The C & D Newsletter

Citron & Deutsch
A LAW CORPORATION

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THE BENEFITS OF INCORPORATING

One of the first decisions to make when starting a new business is the selection of a business entity. This Newsletter will discuss the advantages of the conducting business as a corporation.

1. ***Limitation of Liability.*** A corporation which is validly formed, adequately capitalized, and which complies with necessary corporate formalities, protects the owner's personal assets against business liabilities. This is particularly important if the nature of the business results in potential liabilities which cannot be adequately covered by insurance, or if the owner of the business has substantial net worth or income outside of the business. However, it must be kept in mind that landlords and bankers may require the owner of a small business to personally guarantee the corporation's obligations.

2. ***Continuity of Existence.*** Corporations have potentially unlimited duration, and will continue to exist despite the death of one of the shareholders of the corporation.

3. ***Transferability of Interests.*** Stock in a corporation is freely transferrable, and it is a simple matter to issue stock to employees. Often, however, owners of a new business find it prudent to place restrictions on transferability of stock in a buy-sell agreement to prevent the transfer of stock to a person not involved in the business, and to cover the event of the death or disability of a shareholder.

4. ***Management and Control.*** A corporation permits centralized management. The shareholders delegate management and control to the Board of Directors who in turn delegate management and control to the officers of the corporation. This allows a majority shareholder to control the management of the corporation. If desired, minority ownership interests may be protected through the use of supermajority voting provisions or the use of different classes of stock.

5. ***Raising Capital.*** A corporation is advantageous in raising capital since the liability of the investors is limited to the amount of capital contributed, and the availability of different classes of stock can provide flexibility among different investors. A corporate image to the outside world is also beneficial.

6. ***Compliance Requirements.*** After the initial incorporation, there are relatively few corporate housekeeping matters, other than corporate tax returns and annual shareholders' and directors' meetings.

7. ***Tax Considerations.*** The company's accountant and attorney can determine whether it is advantageous to be taxed as a C corporation or as an S corporation (partnership). On a C corporation the tax year end may be other than December 31, allowing for a rollover of income to the next fiscal year.

8. ***Compensation of Employees.*** A corporation can issue stock or grant stock options to its employees, which will permit it to attract and retain skilled employees.

9. ***Estate Planning.*** A corporate form allows the owner of a business to pass on different interests in the corporation to different persons, thereby maximizing estate planning opportunities.In determining whether to conduct business as a sole proprietorship, general or limited partnership, or as a corporation, it is important for the attorney and the accountant to have a comprehensive view of the nature of the business, its operating procedures and capital requirements. The business owner, attorney and accountant may work together to select the most appropriate business entity.