

BUSINESS ORGANIZATIONS

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BUSINESS
COUNSEL

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CIVL 402

AGENDA

Sole Proprietorship

- What, how, advantages, disadvantages

Partnership

- What, how, types, advantages, disadvantages

Corporation

- What, how, characteristics, advantages, disadvantages

Risk Mitigation Strategies

Questions

REMEMBER

It's almost always about the money!!!

- Maximize income and contain costs
- Minimize liability and risk exposure



SOLE PROPRIETORSHIP

Advantages	Disadvantages
<ul style="list-style-type: none"> - Simple, fast & inexpensive start-up cost - Fewer ongoing reporting obligations - Less government regulation - Little overhead - Risk can be reduced with insurance 	<ul style="list-style-type: none"> - Personally responsible for all debt and obligation of the business - Almost all assets are at risk of loss <ul style="list-style-type: none"> - Bank accounts, home, cars, etc. - Unlimited liability to the world at large <ul style="list-style-type: none"> - Vicarious liability for those acting in your name - Income is reported and taxes paid at time it is earned - Very little brand protection - No continuity in absence of owner. <ul style="list-style-type: none"> - Restricts money-raising options

PARTNERSHIP

What Is It?

- The simplest available form of business where people pool resources with a view to making a profit in an ongoing business
- Not a separate legal entity from the partners
 - Except in the case of a Limited Partnership

How to Create?

- By the actions of the parties – even if unintentional
 - Partnership Act
- By agreement (i.e., a Partnership Agreement)

GENERAL PARTNERSHIP

General Partnership

- Can be created by actions of the parties
 - If parties operate an ongoing business together and share management, expenses and profits, then likely a partnership
 - Can be created by agreement of the parties – oral or written
 - Formal partnership agreement
 - Agreement that, by its terms, creates a partnership
 - Question of law, not the terms of agreement



GENERAL PARTNERSHIP

Advantages

- No registration required to create
- Fewer ongoing reporting obligations than companies
- Income and expenses can be shared by the partners in different proportions
- Division of labour and sharing of risk
- Combine resources and expertise

Disadvantages

- Each partner liable for the actions of ALL partners
 - All assets are at risk
 - Vicarious liability
- Each partner is an agent for ALL partners
 - Can bind each and every partner in contract
- Partnership Agreement will not limit liability to the world at large
 - Deep pockets
- Partners are fiduciaries
 - Must act in the interest of the partnership
- Little opportunity to defer income tax liability

LIMITED PARTNERSHIP

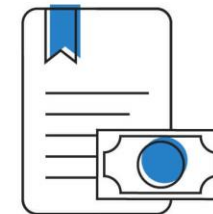
Limited Partnership (LP)

- Has limited partners - who contribute only capital
 - money or in-kind transfer
 - not involved in managing the business
 - cannot be liable for more than the amount of capital contributed
- Requires a general partner, who manages the business
 - general partner is fully liable for the debts and obligations of the business, but may be entitled to a greater share of the profits

WHAT IS A LIMITED PARTNERSHIP?

Limited partnerships have both general and limited partners.

LIMITED PARTNER



Limited liability; only liable for their investment, not the business's debts
Little to no control over the business

GENERAL PARTNER



Full liability for the business's debts
Full control over the business

LIMITED PARTNERSHIP

Advantages	Disadvantages
<ul style="list-style-type: none"> - Fewer ongoing reporting obligations than companies <ul style="list-style-type: none"> - But is the GP a company? - Income and expenses can be shared by the partners in different proportions - Liability and risk is limited to money invested - Broader management base, continuity of business <ul style="list-style-type: none"> - Increase money-raising opportunities 	<ul style="list-style-type: none"> - Partners may still be fiduciaries <ul style="list-style-type: none"> - Must act in the interest of the partnership - Little opportunity to defer income tax liability <ul style="list-style-type: none"> - Some ability to keep income parked in the GP - Easy to lose « limited partner » status <ul style="list-style-type: none"> - Participate in the business, provide services to business - Liability converts to unlimited - Partnership Agreement may limit marketability of LP Units - Difficulty in finding like-minded partners

LIMITED LIABILITY PARTNERSHIP (LLP)

- Combines characteristics of General and Limited Partnership
 - Not a separate legal entity from the partners
 - All partners are active in management of the business
 - Any partner can bind the partnership
 - BUT each partner is only liable to the world at large for the money they have put into the partnership
 - Vicarious liability, but not unlimited
- Most often used by professionals
- Legislation usually requires insurance



CORPORATION

What Is It?

- A legal ‘person’ that is separate and distinct from its members (shareholders)
- Incorporated in BC according to the provincial *Business Corporations Act* or federal *Canada Business Corporations Act*
- Has all of the powers of a person and an independent existence – separate and distinct from its shareholders – and an unlimited life expectancy
- Can acquire assets, go into debt, enter into contracts, sue or be sued.
- Ownership interests are usually easily changed

CORPORATION



How to Create?

- Application for incorporation
- Articles of incorporation
- At least one director and one shareholder
- Must use either Inc., Corp. or Ltd. in its name

CORPORATION

Distinguishing characteristics

Limited Liability: normally, no member can be held personally liable for the debts, obligations or acts of the corporation beyond the amount of share capital the shareholder has put in

- Be careful about piercing the corporate veil . . .

Perpetual Succession: because the corporation is a separate legal entity, its existence does not depend on the continued membership of any of its shareholders

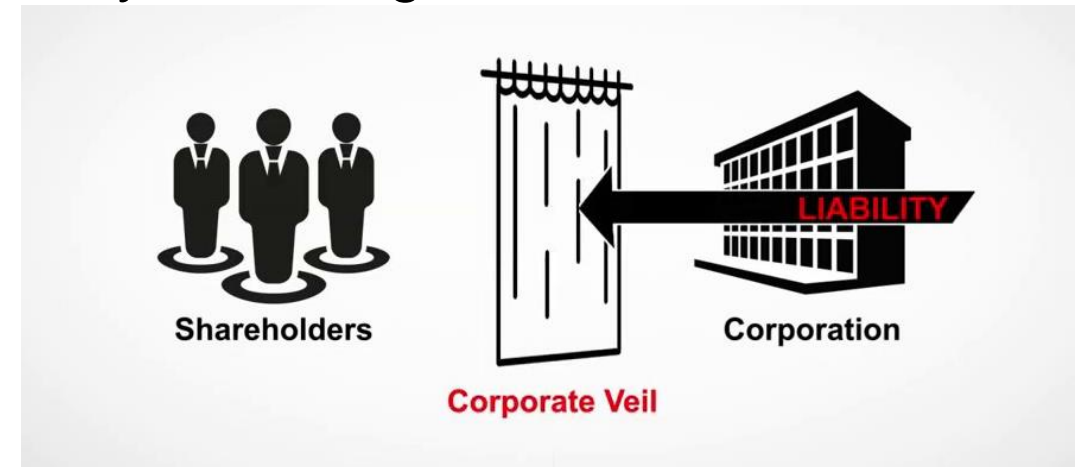
Considerations for Professionals!

- If a professional corporation (i.e., an engineering firm), then must:
 - Comply with any additional incorporation and ongoing obligations of its regulatory body
 - Employ persons licensed to practice in that profession

CORPORATION

Separate Legal Entity

- The company is a legal ‘person’ in its own right
 - It acts through its shareholders, who vote for a slate of directors to run the business
- Can sue, be sued, enter into contract, employ, etc., in its own name
- Separate legal person doesn’t always mean absence of liability
 - If a small company, then the shareholders may have to guarantee debts or provide security
- For professionals, liability may arise out of governing legislation
- If a shareholder or director uses the company to commit a fraud, then courts may pierce the corporate veil



CORPORATION

Shareholders and Directors

- The company is a legal ‘person’ in its own right
 - It acts through its shareholders, who vote for a slate of directors to run the business
- Legislation and case law dictate shareholders’ and directors’ obligations / exposure
 - Shareholders have very little exposure beyond the money invested
 - Directors are fiduciaries to the company
 - Must act in interest of company to detriment of own interests and must disclose conflicts of interest
 - For directors to escape liability, must perform reasonable due diligence
 - Risk of ‘willful blindness’
- If a shareholder or director uses the company to commit a fraud, then courts may pierce the corporate veil

CORPORATION

Advantages

- Possible tax advantages
 - Income treatment can be deferred or sprinkled
- Limited liability
- Ownership is transferable
- Continuous existence
- Separate legal entity
- Easier to raise capital

Disadvantages

- Closely regulated and lots of on-going reporting
 - Annual filings, change of director, etc.
- Most expensive form of business to organize
 - Higher start-up costs related to professional fees to legal and accounting services
- Extensive recordkeeping necessary
 - Legal and accounting
- Shareholders and/or directors may be held legally responsible in certain circumstances
- Personal guarantees undermine limited liability advantage

RISK MITIGATION STRATEGIES

- Consider establishing your business as a corporation or limited partnership rather than as a proprietorship or partnership.
- Invest by way of registered secured debt and minimize your investment in share capital.
- Hold assets such as real estate and equipment in a company separate from the parent company
- Obtain appropriate insurance coverage.





ANY QUESTIONS?

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