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WHAT'S YOUR BUSINESS?

Entrpreneurs have options when it comes to choosing the legal structure for their business. All have advantages and disadvantages. When it comes to making your choice remember: One size does not fit all.

A QUESTION I AM FREQUENTLY ASKED IS, what business model is right for me? When starting a business there are several factors to consider before deciding on a business model: What is the purpose of the business? Do you want to run the business alone or with others? Do you already have capital available? Do you expect to make a large profit? Are you looking for tax efficiency? Do you want to limit your liability?

A business carries on commercial activity with the intent of making a profit. And, there are different models to consider in determining how to organize your business. Most established businesses follow one of three primary models: sole proprietorship, corporation, or partnership.

There are various advantages and disadvantages to each business model to consider in deciding which one will best suit your needs and goals. In addition to the legal issues I outline below, you should consult an accountant to discuss the tax consequences in each circumstance. ••

THE CHOICE IS YOURS. Choosing a legal structure for your business is an important decision. It can affect everything from requirements for tax filing to liability issues.

Sole Proprietor: A sole proprietor is a business that runs with one owner. It is the simplest and least costly business model to create. No formalities are required, and it is recommended if you expect to make a small profit. Practically and legally, in a sole proprietor business, there is no difference between the business and the owner. They are the same, and the owner is fully liable for any debts that may be incurred by the business. However, sole proprietors may manage risks through liability insurance.

Corporation: In contrast to a sole proprietorship, a corporation is considered a legal person, separate from its directors, officers and shareholders. It is recognized by law as a separate legal entity that holds a similar status to that of a natural person. Therefore, shareholders are not liable for the debts or other obligations of the business, except under exceptional circumstances.

Incorporating may be attractive if you expect to make a significant profit and do not expect to spend it all. Some benefits of incorporating a business include the protection of personal assets, enhanced business credibility, greater access to capital, and tax benefits. However, incorporated businesses are more costly to operate than sole proprietorships. You must consider issues such as the expenses of incorporation, compliance with annual maintenance of a corporation, possible payroll deductions, and corporate accounting and tax returns.

You must also consider where you want to incorporate a business, which may be federally, provincially, or territorially.

Professional Corporation: If you are a regulated or designated professional—say a lawyer, a dentist or an accountant—you may be able to incorporate your practice as a professional corporation. Professional corporations offer limited liability protection and the advantages of corporate tax rules. The primary disadvantage of the professional corporation model is the cost of establishing and maintaining the entity, which are the same costs as the corporation costs noted above.

Partnership A partnership is a relationship between two or more persons carrying on a business in common, with a view to making a profit and sharing in any losses. A partnership business model offers flexibility in designing the business structure. Each partner holds full liability to the business either jointly or jointly and severally. However, other forms of partnership grant limited liability, such as a limited partnership or a limited liability partnership.

Limited Partnership (LP): A partner can limit their liability with a limited partnership. An LP consists of a general partner who manages and operates the business and has unlimited liability. Limited partners enjoy limited liability and do not take any part in the decision making or exercise control over the direction of the business.

Limited Liability Partnership (LLP): An LLP allows partners of a professional practice to limit their liability against other partners. The objective of this partnership is to protect one partner and their assets from liability due to misconduct by another partner. It allows professional partners to avoid unlimited liability unless they were also a party to wrongful actions.

Joint Venture: A joint venture refers to a business model where two or more business entities enter into a contractual relationship to combine resources and share expertise. A venture is not, however, a partnership. There are two types of joint ventures: contractual and equity. A contractual joint venture is formed by two or more entities that agree to combine resources or expertise to carry out a specific project. An equity joint venture is where a corporation is formed by the parties involved in the project, allotting each party shares in the corporation.

To conclude, each business model has benefits and consequences. I have set out several legal factors which should be considered in choosing which one is best suited to your plans. And remember, it is important to consult with your accountant when evaluating business models and to obtain legal advice in making the choice that works best for you.

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