### Business Entity Selection

#### At a Glance

Research Park at University of Illinois, 2001 South First Street, Suite 209  Champaign, IL 61820  217-352-3900

<table>
<thead>
<tr>
<th>Liability (Limited v. Personal)</th>
<th>Sole Proprietorship</th>
<th>General Partnership</th>
<th>S Corporation</th>
<th>C Corporation</th>
<th>Limited Liability Company</th>
<th>Single Member Limited Liability Company</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>An individual carrying on a business for profit.</td>
<td>Association of two or more co-owners carrying on a business for profit.</td>
<td>Limited liability for shareholders even if they participate in management.</td>
<td>Limited liability for shareholders even if they participate in management.</td>
<td>Combines limited liability provided by a corporation with pass through partnership tax treatment.</td>
<td>Limited liability for owners makes it a better choice than sole proprietorship unless cost of formation or maintenance is a controlling factor.</td>
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<td>Unlimited personal liability for the owner.</td>
<td>Partners have unlimited personal liability for partnership debts.</td>
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<tr>
<td>Tax Implications</td>
<td>Single level of income tax.</td>
<td>Pass through tax treatment (partnership files form 1065 but all income and expenses pass through to individual partners on Schedule K-1).</td>
<td>Pass through tax treatment under most circumstances but not as complete as for the LLC.</td>
<td>Tax at both corporate and shareholder level - this double tax can be avoided to some extent by payment of reasonable salaries to shareholders in exchange for services actually rendered.</td>
<td>LLC files a partnership tax return (form 1065) with all income and expenses being passed through to individual owners of the LLC on a K-1.</td>
<td>Disregarded entity from an income tax perspective - all income and expenses are reported on the sole member’s tax return and no income tax return need be filed by the LLC.</td>
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<td>Complexity of Formation and Management</td>
<td>Relatively simple to start.</td>
<td>Relatively easy to start - partnership agreement is typically entered into but is not legally required.</td>
<td>Formation steps include filing Articles of Incorporation with the Secretary of State, filing Sub S election with the IRS, adoption of Bylaws and, usually, adoption of a Shareholder (buy-sell) Agreement.</td>
<td>Formation similar to S corp except Sub S election not filed with IRS.</td>
<td>Formation steps include filing articles of organization with the Secretary of State, contributing an appropriate amount of capital, and adopting an operating agreement.</td>
<td>Formation process similar to multiple-member LLC except that the operating agreement will likely be less complex.</td>
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<td>If business conducted other than under the name of the sole proprietor, assumed name publication needed.</td>
<td>Managed by the partners or as described in the partnership agreement.</td>
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<td>Managed by the sole proprietor.</td>
<td>Problem: Any partner can bind the partnership.</td>
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<td>Capital - Effect on Ability to Raise Capital through Angel Investment, VC or IPO</td>
<td>Any transfer of the business would be of the underlying assets as opposed to a transfer of shares in the business.</td>
<td>Ability to raise capital is limited since most investors would prefer to invest in an entity offering limited liability.</td>
<td>Limit of 100 shareholders, only one class of stock is allowed, difference in voting rights is allowed, partnerships and corporations cannot be shareholders, only U.S. citizens and residents may be shareholders.</td>
<td>No limits on type or number of shareholders, different classes of stock allowed (common and preferred) thus enabling different priority for return of capital.</td>
<td>No limitation on the number of members, no limitation on who may invest, treatment of gain on distribution of appreciated property more favorable, different classes of ownership are allowed so there is the flexibility to provide for a priority return of capital to investors.</td>
<td>Outside investment allowed only if converted to a multi-member LLC.</td>
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<td>Capital needs - addressed through loan to sole proprietor.</td>
<td>LLC is almost always the better choice if partnership tax treatment is the goal.</td>
<td>Is easier to convert S corp to C corp than it is LLC to C corp in event venture capital is sought.</td>
<td>If venture capital is being sought, incorporation should be in the state of Delaware.</td>
<td>Often used to own commercial real estate.</td>
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</tbody>
</table>

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## Intellectual Property Protection

### At a Glance

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### Patents

- **Property Protected:** Anything man-made that is new, useful, and non-obvious.
- **Not new:** If there is a commercial use, offer for sale, or public disclosure more than one year before a patent is applied for.
- **One year grace period:** There is no one year grace period for foreign patents.

### Trademarks

- **Property Protected:** Any distinct word, name, symbol, or device used to identify a source of goods or services.
- **Distinctive:** Inherently distinctive if arbitrary, fanciful, or suggestive.
- **Not distinctive:** Also distinctive if descriptive with acquired secondary meaning.

### Copyrights

- **Property Protected:** Original work of authorship fixed in a tangible medium of expression.
- **Distinctive:** Originality requires some amount of creativity by the author.

### Trade Secrets

- **Property Protected:** Commercially valuable information not generally known or readily ascertainable, if reasonable efforts are used to keep it secret.
- **Distinctive:** Disclosure to one person without confidence may destroy a trade secret.

### Registration

- **Patents:** U.S. Patent and Trademark Office. Application required.
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- **Trade Secrets:** NONE.

### Rights

- **Patents:** Right to exclude others from making, using, selling, or offering for sale in U.S. or importing to U.S.
- **Trademarks:** Right to stop others from using confusingly similar marks in commerce.
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- **Trade Secrets:** Right to sue others from improperly acquiring the trade secret or breaching confidence regarding the trade secret. Does not prevent reverse engineering.

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- **Patents:** Pat. Pending. Pat. No. ######.
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- **Copyrights:** "Copyright" or ©, year of first publication, author's name.
- **Trade Secrets:** Notice to show confidential nature to employees and anyone else with access to the information.

### Duration

- **Patents:** Generally, 20 years from the date of filing. Non-registered: No limit as long as you continually use it. Registered: No limit as long as you continually use it and file appropriate renewal papers.
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