

Choice of Entity and Other Considerations for Launch and Growth

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How to Structure Your Business

- Sole Proprietorship
- Partnership (General, Limited, LLP)
- Corporation (C corporation, S corporation, Benefit corporation)
- LLC (L3C, S corporation)





Choice of Entity: Principal Considerations

- Limited Liability
- Tax Treatment
- Formation and Maintenance Costs
- Capital Needs
- Growth Expectations and Anticipated Liquidity Events
- Management Structure



Sole Proprietorship

- No Limited Liability
- Pass through Tax Treatment – Schedule C
- Inexpensive
- Poor Choice for Capital Raising
- Not Scalable
- Default classification for one person, if no entity formed
- Conclusion: Not Recommended



Partnership

- No Limited Liability
- Pass through Tax Treatment – Requires Partnership Tax Return
- Relatively inexpensive / Formation
- Poor Choice for Capital Raising
- Not Scalable
- Default classification for two or more persons, if no entity formed
- Conclusion: Not Recommended
- Derivatives (Limited Partnership, Limited Liability Partnership)



Limited Liability Company

- Limited Liability
- Variable Tax Treatment (Partnerships & Corporations governed by contracts, i.e., Operating Agreement)
- Flexible
- Acceptable Choice for Capital Raising
- Somewhat Scalable
- Conclusion: Recommended in the Right Circumstances



Corporations

- Limited Liability
- Variable Tax Treatment (C corporation vs. S corporation)
- Relatively more expensive depending on number of stockholders and capital structure
- Annual corporate and tax filings
- Highly Scalable
- Conclusion: Preferred Entity Choice



Benefit Corporations

- Alternative corporate designation
- Must be formed to address general public benefit and may address specific public benefit
- Requires supermajority to opt in or out
- Must designate an independent benefit director
- The Corporation must prepare an annual benefit report on its creation of public benefit
- No third party cause of action
- B Corporation certification





Intellectual Property Issues: Choice of Name

- Availability of Entity Name
- Trade Name Reservation and Registration
- Statutory Requirements
- Domain Name Availability
- Trademark Search



Intellectual Property Protection

- Patent (NDA's)
- Trademark
- Copyright
- Trade Secret and Contractual Protection
- Non-Disclosure Agreements, Consulting/Employment Agreements
- Independent Contractor Agreement – work for hire



Financing your Business

- Grants, SBIR, STTR's
- Family and Friends
- Angel Investors
- Venture Capital
- In- Kind, Crowdfunding/Community Support
- Securities Law Compliance



Questions?

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