

LEGAL STRUCTURE AND REGULATIONS

What are the options for my business' legal structure?

As a small business owner, one of the first major decisions you will make is to choose a legal form under which to operate your business. It is important to understand the four basic legal forms: *sole proprietorship*, *partnership*, *corporation*, and *limited liability company*, and determine the advantages and disadvantages of each. There are variations to each type, and it is wise to remember that the best sources of advice for making this decision will be from your accountant and attorney.

Sole Proprietorship

Most businesses begin as sole proprietorships, the simplest form of business. No special legal steps are required to get started and it is the easiest one to end. Bookkeeping and tax operation are also the simplest. For income tax reporting purposes, you and your business are considered to be the same. You do not pay yourself a salary as such, because your profits, if any, are your "salary." You may or may not have a name, as you choose.

Partnership

There may be good reasons why you need to consider incorporating or forming a partnership. Partnerships are necessary when two individuals want to do business together. Partnerships have the advantage of combining the resources or skills of two or more people into the enterprise. A partner, for example, provides a source of needed start-up capital for a business.

A written partnership agreement, although not mandatory, is almost always a practical necessity. It describes each person's responsibility, how profits and losses will be divided, how a partner can leave the business, and what happens in case of serious discord or a partner's death or disability. You may wish to use an attorney for this purpose.

Partnerships do not have permanence; if one partner leaves, the partnership is dissolved. Partners are personally liable for all liabilities of the partnership. But note that a new form of partnership called a "**limited liability company**," approved by the Commonwealth of Virginia in 1991, provides liability protection for partners. Partnerships must file a federal income tax return but do not pay tax; each partner's share of profits or losses are included in the individual partner's income tax return.

Corporation

The advantages and disadvantages of incorporating are numerous and complex. They take into account issues of duration of the business, capital formation, income distribution and retention, liability protection, ownership transfer, taxation, and legal costs. One main reason businesses incorporate is for the liability protection that a corporation provides to shareholders. In the eyes of the government, a corporation is a legal entity distinct from its owner or owners. It reports and pays taxes separately and its organization and operation are regulated by Virginia law. A corporation has permanence; unlike a partnership or sole proprietorship, it cannot be so easily dissolved. Using an attorney to incorporate is not legally mandatory but recommended. The choice of an **S-corporation** deals largely with tax considerations. S-corporations pass through profits or losses to the shareholders much like a partnership.

Limited Liability Company (LLC)

The Limited Liability Company (LLC) is rapidly becoming a very popular business form. An LLC combines selected corporate and partnership characteristics while still maintaining status as a legal entity distinct from its owners. As a separate entity, it can acquire assets, incur liabilities and conduct business. As the name implies, however, it provides limited liability for the owners. LLC owners risk only their investment. Personal assets are not at risk.

What are the factors to consider when choosing the type of legal structure for my business?

There are five factors to consider when choosing the type of business structure:

- **Liability.** Determine the type of liability your business may incur and how this may affect you and your business in the future.
- **Tax implications.** Yes, we're all proud of living in the great Commonwealth of Virginia and the United States of America, and we recognize that all the wonderful things brought about by this democracy cost money which is generated by taxes. By choosing the most appropriate business structure, you will ensure that you are paying the correct tax rate.