

Personal Liability for Partnership Obligations

Partners not personally liable (contract, tort, or other)

Transferability of Partnership Interest

Partner may transfer right to profits, losses, & distributions

Partner may not transfer management or other rights

Filing Requirements

Partnership Registration & Statement of Qualification

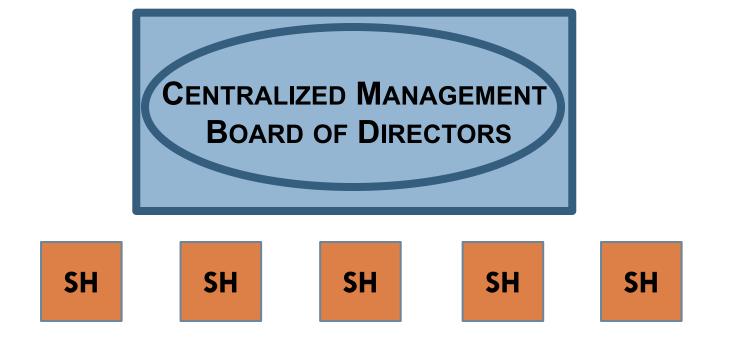
Corporations Attributes & Requirements

Important Attributes

- Separate Legal Entity
- Centralized Management
- Continuity of Life
- Limited Liability for Shareholders
- Free Transferability of Interests
- Filing & Other Requirements
 - File Articles of Organization
 - Adopt Bylaws & Hold Meetings

Corporations Management & Ownership

SEPARATE ENTITY NAME (CORP., CO., INC.)



Corporate Structure with Flexibility

- Familiar Management Structure for Public
 - Directors, Officers, Employees
- Flexibility in Designing Shares & Board
 - Shares: Common, Preferred, Convertible
 Voting Nervoting

Voting, Nonvoting

Board of Directors:

Number, Term, Voting Rights

Shareholders' Rights

Right to Vote:

elect directors

Right to Receive Distributions:

- dividends or corporation dissolution
- Right to Transfer Shares
 - by sale or gift; forced sale

Limited Liability Company ("LLC") Attributes

Important Attributes

- Separate Legal Entity
- May Choose Partnership or Corporate Style of Management
- Continuity of Life
- Limited Liability for Members
- Partial Transferability of Interests

Choose LLC Management Style # 1 – Partnership Style (Default)





Choose LLC Management Style # 2 – Corporate Style



CENTRALIZED MANAGEMENT

MANAGERS



Limited Liability Company ("LLC") Requirements

Filing Requirement

- File Articles of Organization
- Formalities
 - Meetings Optional
- Members adopt Operating Agreement
 - Define Rights
 - Flexibility for Sophisticated
- > or Rely on Default Rules

Florida Limited Liability Company (LLC) Personal Liability & Transferability

- Personal liability of member for LLC obligations Not personally liable (contract, tort, other)
- Transferability of member's interest May transfer right to receive distributions per Op. Ag. May <u>not</u> transfer management or other rights
- **Member's creditors**
 - If 2 or more members
 - Court's charging order for member's distributions Only 1 member
 - Court may order sale of sole member's interest

Federal Income Taxation at a Glance for C Corporations

C Corporation – taxed as separate entity corporate income tax rate – 21%

Dividend (after-tax profits) – taxed to shareholders

reduced capital gains rates may apply to qualified dividends

Federal Income Taxation at a Glance for S Corporations

- S Corporations generally income, deductions, & credits pass-through to shareholders
- **Corporate election with shareholders' consent**
- **Only "Small Business Corporation"**
 - max: 1 class of stock
 - voting & nonvoting common stock allowed
 - max: 100 shareholders
 - generally individual U.S. taxpayers

Federal Income Taxation at a Glance for LLCs

Default Rules

if 2 or more members, taxed as a partnership if only 1 member, entity is disregarded taxed to member (like sole proprietor) By Election

LLC may elect to be taxed as a corporation C Corporation or elect S Corporation