

LEGAL PLANNING FOR START-UPS

CHOICE OF BUSINESS ENTITY

LIMITED LIABILITY ENTITIES

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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.)**

**CENTRALIZED MANAGEMENT
BOARD OF DIRECTORS**

SH

SH

SH

SH

SH

Corporate Structure with Flexibility

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

MEMBER-MANAGED
LLC

Member

Member

Member

Choose LLC Management Style

2 – Corporate Style

**MANAGER-MANAGED
LLC**

**CENTRALIZED
MANAGEMENT
MANAGERS**

Member

Member

Member

Member

Member

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 not 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