Forms of Business Organization

If you are considering entering into a business or are involved with an existing business, there are a number of different ways to structure your business. The most common types are sole proprietorships, partnerships, limited partnerships, limited liability partnerships and corporations. A brief description of each type and some of the advantages and disadvantages is noted below.

Sole Proprietorship

A sole proprietorship is the simplest form of business organization. The sole proprietor owns the assets of the business and is personally responsible for all debts and obligations of the business so personal assets can be seized to meet obligations and liabilities of the business. If the proprietor uses a business name other than his or her own name then registration of the name will be required with the Province. All income of a sole proprietorship is taxed at personal Income Tax rates.

The advantage of a sole proprietorship is that it is simple and inexpensive to set up and operate. The disadvantage is that there is unlimited liability for the owner.

Partnership

Where two or more people combine their resources in a business, their relationship will probably be considered a partnership and it is wise to prepare a partnership agreement setting out the terms of the business. If partners do not enter into a formal partnership agreement, their relationship will be governed by the Partnership Act. A partnership agreement is important if there are only two partners because without an agreement, if one partner dies then the partnership automatically dissolves which may lead to adverse tax consequences.

The advantages of a partnership are that it is simple and inexpensive to set up and operate and there are possible tax advantages. People often enter into a partnership until they determine how successful the business will be and then review whether they should incorporate.



The disadvantages of a partnership include that each partner will be personally liable for the debts and obligations of the partnership, and will be bound by the acts of the other partners in connection with the business of the partnership.

Joint Venture

A joint venture is similar to a partnership but is generally limited to a single project. It involves two or more parties combining their expertise, services and other resources for a limited purpose and usually for a limited time. One advantage of a joint venture is the ability to designate, by contract, differing levels of obligation and commitment between the parties and to separate business interests both during the joint venture project and after its completion.

A joint venture has as its basis a contractual relationship between parties who intend to associate

themselves as joint venturers, with each contributing to a common undertaking for a share of profits or losses and each having some degree of management control over the venture. However, the parties must be careful not to agree to carry on business together or they may find that they have formed a partnership rather than a joint venture. The parties should contract in a manner that does not involve the parties being identified as a combined entity, where either party is permitted to act for or on behalf of the other. Much of the law of partnership is nonetheless applicable to joint ventures.

Limited Partnership

A limited partnership has one or more "general partners" and one or more "limited partners". General partners have similar rights and obligations to partners in a non-limited partnership. Limited partners are liable only for the amount equivalent to their contribution or promised contribution to the capital of the business, provided that they do not participate in the management of the business.

A limited partnership often requires a disclosure document to be filed to meet the requirements of the Securities Act or the Real Estate Act, and always requires a limited partnership agreement signed by all parties. For this reason, limited partnerships are used primarily for larger projects.

The advantage of a limited partnership is that it allows the limited partners to obtain the tax advantages that a partnership may provide, while limiting their personal liability. For general partners, who are often the initial principals in a project, it allows for investment without interference from the limited partners.

Limited Liability Partnership (LLP)

Limited liability partnerships have the same advantages as limited partnerships, with the added benefit that limited liability partners can take an active role in the business of the partnership without exposing themselves to personal liability for the acts of the other partners beyond the value of their investment in the partnership. However, they may still be liable for their own actions or for the obligations of the LLP in certain situations.

To form an LLP, a registration statement must be filed with the Registrar. The partners will generally also enter into an extensive partnership agreement which governs their respective rights and obligations.

Corporation

A corporation is a separate legal entity. It can sue and be sued in its own name, hold property in its own name, and enter into contracts in its own name, including contracts with its shareholders. A corporation can be more expensive to set up and maintain than other forms of business organizations.

It has several advantages including that it is a separate legal entity and therefore has the ability to do many of the things that a natural personal can do. It also provides limited liability such that shareholders are generally only liable to lose the value of their shares and are not personally liable for the obligations of the corporation or the actions of the directors. Directors may be liable in certain situations.

There are some tax advantages to being a corporation, such as the small business deduction and there may be some tax disadvantages, such as if the corporation incurs losses.

Should you decide to incorporate, you must determine the appropriate jurisdiction of incorporation. A company may be incorporated federally or in any province in Canada. A provincially incorporated company can carry on business in the province of incorporation. It must register extra-provincially to carry on business in a province other than the province of incorporation. A federal corporation can carry

on business in any province and is subject to the laws of any province in which it operates. In addition to incorporation, a federally incorporated company must register "extra-provincially" in every province in which it carries on business. Further, the Board of Directors must be chosen to ensure that a majority of the Directors are resident Canadians.

This information applies as a general rule but may change depending upon the specific circumstances of your own situation. You should consult a lawyer before acting on any of this information.

If you have any questions, please do not hesitate to contact us:



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