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FOLEY & LARDNER LLP

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PRIMER ON
SELECTION OF A BUSINESS ENTITY

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Note: This is a brief summary and is not to be relied upon for legal advice.

Forward: This Primer, when read together with the other Primers in this Wisconsin series, is intended to assist readers in thinking through what route to follow when embarking on a start-up Wisconsin business and/or financing of their business.

OTHER FOLEY & LARDNER PRIMERS

Foley & Lardner has several volumes in this Wisconsin Primer series that are designed for non-lawyers such as founders of start-ups and emerging growth companies, other executives and "Angel" investors. The entire series of Wisconsin Primers is listed below.

I. Primer on Selection of a Business Entity

II. Primer on Early Stage Financing

III. Primer on Intellectual Property

IV. Primer on Federal and Wisconsin Securities Laws

V. Primer on How to Offer and Sell Securities

VI. Primer on Use of the Internet to Sell Securities

The Primers are designed for use in Wisconsin, but also provide information to assist readers in other states.

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TABLE OF CONTENTS

I. SCOPE

This Primer focuses on the factors to be considered when selecting a form of organization for a business. The form of organization adopted will depend upon the particular objectives and situation of each business, and this Primer suggests matters for you to review in making the determination of the best form to choose under the circumstances. The specific attributes of alternative forms of business organization are discussed. The Primer considers the most common forms of business organization -- sole proprietorships, general partnerships, limited partnerships, limited liability companies and corporations, including "S," "C" and Close corporations. Other, specialized forms of business organization such as business trusts, cooperatives, and professional corporations are beyond the scope of this work.

SPECIAL NOTE: The Business Plan and the Real Agenda. When you contemplate a new venture think through what you really want and how you are going to achieve your goal. Usually a Business Plan is the tool used to force a think-through.

What are the goals? An IPO in five years? A single store with two owners and no expansion? A "Cash Cow" that licenses an invention? The answers to these questions will have a substantial influence on what form of organization best suits your needs.

If outside investors are involved, it is doubly important that you have a clear understanding, and full disclosure, of the real agenda of the founder/management team in order to avoid later charges of your having mislead the investors.

This first step: the choice of entity, is an area where your lawyer can be critically useful. A wrong choice can be fatal. Your lawyer should take the time necessary to thoroughly understand your real agenda, to measure your resources and to understand the structural and tax advantages and disadvantages involved in the various structures you are considering.

II. ALTERNATIVE FORMS OF BUSINESS ORGANIZATION

2.1 Sole Proprietorship.

A sole proprietorship is a business owned by a single individual. As sole owner of the assets, the sole proprietor is entitled to all of the profits of the business and must personally bear all of the losses. There is no "shield" from liability other than insurance coverage (which usually does not cover debts and financial obligations). As a sole proprietor you will be personally responsible for all of the liabilities and obligations of the business. No legal formalities are required to bring this form of business organization into being, and there are no particular formalities necessary for its operation. You will wish to avoid the liabilities associated with a sole proprietorship.

Recommendation: Do not use. You are "naked" regarding liability. If you do use this form, have a good insurance broker and avoid debt.

2.2 General Partnership.

A general partnership is an association of two or more persons to carry on a business as co-owners for profit. This form of business organization is ordinarily created by formal agreement, but a partnership may simply be created by oral agreement or may even be implied by the conduct and acts of the parties. Matters not covered by a written partnership agreement will often be controlled by state laws, in Wisconsin by the Uniform Partnership Act (Chapter 178, Wisconsin Statutes), which provides certain rules for the operation of a partnership, its termination and the rights of creditors against the partners.

As a partner in a general partnership you are personally liable for all obligations and liabilities of the partnership, even those incurred by another partner. Because of this exposure you will probably wish to avoid this form of entity. Wisconsin general partnership law, however, does provide the option to register as a Limited Liability Partnership ("LLP") with the Wisconsin Department of Financial Institutions. Such registration does provide a degree of protection against claims of business creditors and provides protection from joint and several liability for the wrongful acts of one's partners. The LLP is sometimes selected by Wisconsin businesses that offer professional services and for which the limited liability company is not a suitable option.

Recommendation: Same as sole proprietorship, only worse as you will be personally liable for the acts of your partners.

2.3 Limited Partnership.

A limited partnership is a partnership formed under the acts of the various states. In Wisconsin, it is the Wisconsin Limited Partnership Act (Chapter 179, Wisconsin Statutes). A limited partnership must have at least two partners, and must have at least one general partner and one limited partner. The general partner is liable for the partnership obligations beyond the funds invested. Consequently, many general partners are corporations. A limited partnership may be formed only by filing a Certificate of Limited Partnership with the Wisconsin Department of Financial Institutions, with a filing fee. A limited partnership may record a certified copy of the Certificate of Limited Partnership in any county recorder's office. Recordation creates certain conclusive presumptions with respect to bona fide purchasers.

The feature which distinguishes a limited partnership from a general partnership is that the limited partners' liability is restricted to their contribution of capital. You, as a limited partner, are not personally responsible for the debts and liabilities of the partnership, beyond your investment commitment, unless you take part in the control of the business. Management of a limited partnership is vested in the general partner or partners. The general partner is liable for the obligations of the partnership. Consequently, many general partners are corporations. Limited partnerships, very popular in the '80s for syndication purposes (real estate and oil and gas), have recently been eclipsed by the Limited Liability Company form of organization.

<u>Recommendation</u>: O.K., but general partner should be a corporation to avoid personal liability. Why not use an LLC?

2.4 Limited Liability Company.

The limited liability company ("LLC") is a fairly recent type of business entity, combining the advantage of corporate limited liability with the one-level taxation and managerial and operational flexibility of a partnership. It can be formed by one or more persons and, if a single owner LLC, it does not have to file a separate Federal tax return. It does not suffer the limitations placed on an S Corporation or a limited partnership. In addition, there is no need of a corporate entity to shield the general partner as in a Limited Partnership. All members of the LLC are shielded from personal liability beyond their committed investment. The LLC can be member or manager managed and can, if it so chooses, have officers and directors like a corporation. Because of the perceived advantages of (1) pass-through tax treatment; (2) the operational flexibility of a partnership; and (3) limited liability, the LLC has recently taken its place as the most used form for doing business in Wisconsin.

<u>Recommendation</u>: Excellent form for a "cash cow" and start-up businesses without short-term IPO plans. Best suited for small group, licensing company, etc. Very flexible. Can be easily converted to a corporation when required. Management option plans, however, are more complicated than for a corporation.

2.5 Corporation.

A corporation is an artificial, legal person which is created under state law. A corporation may be owned by one or more persons. It is a separate entity that can acquire, hold, and convey property, be sued and generally act in its own name. It derives its rights from statute and its articles of incorporation. A detailed statutory framework is provided for the creation, operation, and termination of corporations. In Wisconsin, matters dealing with the formation, capitalization and operation of corporations are found in Chapter 180, Wisconsin Statutes. All states have laws governing the creation and operation of corporations. Wisconsin's law is one of the best corporate acts.

If adequately capitalized and corporate procedures are followed, the corporation alone is responsible for its debts and liabilities. The owners are not personally liable for these obligations. As discussed below a "standard" corporation is not a pass through entity for tax purposes and would be subject to double taxation. If you want to "go public" some day and have a vision of a large, listed Company, the best form ultimately is the corporate form (even though you may want to start with an LLC).

Recommendation: Best suited for public vehicle even if start with an LLC. Many people are more familiar and more comfortable with the corporate entity structure.

2.6 Subchapter S Corporation.

A Subchapter S Corporation is a "regular" corporation which has elected to be taxed similar to a partnership and has adhered to certain strict requirements in order to obtain that treatment.

Generally, an S corporation may not have more than 100 shareholders, all of whom must be non-alien individuals, estates or certain defined trusts. A corporation, partnership or LLC cannot be a shareholder. However, an S corporation can have corporate subsidiaries which can be ignored for tax purposes and treated as divisions.

An S corporation may not have more than one class of stock, although certain differences in voting rights are permitted. Tax allocations and cash distributions must be exactly proportionate to ownership interests.

The election to be an S corporation must be filed, with the unanimous consent of all shareholders, on or before the fifteenth day of the third month of its taxable year in order for the election to be effective beginning with the year when made.

There are rather strict rules that, if violated, cause the S status to be loss. Thus, the principal advantage of the S corporation is avoidance of double taxation. If there are losses this can be an advantage for the shareholders for the near term, but a long term disadvantage for the corporation in that any loss carryover is not available to the corporation once it becomes profitable.

With the advent of the Limited Liability Company, S Corporations are less frequently used. However, it remains an attractive alternative in many situations and can easily be converted to a C corporation. The opposite is not true.

Recommendation: Worthy of consideration for the right situation, but LLC is generally preferable.

2.7 Close Corporation.

Wisconsin offers the choice of forming a Statutory Close Corporation. Although this form of doing business affords a degree of flexibility and informality, not available in a regular corporation, there are many pitfalls and the close corporation format is rarely used.

Nevertheless, the elements, the advantages and the disadvantages should be considered.

(See 4.7 below). The following is intended to be a brief outline of the salient features of the close corporation.

In addition to the normal requirements for incorporation, the following are essential to attain close corporation status:

a. An unanimous, written Shareholders Agreement. This covers what matters the shareholders will control and “any phase of the affairs of a close corporation.”

b. There may be no more than 50 shareholders of record of all classes of shares outstanding.

c. Substantial restrictions on share transferability.

Recommendation: Forget it. Use LLC instead.

III. CONSIDERATIONS RELATING TO FORM SELECTION

Various factors bear on the selection of a form of business organization. Some of these considerations, the advantages and disadvantages of the alternative forms of business organization, and the specific attributes of these various forms are reviewed later in this Primer.

Generally, choosing the form of business organization is a matter of weighing the various considerations and evaluating their relative importance.

In some cases, the form of organization for a business will be heavily influenced, or even dictated, by a single factor. For example, if you are entering into a relatively risky business you may be willing to consider only a form of business organization such as a corporation, limited partnership or limited liability company which offers limited liability. In many states, banks and insurance companies must be organized as corporations, so this would be the only choice for this type of business. In most cases, however, the selection of the form of entity will depend upon your consideration of a number of factors.

The selection of a form of business entity is not necessarily an all or nothing proposition.

It is possible to utilize more than one form of business organization for a business. For example, a corporation might be organized to operate a business, and some of the assets used in the business might be owned by a partnership which leases them to the corporation.

Of paramount importance is to ascertain what you wish as to your position, say, five years in the future. How much available cash flow is expected? How will it be distributed? What is the “exit strategy”? How much financing is needed and when? The answer to these financial questions bears heavily on who will control the company. The answers to these and tax considerations will determine what form of entity makes sense.

IV. CHECKLISTS OF ADVANTAGES AND DISADVANTAGES

4.1 In General.

The following checklists summarize the advantages and disadvantages of the various alternative forms of business organization.

4.2 Sole Proprietorship.

Advantages

1. Few formalities are required for organization and hence organizational costs are minimal. This minimizes legal fees. Actually, it is rare for lawyers to be involved in the formation of a sole proprietorship – some would argue its most important advantage.

2. Absence of statutory or other formalities required for decision making and action.

3. Freedom to do business anywhere without elaborate formalities to qualify.

4. Minimal reporting requirements to government entities.

5. Control is centered in one person, thus avoiding the inconvenience of collective decision making and the risks arising when broad powers to manage or to obligate the business are granted to several persons.

6. Income is taxed only once at individual federal income tax rates, which can be lower than federal corporate rates for high income. Of course, state taxes are also payable. In a C corporation, income is taxed twice, once to the corporation when earned and once to the shareholder when distributed.

7. Losses are available on the owner's personal income tax return and can offset other income.

Disadvantages

1. The owner is subject to unlimited personal liability for obligations and liabilities of the business.

2. The business is subject to termination upon the death or disability of the owner.

3. Transfer of the business through sale or otherwise requires transfer of the individual assets of the business.

4. Risk or equity capital is limited to resources of the individual owner, and borrowing capacity may be limited as well.

5. Business profits are taxed as income to the owner at individual income tax rates which can be higher than those of a corporation for lower incomes.

4.3 General Partnership.

Advantages

1. Minimal formalities are required for organization, and hence organizational costs are limited.

2. Since a partnership involves more than one person, it permits a combination of individual resources and talents, and authority to act is not limited to one person.

3. Few formalities are required by law for decision making and action.

4. The business may operate where it wishes without elaborate formalities to qualify.

5. Minimal reporting to governmental entities is required.

6. If the partnership agreement so provides, a partnership may continue in existence after the death or withdrawal of a partner.

7. Business profits are taxed to the partners, and if they are individuals, will be taxed at individual income tax rates which are lower than corporate rates for high incomes.

8. Business losses are available on partners’ personal income tax returns and can offset other income.

9. Usually can withdraw assets with minimum adverse tax consequences.

Disadvantages

1. Each partner has unlimited personal liability for all debts and liabilities of the business unless registered as an LLP.

2. The power of every partner to act on behalf of the business requires caution in the selection of partners.

3. A partnership is dissolved upon the death of any one partner, if not otherwise provided by agreement.

4. Partnership profits are taxed as income to the individual partners, which is disadvantageous at low income levels.

5. As more than one person is involved, lawyers’ fees can be substantial due to the need to customize and protect the participants as much as possible.

4.4 Limited Partnership.

Advantages

1. If you are a general partner, or control the corporation that is, there is an advantage in that financing, or other support, is available from limited partners, without the need for the general partners to surrender control. There can be great flexibility in the share of available cash flow to be paid to the limited partners; e.g. 75% until they get their money back, then 50% until they get double their money, then 25% thereafter.

2. For limited partners, a limited partnership affords an opportunity to invest and participate in the profits of a partnership without risk of liability or loss beyond the amount invested.

3. The business continues in existence without interruption upon the death of a limited partner or upon transfer of a limited partner's interest.

4. Relatively free transferability is available for limited partnership interests.

5. The tax advantages are the same as those for a general partnership, including the ability to take partnership losses on partners' personal income tax returns and to report partnership income on individual partners' returns. Disproportionate allocations of profits and losses are also possible.

Disadvantages

1. Organization requires greater formality, which increases organizational costs. The preparation of a Limited Partnership Agreement usually demands a great deal of "customizing" and is therefore quite costly.

2. Operating in states other than the state of organization will require qualifying to do business in the other state.

3. Greater reporting requirements to governmental entities, including a separate tax return.

4. Limited partners are required to make a financial or property investment without the right to participate in the operation of the partnership.

5. At least one general partner is required to assume responsibility of unlimited exposure for debts and liabilities of the business. This usually involves the formation of a corporation to act as the general partner. This, of course, has attendant costs and reporting requirements.

6. Sale or transfer of interests may be subject to securities law regulation.

7. The limited partnership is dissolved upon the death of an individual general partner - subject to the terms of the Agreement.

8. The same tax advantages or disadvantages, depending on the owners' position, apply as for general partnerships, including income being taxed to the individual partners.

4.5 Corporation – "C" Type.

Advantages.

1. If corporate procedures are followed and the initial capital is adequate, there is no liability of the shareholders for debts and liabilities of the corporation.

2. Free and ready transferability of ownership by sale and transfer of stock, without affecting the continuing existence of the business or title to its assets.

3. Perpetual existence of the corporation unaffected by the death of shareholders or transfer of shares.

4. The ability to transact business without each shareholder participating in each decision.

5. The use of a business format which, if used correctly, provides for structured accountability and governance. The corporation provides an institutional "being" separate and apart from the owners – sometimes a distinct advantage.

6. Flexibility of financing through the sale of various types of securities to many investors. Often the founders get common stock and the investors get preferred or convertible preferred stock.

7. The availability of tax-favored fringe benefits unavailable to other forms of business entity.

8. For simple corporations, relatively inexpensive formation costs.

9. A long established body of law which serves to provide a degree of predictability as to corporate actions.

Disadvantages

1. If you are going to be a minority shareholder, you will have very little power to control any aspect of the corporation's operation or policy.

2. Burdensome requirements for reporting to governmental entities including separate tax return.

3. Statutory formalities must be adhered to for decision making and action.

4. Control is vested in a board of directors, not the individual owners (however, the majority owners control the Board of Directors).

5. Stock issuance and transfers are subject to securities law regulation.

6. Limited liability of the corporation causes the assets to be the only source for credit. You may be called upon to personally guaranty corporate indebtedness, which somewhat defeats the value of limited liability.

7. Must qualify to do business in states other than the state of incorporation.

8. Double taxation for federal income tax purposes of business income which is taxable initially to the corporation and again upon distribution to the shareholders, unless the corporation qualifies and elects to be taxed as a "S" Corporation.

9. Losses of corporations may not be deducted by individual shareholders, unless the corporation qualifies and elects to be taxed as an S corporation.

10. The distribution of property by a corporation to its shareholders is generally a taxable event for income tax purposes as to both the corporation and the shareholders. Thus, withdrawing property from a corporation can be extremely expensive from a tax standpoint.

11. In determining who gets what share of the equity, there is limited flexibility to have the amount of equity for the founders to be greater than their actual cash and property contributions. It is of the utmost importance for the founders to purchase their holdings (which should be Common Stock) at the earliest date possible if the price they pay is considerably less than anticipated to be paid by outside investors (who should purchase Preferred Stock). Otherwise the founders will run the risk of being held by the IRS for having received for services the difference between what they paid and what the investors paid. This "income" would be taxed at ordinary income rates. As hinted above, another technique used to lessen the tax risk is to issue Preferred Stock to the investors and Common Stock to the founders.

4.6 Corporation – "S" Type

<u>Advantages</u>

1. No double taxation. Income and losses flow through to owners.

2. Limited liability.

<u>Disadvantages</u>

1. Can lose status inadvertently; e.g. transfers of ownership by a shareholder to non-permitted trust or corporation.

2. Robs corporation of the use of net operating loss, incurred in early years, for a tax shelter when the corporation becomes profitable and usually needs cash for expansion. This may be a very important consideration, often overlooked by the founders.

3. Limited to 100 shareholders (which cannot be corporations or certain other entities).

4. Limited to one class of stock.

5. Being replaced by more flexible Limited Liability Company structure.

4.7 Close Corporation

Advantages

1. Flexibility in arrangements amongst the shareholders as to distribution of profits, voting and "any affairs" of the corporations including meetings of the Board and shareholders. In short, shareholders have more power than in a non-close corporation. They can approach being partners.

2. Corporate attributes of a shield against personal liability, centralized management, and continuity of life.

3. Lack of corporate formalities does not provide basis for alter ego liability.

4. Shareholders may bypass Board of Directors by use of unanimous written agreement.

Disadvantages

1. Limited to 50 shareholders.

2. If you as a founder elect Subchapter S formation and the corporation allocates profits, voting rights, or other privileges on an unequal basis, the corporation could lose S status and be subject to double taxation; i.e., at the corporate level and the owners' level as these distinctions could be held to create two classes of stock and therefore Subchapter S status would be denied.

3. Formal tax requirements are strict and the status can be lost without so intending.

4. Issuance of new shares by the corporation can be complicated as the new shareholder must agree to be bound by the Shareholders' Agreement or the corporation loses its close corporation status automatically.

5. If shareholders act as managers, as they can, they are personally liable as managers.

6. Limited marketability for the shares as the transferee is bound by the terms of the Shareholders' Agreement (if the required legend is on the share certificates) and may not wish to abide with those terms. Also, the holders specifically waive the right to register their shares for sale to the public.

7. On liquidation the shareholders could be taxed at ordinary income rates on the portion of a distribution which is greater than that received by other shareholders with the same number of shares.

From the above it is obvious why the Close Corporation is not used very often. With the advent of the Limited Liability Company, it is hard to imagine when the Close Corporation form will be used.

4.8 Limited Liability Company.

Advantages

1. Allows great flexibility in the relationship among the member-owners as to the distribution of profits, voting and management through the terms of the Operating Agreement. The members may be active in the management of the entity without being subjected to liability as in a Limited Partnership or corporation. Conversely, management rights can be accorded to only a limited number of members or even a non-member. An LLC is particularly handy when the founders wish to end-up with a sizeable amount of equity by providing the investors with a large share of the “available” cash flow until they get their investment back (say 75%), then a lesser percentage (say 50%) until they receive double their funds and then they drop to, say 25% on a permanent basis. Thus, you, as a founder, can end up with 75% of the cash flow while the investors are happy as they have received double their investment back and “ride” at 25%.

2. Allows for pass-through tax treatment; i.e., the entity is not taxed, with the members being taxed as a partnership.

3. Provides limited liability with exposure for debts and obligations limited to the committed capital investment of the members. There is no need for a Managing Member to be a corporation as in the Limited Partnership form where the General Partner is liable.

4. As compared to the “S” corporation, allows any number of members and for corporations, trusts, and any other form of organization and nonresident alien individuals to be members.

5. Can generally withdraw assets without adverse tax consequences.

6. One can change to a corporate form without tax consequences. The reverse is not true.

7. A single member LLC can have limited liability, total control of the business and not have to file a separate income tax return.

Disadvantages

1. The death, retirement, resignation, expulsion, bankruptcy or dissolution of a member may terminate the LLC unless properly handled in the Operating Agreement.

2. Limited participation by members in fringe benefits and more complexity in self employment tax issues and in offering equity options to employees.

3. On sale of a member's interest, the capital gain may be subject to IRC §751 ordinary income categorization.

4. Have to be careful on following formalities to avoid "veil piercing."

5. Cost of formation may be higher than for a corporation as the Operating Agreement is often highly customized.

6. If you wish to have an initial public offering and become a listed company (on the Bulletin Board or NASDAQ Small Cap), you may wish to start with a "C" corporation and not complicate the business growth by starting with an LLC, despite its apparent appeal, and then convert to a corporation.

7. As a new entity, the case law and tax issues are not as settled and some of the older generation are more comfortable is using the corporate format.

COMPARISON OF BUSINESS FORMS: SUMMARY DESCRIPTION

	General Partnerships	Limited Partnerships	Corporations	Limited Liability Companies
1. Ease of Formation	No writing legally required, but agreement should be in writing. No government approval needed. Section 2.3.	Certificate of Limited Partnership signed by all general partners must be filed with the Wisconsin Department of Financial Institutions (DFI). Partners must enter into limited partnership agreement. See Column (A) "General Partnerships" for other possible requirements Section 2.4.	Articles of Incorporation must be filed with and approved by DFI. Licenses or permits may be required. Sections 2.5 and 2.6.	Articles of Organization must be filed with DFI. Section 2.7.
2. Cost of Formation	Cost of drafting the agreement subject to much variation. General partnership agreements are not required to be filed with DFI, but may be recorded in the office of the register of deeds of the county in which principal place of business is located. Section 2.2.	Drafting the agreement is more time consuming and costly than drafting simple articles and bylaws for a corporation. DFI's filing fees is $70. $25 fee for expedited service. Section 2.4.	Filing fee is $100. $25 fee for expedited service. Sections 2.5 and 2.6.	Filing fee is $130. $25 fee for expedited service. Legal costs of writing the Operating Agreement are comparable to writing a Limited Partnership Agreement. Section 2.3.

	General Partnerships	Limited Partnerships	Corporations	Limited Liability Companies
3. Raising Capital	Partners' capital contributions and loans to partnership from partners and outsiders are main sources. General partnership interests are not usually deemed securities.	Same as general partnerships, except that limited partnership interests are usually deemed securities.	Sale of shares (equity) in various forms, including common, preferred, and convertible debt, while straight debt can be in various forms, including bonds, debentures, notes and other evidences of indebtedness.	Great flexibility aids in raising capital. Excellent vehicle for a "cash cow" business. Securities laws similar to limited partnerships if manager managed.
4. Control and Management	Control can be shared or centralized; great variety of control and management structures available by agreement. Absent an agreement, control is by a numerical majority of all partners.	Management and control are by the general partners. Limited partners must be excluded from control to retain limited liability (but they are less restricted under new Act than under old Act.).	Structure can be highly centralized. Many control devices available to separate management from ownership, such as nonvoting stock, voting trusts, shareholder agreements, and super majority vote requirements for certain matters.	Structure can be highly centralized and does not need to be exercised by a member. Can have a Managing Member or Members, a management Committee or be Member Managed. Must indicate whether member or manager managed in Articles of Organization.
5. Liability of Owners	Partners ordinarily share risks according to partnership agreement. Partners have joint or joint and several liability without limitation for partnership obligations to outsiders.	General partners have unlimited liability to outsiders; limited partners risk only the loss of their agreed capital contribution.	Risks are born by corporation, and shareholders risk only their investment, not their personal estates, unless courts "pierce the corporate veil". But lenders may require personal guaranties of principal shareholders of closely held corporations.	Liability is limited to the original capital investment of the members, but lenders may require member guaranties. Have to follow enough formalities to avoid veil piercing.

	General Partnerships	Limited Partnerships	Corporations	Limited Liability Companies
6. Continuity of Business	No perpetual existence. Partnerships may be dissolved by specified events or (unless otherwise agreed in advance) by the death or withdrawal of a partner. Inadvertent dissolution should be guarded against in the partnership agreement.	No perpetual existence (see Column (A) General Partnerships). Dissolution may result from loss of limited partners. Inadvertent dissolution should be guarded against in the limited partnership agreement.	Corporations have perpetual existence. However, the corporation may be dissolved, or its powers may be suspended for failure to comply with corporate formalities, or the business may fail or be sold.	Need to address dissolution events in Operating Agreement as statute could produce unwanted termination.
7. Transfer of Interests	Difficult. Partner's right to receive distributions is assignable, but transferee cannot be substituted as a partner except by consent of the remaining partners.	Same as general partnership with respect to general partner's interest. Limited partner's interest is assignable but the assignee cannot be substituted as a limited partner without the other partners' consent, unless the partnership agreement provides otherwise.	Shares are more readily transferable than interests in partnership (if there is a market for them). However, restrictions on sale to outsiders may be imposed by the articles or bylaws or by a shareholders' agreement.	Membership and economic interests are assignable. Membership interest transfer approved unanimously by the members unless the Operating Agreement or Articles provide otherwise.

	General Partnerships	Limited Partnerships	Corporations	Limited Liability Companies
8. Fringe Benefits	Some of the fringe benefits that corporations can offer employees (see Column (C)) are available to partnerships as well.	Same as General Partnerships.	Many tax-favored fringe benefits are available for corporate employees, such as incentive stock options, profit-sharing and pension plans, group insurance, and accident, health, and sick-pay plans (some of these benefits, or comparable alternatives, are also available for use by partnerships).	Limited as in partnerships.
9. Taxation, Generally	Partnerships do not pay income tax but merely file information returns. Partners are taxed on their share of the profits, whether distributed or not; “double taxation” of corporation is avoided. Lower taxes generally, even without considering double taxation.	Same as general partnerships.	Double taxation (corporations are taxed on pre-dividend profits and shareholders are taxed on dividends) is a major disadvantage; where applicable, use of S corporation status should eliminate the double taxation burden.	Same as partnerships.

	General Partnerships	Limited Partnerships	Corporations	Limited Liability Companies
10. Other Advantages	Simpler structure, fewer statutory requirements. Doing business in other states may be easier for general partnerships than for corporations. For some businesses (e.g., law firms) partnership is the traditional form.	Limited partners' names need not be disclosed to public.	Shareholders' identity (unless they are directors or officers) is not disclosed on public records.	Most flexible of entities because members can structure virtually their entire relationship by contract (e.g. Operating Agreement) rather than dictated by statute.