

Please accept our heartfelt gratitude for taking one step ahead in the journey of your entrepreneurship achievement 😊. In this module, we will be discussing about the obligatory procedures that needs to be followed by the entrepreneurs when they are setting up their business.

## Business structure

### So what is it???

Among all the decisions you make for your business, probably the most important one is the type of legal structure you select for your company. Not only it will impact on how much you pay in taxes, but also will affect the amount of paperwork your business is required to do as well as the personal liability you face and your ability to raise money. Amongst several forms of the most common forms of business structure are sole proprietorship, partnership, corporation and S corporation. A more recent development to these forms of business is the limited liability company (LLC) and the limited liability partnership (LLP). Because each business form comes with different tax consequences. Entrepreneurs need to make their selection wisely and choose the structure that most closely matches their business's needs.

**Sole Proprietorship** is the simplest structure for a business, which usually involves just one individual who owns and operates the enterprise. If anyone intends to work alone, this structure may be the way to go. The tax aspects of a sole proprietorship are appealing because the expenses and income from the business are included on the personal income tax return form. Profits and losses are recorded on a form called Schedule C, which is filed with it. With a sole proprietorship, business earnings are being taxed only once, unlike other business structures. Another big plus is that entrepreneurs will have complete control over their business-and will make all the decisions.

However, there are a few disadvantages to consider. Selecting the sole proprietorship business structure means entrepreneurs are personally responsible for their company's liabilities. Raising money for a sole proprietorship can also be difficult. Banks and other financing sources may be reluctant to make business loans to sole proprietorships. In most cases, one will have to depend on his/her financing sources, such as savings, home equity or family loans.

**Partnership** of a business will be owned and operated by several individuals, entrepreneurs should take a look at structuring your business as a partnership. Partnerships come in two varieties: general partnerships and limited partnerships. In a general partnership, the partners

manage the company and assume responsibility for the partnership's debts and other obligations. A limited partnership has both general and limited partners. The general partners own and operate the business and assume liability for the partnership, while the limited partners serve as investors only; they have no control over the company and are not subject to the same liabilities as the general partners.

Unless someone expects to have many passive investors, limited partnerships are generally not the best choice for a new business because of all the required filings and administrative complexities. If there are two or more partners who want to be actively involved, a general partnership would be much easier to form.

One of the major advantages of a partnership is the tax treatment it enjoys. A partnership does not pay tax on its income but "passes through" any profits or losses to the individual partners. At tax time, the partnership must file a tax return form that reports its income and loss to the IRS. Personal liability is a major concern in case of a general partnership to structure the business. Like sole proprietors, general partners are personally liable for the partnership's obligations and debts. Each general partner can act on behalf of the partnership, take out loans and make decisions that will affect and be binding on all the partners.

**Corporation** or the corporate structure is more complex and expensive than most other business structures. A corporation is an independent legal entity, separate from its owners, and as such, it requires complying with more regulations and tax requirements.

The biggest benefit for a business owner who decides to incorporate is the liability protection he or she receives. A corporation's debt is not considered that of its owners, so if an entrepreneur organizes their business as a corporation, they are not putting their personal assets at risk. A corporation also can retain some of its profits without the owner paying tax on them.

Another plus is the ability of a corporation to raise money. A corporation can sell stock, either common or preferred, to raise funds. Corporations also continue indefinitely, even if one of the shareholder's dies, sells the shares or becomes disabled. However, the corporate structure, comes with a number of downsides. A major one is higher costs. Corporations are formed under the laws of each state with its own set of regulations. One will probably need the assistance of an attorney for guidance. Another drawback is the owners of the corporation pay a double tax on the business's earnings. Not only are corporations subject to corporate income tax at both the federal and state levels, but any earnings distributed to shareholders in the form of dividends are taxed at individual tax rates on their personal income tax returns.

**S Corporation** is more attractive to small-business owners than a regular (or C) corporation. That's because an S corporation has some appealing tax benefits and still provides business owners with the liability protection of a corporation. With an S corporation, income and losses are passed through to shareholders and included on their individual tax returns. As a result, there's just one level of federal tax to pay. In addition, owners of S corporations who don't have inventory can use the cash method of accounting, which is simpler than the accrual method. Under this method, income is taxable when received and expenses are deductible when paid. S corporations can also have up to 100 shareholders. This makes it possible to have more investors and thus attract more capital, tax experts maintain.

S corporations do come with some downsides which is, higher legal and tax service costs. The legal and accounting costs of setting up an S corporation are also similar to those for a regular corporation. Another major difference between a regular corporation and an S corporation is that S corporations can only issue one class of stock. In addition, unlike in a regular corporation, S corporation stock can only be owned by individuals, estates and certain types of trusts.

**Limited Liability Company** is often referred to as "LLCs," have been around since 1977, but their popularity among entrepreneurs is a relatively recent phenomenon. An LLC is a hybrid entity, bringing together some of the best features of partnerships and corporations. **LLCs** were created to provide business owners with the liability protection that corporations enjoy without the double taxation. Earnings and losses pass through to the owners and are included on their personal tax returns. To set up an LLC, one must file articles of organization with the secretary of state in the state where (s)he intends to do business. Some states also require filing an operating agreement, which is similar to a partnership agreement. Like partnerships, LLCs do not have perpetual life. Some state statutes stipulate that the company must dissolve after 30 years. Technically, the company dissolves when a member dies, quits or retires.

**Limited Liability Partnership** allows the general partners to have limited liability. For example, the partners are liable for their own malpractice and not that of their partners. This legal form works well for those involved in a professional practice, such as physicians.

## Name your business

### Why Naming?? Hmmm??

When it comes to small-business success, The right name can make a company the talk of the town. The wrong one can doom it to obscurity and failure. Ideally, name should convey the expertise, value and uniqueness of the product or service of a business. Below are some facts one needs to consider in order to give a small business the most appropriate and effective name.

### What's in a Name?

An ideal name should reinforce the key elements of the business. Entrepreneurs role in developing a niche and a mission statement will help pinpoint the elements they want to emphasize in the business name. The more a business name communicates to consumers about the business, the less effort one must exert to explain it. According to naming experts, entrepreneurs should give priority to real words or combinations of words over fabricated words. People prefer words they can relate to and understand. That's why professional namers universally condemn strings of numbers or initials as a bad choice. On the other hand, it is possible for a name to be too meaningful. Common pitfalls are geographic or generic names. How can a name be both meaningful and broad? Descriptive names tell something concrete about a business -- what it does, where it's located and so on. Suggestive names are more abstract. They focus on what the business is about.

When choosing a business name, keep the following tips in mind:

- Choose a name that appeals not only to you but also to the kind of customers you are trying to attract.
- Choose a comforting or familiar name that conjures up pleasant memories so customers respond to your business on an emotional level.
- Don't pick a name that is long or confusing.
- Stay away from cute puns that only you understand.
- Don't use the word "Inc." after your name unless your company is actually incorporated.

## What you can do.....

**Enlist Expert Help to Start**, includes coming up with a good business name can be a complicated process. One might consider consulting an expert, especially in a field in which the company name may influence the success of the business. Naming firms have elaborate systems for creating new names and they know their way around the trademark laws. They can provide advice against bad name choices and explain why others are good. The downside is cost. A professional naming firm may charge as much as \$80,000 to develop a name that generally includes other identity work and graphic design as part of the package.

**Get Creative**, involves the option of coining a name which is becoming more popular now a day when almost every existing word in the language has been trademarked. Some examples are Acura and Compaq, which were developed by naming firm NameLab. Coined names can be more meaningful than existing words, says **NameLab president Michael Barr**. For example, "Acura" has no dictionary definition but the word suggests precision engineering, just as the company intended. NameLab's team created the name Acura from "Acu," a word segment that means "precise" in many languages. By working with meaningful word segments (what linguists call morphemes) like "Acu," Barr says the company produces new words that are both meaningful and unique. An easier solution would be to use new forms or spellings of existing words. For instance, NameLab created the name Compaq when a new computer company came to them touting its new portable computer. The team thought about the word "compact" and came up with Compaq, which they believed would be less generic and more noticeable.

**Test Your Name**, includes trademark searching, after four or five names that are memorable and expressive have been narrowed. Not every business name needs to be trademarked, as long as the state government gives the order to go-ahead and the trade name is unique. But you should consider hiring a trademark attorney or at least a trademark search firm before to make sure your new name doesn't infringe on another business's trademark which can lead towards legal battles and bankruptcy as consequences.

**Do a Final Analysis**, by recalling all your initial criteria. Which name best fits the business objectives? Which name most accurately describes the company you have in mind? Some entrepreneurs arrive at a final decision by going with their gut or by doing consumer research or testing with focus groups to see how the names are perceived.

Keep in mind that professional naming firms devote anywhere from six weeks to six months to the naming process. You probably won't have that much time, but plan to spend at least a few weeks on selecting a name.

### What is intellectual property and its objectives . . .

Intellectual property actually refers to creations of the intellect for which a monopoly is assigned to designated owners by law. Intellectual property rights (IPRs) are the protections granted to the creators of IP, and include trademarks, copyright, patents, industrial design rights, and in some jurisdictions trade secrets. Artistic works including music and literature, as well as discoveries, inventions, words, phrases, symbols, and designs can all be protected as intellectual property or generally, it can be said that, intellectual properties are a type of strength that cannot be seen but allows the company enjoy some legal benefits.

The **objectives** of intellectual property law are to incentivize creativity and serve the public interest by facilitating economic growth. It aims to protect the property rights of owners of intellectual property so that they may reap the benefits of their creativity.

### What are the rights???

Intellectual property rights include patents, copyright, industrial design rights, trademarks, plant variety rights, trade dress, and in some jurisdictions trade secrets. Some brief explanations below:

A **patent** is a form of right approved by the government to an originator, giving the owner the right to exclude others from making, using, selling, offering to sell, and importing an invention for a limited period of time, in exchange for the public disclosure of the invention. An invention is a solution to a specific technological problem, which may be a product or a process which has to satisfy three main requirements: it has to be new, not obvious and there needs to be an industrial applicability.

A **copyright** gives the creator of an original work exclusive rights to it, usually for a limited time. Copyright may apply to a wide range of creative, intellectual, or artistic forms, or "works". Copyright does not cover ideas and information themselves, only the form or manner in which they are expressed.

An **industrial design right** (sometimes called "design right" or *design patent*) protects the visual design of objects that are not purely utilitarian. An industrial design consists of the creation of a shape, configuration or composition of pattern or color, or combination of pattern and color in three-dimensional form containing aesthetic value. It can be a two- or three-dimensional pattern used to produce a product, industrial commodity or handicraft.

**Plant breeders'** rights or plant variety rights are the rights to commercially use a new variety of a plant. The variety must amongst others be novel and distinct and for registration the evaluation of propagating material of the variety is examined.

A **trademark** is a recognizable sign, design or expression that distinguishes products or services particular trader from the similar products or services of other traders.

**Trade dress** is a legal term of art that generally refers to characteristics of the visual and aesthetic appearance of a product or its packaging (or even the design of a building) that signify the source of the product to consumers.

A **trade secret** is a formula, practice, process, design, instrument, pattern, or compilation of material which is not normally known or reasonably ascertainable, by which a business can obtain an economic advantage over competitors and customer.

### Legal responsibilities as a business owner

Running a business can be a minefield of constantly changing laws and regulations and being legally compliant relies on being aware of rules and regulations. There are a number of issues need to be considered when operating a business and will vary depending on the nature of the business, the business structure and which country/state you operate it in. below are some major legal issues that needs to be considered-

#### Business registration

All business owners in have to register before commencing any business activities. As well as registering a business name, there are a variety of taxes that can impact the business and may require a registration. These may include:

- A Country/state Business Number (ABN)
- The Goods and Services Tax (GST)
- A Tax File Number (TFN)
- Pay as you go (PAYG) withholding.

There are other registrations such as registering for a domain name or registering a trade mark that may be applicable for the business. Different registration process is required according to the business structure.

## **Licences**

When operating a business, it is likely that certain licences will be needed to make sure you are complying with your legal obligations. You can search for information government licences, permits, approvals, registrations, codes of practice, standards and guidelines you need to know according to your country/state law. The licence or permit you require may depend on the product or service you're selling. You will need to find out whether there is a licensing requirement for your particular business, or you may face fines or other difficulties. Licences and permits can vary from state to territory.

## **Privacy Act**

Privacy act principles cover how a business handles personal information, including the:

- handling and processing of personal information
- use of personal information for direct marketing purposes
- disclosing of personal information to people overseas.

Privacy Act obligations can be found from the country office of information commissioner/department of business etc. You'll need to be aware of your obligations under the privacy principles of your country

## **Anti-bullying laws**

Bullying occurs when a person or group of people, repeatedly behave unreasonably towards a worker. The behavior also has to be deemed a risk to the worker's health or safety. All employers and managers have a duty of care to provide a safe and healthy workplace. This is a proactive duty to prevent any risks which may arise, including psychological dangers such as bullying.

## **Independent Contractors**

Independent contractors are self-employed and provide a service to a business. Often they negotiate their own payments and working arrangements, as well as have the opportunity to work for a range of clients at any given time. Before entering into a contract, you will need to determine whether someone is classified as an independent contractor. Their status will affect their rights and obligations. It is possible for someone to be an employee for some work and an independent contractor for other work. You also need to remember that it's illegal to fire, or threaten to fire, an employee if they do not agree to become a contractor. It is important to know whether you are hiring an independent contractor or an employee, so you can be sure you are complying with your legal obligations.



## Unfair Dismissal

Small businesses have different laws compared with larger businesses when it comes to unfair dismissal. Most small businesses (those with fewer than 15 employees) will fall under the Small Business Fair Dismissal Code.

### Register your Business

#### Why registration???

New business owners spend sleepless nights brainstorming the perfect name. But after a name has been picked, what's the next step to making sure everything is legal? The most important reason to register a business name is because that's the law. In general, the public needs to know who is behind a company. The one exception is when a sole proprietor conducts business with his or her own name; so, if Jane Doe runs an accounting business as Jane Doe, there's no need to register that name. The other key reason to register a business name is to prevent anyone else from using it. After you've spent months or years building your brand, the last thing you want is someone else to come into the market and start using the same or a very similar name.

#### Worried about the registration process???

There are three key paths to registering and protecting a business name. Here we'll break down the differences so you can decide which route is best for you.

**1. File a Doing Business As (DBA).** The simplest way to register a name is by filing a DBA with your country/state. This is also called a Fictitious Business Name. If you have a sole proprietorship, a DBA is the way to use a business name without having to create a formal entity (such as a corporation). For example, if Jane Doe wanted to operate her accounting business as "Numbers by Jane," then she would need to file a DBA for "Numbers by Jane." Again, that's so there's a public record to let people know who is running the business.

There's one more situation where you need to file a DBA. Let's say you have an LLC named "Jane's Company, LLC" but you also want to start doing business as "Jane's Company Too." You'll need to get a DBA for Jane's Company Too.

**2. Create an official business structure.** When you form an LLC or corporation for your business, this will automatically register your business name with the country/ state. Before your LLC/corporation application is approved, the state will first make sure that no one else already has the same/similar name in the state. Then, once approved, no other business will be able to come in and use your name in the state.

Keep in mind that this doesn't offer you any kind of brand protection. If you're operating a local business (i.e. a restaurant), then registering your name with your country/state might be enough protection for you. But if you are planning on expanding nationally/ internationally, operating on the web or providing services/selling products nationwide, then you should take your brand protection to the next level with a trademark.

**3. Get a trademark.** If you want to get serious about protecting your name and brand then you'll need to apply for a trademark with the country Patent and Trademark Office.

You're not actually required to register a trademark but registered trademarks enjoy stronger protection than common law marks. If you've registered your trademark, it's going to be much easier to recover your property. If you are going to apply for a trademark, it's smart to conduct a comprehensive search beforehand to make sure no one is already using your proposed name in a similar capacity. That's because if your name isn't available, your application will be rejected right away.

**To conclude,** it can be said that, a business structure is a must when you are thinking about starting a new business. As you are getting your new business off the ground, make sure you've taken the right legal steps to use and protect your name. Your name represents everything that your business is about, so you'll need to get serious about protecting it.

**For more information please visit the links ☺**

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