

Choosing A Corporate Structure

The chart below sets forth the primary differences between the C-corporation, S-corporation and LLC so that a business owner can make an informed decision and choose the best corporate structure for his business.

	C-corporation	S-corporation	LLC
Definition	An organization formed under state law. An artificial entity separate from its owners.	An organization structured legally like a corporation but taxed like a partnership.	An entity that can be taxed like a partnership but has limited liability like a corporation.
Who owns the business	Shareholders	Shareholders	Members
Type of Ownership	Stock. There may be different classes of stock.	Only one class of stock, but there can be both voting and non-voting stock.	Membership interests, of which there can be many different classes.
Personal Liability for Debts of the Business	No personal liability for shareholders, unless the corporate veil is pierced, except that the amount of their investment is at risk and to the extent they have any personally guaranteed business debts or committed a personal tort.	No personal liability for shareholders, unless the corporate veil is pierced, except that the amount of their investment is at risk and to the extent they have any personally guaranteed business debts or committed a personal tort.	No personal liability for shareholders, unless the corporate veil is pierced, except that the amount of their investment is at risk and to the extent they have any personally guaranteed business debts or committed a personal tort.
Eligible Owners	No restrictions.	100 shareholder limit. No non-individual or non-US resident shareholders, except eligible trusts and an S-corporation can own another S-corporation.	No restrictions.
Management	Managed by director(s), who are elected by shareholders. Director(s) elect officer(s).	Managed by director(s), who are elected by shareholders. Director(s) elect officer(s).	All or a group of members, a designated managing member(s) or one or more designated managers.
Formation/Corporate Formalities	File Articles or Certificate of Incorporation with the Secretary of State. Prepare By-Laws, annual meetings, minutes and other corporate formalities.	File Articles or Certificate of Incorporation with the Secretary of State. Prepare By-Laws, annual meetings, minutes and other corporate formalities. All shareholders must sign and file Form 2553 to elect S-corporation tax status with the IRS within 75 days of date before the beginning of the tax year in which the election is to take effect.	File Articles of Organization with the Secretary of State, execute an Operating Agreement, prepare minutes, comply with publication requirements. Entity name must indicate that it is an LLC (such as "LLC" or "Limited Liability Company").
Income Tax	Double Taxation. Profits are taxed on the corporate level and then again on shareholder dividends. Income that would be taxed on the corporate level can be paid as salaries to employee shareholders to the extent that the amounts are reasonable, creating a deduction for the business.	Flow-Through Taxation. There is no tax on the corporate level. Income or loss is passed through to the shareholders. All profits are taxed even if not distributed.	Can be structured so there is no tax at the entity level, with the income or loss passed through to the members like in an S-corporation or a partnership. To elect partnership taxation, an LLC must file Form 1065 (other tax forms may need to be filed depending on selected classification).
Withholding and Social Security Taxes	No self-employed tax on principals' wages or profits. Usual FICA and Medicare taxes on wages.	No self-employed tax on principals' wages or profits. Usual FICA and Medicare taxes on wages.	Principals must pay self-employment tax. Higher FICA taxes for principals.
Employee Benefits Plans	No restrictions.	No restrictions.	Principals not eligible for Simple IRA plans.
Federal Tax Rates	Up to 35%	Up to 39.6% (individual tax rates apply)	Up to 39.6% (individual tax rates apply)
Duration	Perpetual	Perpetual	Can be Perpetual or any duration specified in the Operating Agreement.
Distribution of Funds	Dividends must be paid to shareholders based on the proportion of their stock ownership. Multiple classes of stock can be used to differentiate among classes of stockholders.	Dividends must be paid to shareholders based on the proportion of their stock ownership. Only one class of stock is permitted.	Profits can be distributed any way the Operating Agreement specifies, and do not have to be based upon the member's percentage of ownership. However, owners must be careful to comply with IRS regulations regarding partnership income/loss allocation and distributions.
Raising Capital	Sell shares. Can incur debt.	Sell shares. Can incur debt.	Possible to sell LLC membership interests, subject to the terms of the Operating Agreement. Can incur debt.
Most Suitable For	Preferred corporate structure of venture capitalists, other investors, public companies and corporate subsidiaries.	Owners who want individual tax rates to apply to their business income. Preferred by smaller businesses that expect losses during the initial years of operation and for businesses that do not plan on going public.	Owners can decide what type of taxation they want for the business. Particularly beneficial for distributing profits in a disproportionate method to the capital contributed after used in small businesses and for real estate investments.
Securities Laws	The issuance or transfer of stock is subject to federal and state securities laws.	The issuance of stock is subject to federal and state securities laws.	The issuance or transfer of membership interest is subject to federal and state securities laws.
Costs	Filing fee with the Secretary of State, annual franchise taxes, agent for service of process annual fee.	Filing fee with the Secretary of State, annual franchise taxes, agent for service of process annual fee.	Filing fee, publication requirement, annual franchise tax, agent for service of process annual fee.

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