

Businesses: Starting Right, Starting Best

Starting right means a lot to any venture. And it usually means that a venture is started in such a way that, if differences arise in the course of that business, there are peaceable and efficient ways to change that business, or even dissolve it, without expensive legal costs and bad will. Along every step of the way, an experienced attorney can help keep this process smooth and inexpensive.

Generally, there are two basic ways to start a business: corporations and partnerships. Unlike what you may have heard, each has strengths and weaknesses. Corporations, for example, can be readily expanded by the simple expedient of raising money through issuing stocks in that corporation. Partnerships are more slowly expanded and have a lesser chance to expand, except through the active consent of all the partners. But partnerships need not hold stockholder and officer meetings and have fewer reporting requirements. Taxation is an issue with both forms of starting a business. The following is a general guide to forming a new business and starting one correctly.



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Business Start Up

You've also heard such terms as **LLC**, which means limited liability company, a hybrid of partnership and corporation, or "unincorporated association"; **PC**, a professional corporation, usually advised for professionals like lawyers and doctors, who are subject to malpractice claims, and affords less liability only because another owner is negligent; **LLP**, or limited liability partnership, which also indicates limited liability, but among partners; and **LP**, or limited partnership, where the general partners share general liability and lesser "limited" partners share none, up to their respective shares.

These are general guidelines because there are different types of partnerships and corporations mixing the advantages and disadvantages of both types. Control of assets can be a problem as well, under both types.



So, that all being said, how do I start?

As you can see, the form of a business you choose does matter in terms of liability, asset ownership, income distribution, taxation and control. There is no one solution for your needs, though there is a great need for clarity of the purposes of picking a particular form. The best way to start is this: decide what you want to do with the business and what assets it will need in its lifetime. You must also decide who is to start and who is to control the everyday operations of the business. Further, it is important to decide whether the owners of the business will contribute assets to the business. A good first step, regardless of the form of the business itself, is the composition in writing of a business agreement to be enforced among the owners, covering many topics. Regardless of the type of the business you choose, it is also wise to make provisions for the disposition of the business if things don't work out.

Before seeing an attorney, "rough out" a business agreement with your co-owners. This agreement should be in writing, with the names and Social Security numbers of the owners, home addresses, and whether or not any assets of real value (like vans, tools, garage or rental space) are included to be part of the new business, be it a corporation or partnership. Have an idea of any debts or liabilities which now exist for any of the owners. Make photocopies and bring the photocopies to your attorneys. Being prepared will go a long way and will also help you minimize legal costs in setting up the business.

Regardless of the type of business structure you choose, it is always best to have a clear idea of where a business is going by comparing what was needed at its start to what is presently going on. Like having a good idea and business plan, having a strong legal foundation in place will help your business.



Advantages and disadvantages of each form of business entity (General)

	TAXES	LIABILITY
Corporation:	Paid twice, once as Corporation, once as Income to shareholder	Very limited, unless judge rules it a "sham," then liability follows
Partnership (LLP):	Paid once, to partner as ordinary income	Unlimited (you take partners' problems even before the partnership forms in some cases)
Limited Liability Company (LLC):	Paid once, to each participant	Each liable to agreed "share"
Professional Corporation (PC):	Paid twice	Each liable for own wrongdoing
Limited Liability Partnership (LLP):	Paid once	Each liable for own wrongdoing
Limited Partnership (LP):	Paid once	"Generals" liable, "limiteds" not