DCCA's Guide to Choosing the Right Legal Form For Your Business

Source: www.hawaii.gov/dcca

Issues to Consider	Sole Proprietorship	Partnership	Corporation	Sub S Corporation	Limited Liability Partnership	Limited Liability Company
Ownership	By a single individual	By two or more persons	By unlimited number of shareholders	By shareholders: number of shareholders limited to 100, no foreign investors	2 or more persons or entities	1 or more persons or entities
Business Registration (State Dept. of Commerce & Consumer Affairs)	Not required, unless public notice of trade name is desired	Within 30 days after formation, file Certificate of Limited Partnership or General Partnership forms.	File Articles of Incorporation. For non-Hawaii corporations, file Application for Certificate of Authority with a Certificate of Good Standing	Same as regular corporation	File a General Partnership form with a Statement of Qualification. For non-Hawaii LLPs, file as a Foreign LLP.	File Articles of Organization. For non-Hawaii LLCs , file a Certificate of Authority for LLCs
Management (Control)	Entirely in hands of owner	By general partners	Corporation's board of directors	Same as regular corporation	By general partners	Member-managed or manager-managed
Life of the Business	Will terminate with death or disability of owner	Generally for a specific, agreed-upon term. Partnership may be terminated by death, withdrawal, insolvency or legal disability of a general partner	Unlimited, unless by state law or charter	Same as regular corporation	Generally for a specific, agreed-upon term. Partnership may be terminated by death, withdrawal, insolvency or legal disability of a general partner.	May be for a specific agree-upon time or at will
Liability	Owner liability unlimited. Personal property can be attached be creditors to settle business debts	Unlimited for general partners. General partners are jointly and severally liable for obligations of partnership. Limited partner's liability limited to amount invested	Shareholders' liability limited to their investment in corporate stock	Same as regular corporation	Limited to amount of investment	Limited to amount of investment or as specified in Articles of Organization
Taxation	Owner taxed on business profits whether or not distributed. Business does not file a separate tax return.	Partners taxed on share of partnership income whether or not distributed. Business does not file a separate tax return.	Corporation taxed on taxable income, whether or not distributed to shareholders. Shareholders taxed on dividends distributed by corporation.	Shareholders taxed on some taxable income of the corporation, whether or not distributed. Entity must also report and pay taxes on certain types of income.	Partners taxed on share of partnership income, whether or not distributed. Business does not file a separate tax return.	Members taxed on share of company income, whether or not distributed. Alternatively, can elect to be treated as a corporation for tax purposes.
Advantages	*Uncomplicated *Ease of formation *Greater flexibility of action *Singleness of control *Economy of operation *Tax advantage by avoiding corporate income tax *Maximum centralized authority	*Division of responsibilities *Ease of formation *Greater flexibility of action *Increased sources of capital *Incentive to key employees *Tax advantage by avoiding corporate income tax	*Legal entity separate from individuals *Limited personal liability *Continuity of existence *Continuity of management *Easier to raise capital *Incentive to key employees *Readily transferable interests *Possible separation of ownership & management	*Legal entity separate from individuals *Limited personal liability *Continuity of existence *Continuity of management *Readily transferable interests *Possible separation of ownership & management *Net operating loss deductible by shareholders	*Division of responsibilities *Ease of formation *Limited personal liability *Greater flexibility of action *Increased sources of capital *Incentive to key employees *Tax advantage by avoiding corporate income tax	*Legal entity separate from individuals *Limited personal liability *Continuity of existence *Continuity of management *Easier to raise capital *Incentive to key employees *Readily transferable interests *Possible separation of ownership & management
Disadvantages	*Unlimited personal liability *Legal life ends with owner's death *Difficulty in raising capital *Possible personnel difficulties *Owner's salary cannot be treated as an expense, hence, not tax deductible	*Unlimited personal liability *Impermanence of existence *Division of control/authority *Difficult to find compatible partners *Difficult to raise additional capital *Owners' salary/wage cannot be treated as an expense, hence, not tax deductible	*Difficult, costly formation, must observe formalities *Subject to close government regulation *Scope limited by corporate charter *Inflexibility of operations *Double taxation by paying both corporate and personal income taxes	*Only one class of stock outstanding (less flexible than C corporations) *Difficult, costly formation *Subject to close government regulation *Inflexibility of operations	*Impermanence of existence *Division of control/authority *Difficult to find compatible partners *Difficult to raise additional capital *Owners' salary/wage cannot be treated as an expense, hence, not tax deductible	*Difficult, costly formation *Subject to close government regulation *Scope limited by company charter *Inflexibility of operations