

SMALL BUSINESS INFORMATION

Starting a business can be an extraordinarily rewarding experience. Individuals wishing to start a business should plan carefully and have a solid understanding of their rights and responsibilities as owners. This section will highlight some important considerations for aspiring entrepreneurs.

LEGAL STRUCTURE

There are several types of legal structures that may be utilized in forming a business entity. A number of factors will determine which type of structure is best, including (1) how many business owners will participate, (2) the extent to which the owners wish to be insulated from personal liability for the obligations of the business, and (3) the potential tax implications of each form of legal structure.

The following are general descriptions of some common types of business entities.

Sole Proprietorship

A sole proprietorship is a legal structure in which there is one individual business owner. The owner reports business profits and losses on his or her own individual tax return. The owner is also personally liable for the debts and obligations of the business.

Partnership

A partnership has two or more business owners. Each partner reports business profits and losses on his or her individual tax return. Typically all partners are responsible for the debts and obligations of the business. A “partnership agreement” detailing the rights and responsibilities of each partner should be developed when forming this type of entity.

Partnerships can take one of a few different forms. A “general partnership” is briefly described above. In a “limited partnership,” one or more “limited partners” contribute financially but relinquish managerial control over the partnership. The limited partners have limited personal liability for the business. One or more “general partners” are responsible for management of the entity and can be held personally liable for the debts and obligations of the partnership.

A third form of partnership, called a “limited liability partnership,” or “LLP,” extends the limitation of liability to all partners, while allowing for more managerial control by each partner.

Corporation

A corporation is very different from a sole proprietorship or a partnership. When a corporation is created, a legal entity is established that is separate and independent from its owners. A corporation’s taxes are not included on the tax returns of the individuals who run the corporation. A corporation must file its own taxes.

A corporate business owner has limited exposure to personal liability. Nonetheless, if a business owner abuses the special characteristics of a corporation, he or she may be held personally liable for the obligations of the corporation.

A corporation must be “incorporated” as part of its formation. To form a corporation in California, articles of incorporation must be filed with the California Secretary of State’s office.

There are different types of corporations, each having distinct advantages and disadvantages depending upon the nature, size, and purpose of the business.

GOVERNMENT REQUIREMENTS

Government requirements regarding a company’s registration, mandatory filings, and payment of taxes will vary depending upon the type of business created. Most all businesses will need to obtain a Federal Employer Identification Number (FEIN), which will be used on many important documents. The FEIN should be acquired promptly upon formation of a business entity. Businesses also need to register with the city tax collector (if the business is located in a city) or county clerk (if not within the jurisdiction of a city.)

A business may use a “fictitious business name”—a name under which business is conducted that differs from the legal name of the owner or corporation—also commonly called a “dba” (short for “doing business as”). Fictitious business names must be registered with the clerk of the county in which business is to be conducted.

Special permits may be required depending upon the activities of the business. For example, if the business intends to sell merchandise, it must secure a seller’s permit from the California Board of Equalization. Other examples of special permits include permits for handling food and permits for operating a business in a particular location.

INSURANCE

Companies may need to obtain a variety of insurance coverage depending upon the type of business conducted. A company may have multiple insurance policies covering different aspects of the business.

Businesses are often required to secure general liability coverage. General liability insurance protects a business against lawsuits brought by third parties for loss or damages caused by the business. Under a general liability insurance policy, compensation for any loss is typically paid to the third party suffering the loss, and not to the business.

Businesses which hire employees must maintain worker’s compensation insurance and unemployment insurance.

Auto insurance coverage will be needed if a business owner or employee drives a vehicle as part of his or her job duties or for business purposes. Businesses whose owners or employees use vehicles in the performance of their work must have those vehicles properly insured.

A property insurance policy may cover the physical space in which a business is located, any equipment related to the business, and the property of others entering onto the business premises.

When seeking insurance coverage for your business, it is imperative that you read any policy very closely before signing it, and consult with an insurance representative or attorney regarding any questions that you may have. You should keep a copy of all insurance policies and related documents for your business in a secure location.

TAXES

The profits generated by a business are taxable. Taxes will either be paid by the business owner(s) or, if the business is a corporation, by the business itself. For more information on taxes, consult the Internal Revenue Service (for federal tax questions), the California Franchise Tax Board (for state tax questions), or a tax professional.

CONTRACTS

Read it, read it, READ IT! You should read a contract as many times as required for you to be certain that you understand it. Do not sign a contract without first understanding its contents and consequences. You may want to request that an attorney review a contract with you before you sign it, especially if the rights and responsibilities of the parties to the agreement are not clear to you.

You should not sign a contract that has blank spaces left to be filled. Some contracts are forms that look like a worksheet, with blank spaces for terms relating to quantity, price, or other details. Do not sign a contract unless all spaces have been fully completed.

You should always keep a copy of any contract that you sign. This is the best way for you to provide evidence of its existence and terms.

For more information, please see the “Contract Law” section of this Handbook.

Getting Help

General Legal

Student Legal Services, 858.534.4374 or <http://sls.ucsd.edu>

Resources

U.S. Small Business Administration,
<http://www.sba.gov>

State of California Secretary of State’s Office: Online Business Portal,
<http://www.calbusiness.ca.gov/>

California Board of Equalization
<http://www.boe.ca.gov>

San Diego County Assessor/Recorder, 858.694.3900
<http://arcc.co.san-diego.ca.us/default.aspx>

Tax Information

Internal Revenue Service, 1.800.829.1040 (for individuals), 1.800.829.4933 (for businesses) or
<http://www.irs.gov>

California Franchise Tax Board, 1.800.338.0505 or
<http://www.ftb.ca.gov>