The Right Foot Workshop Series

Presentation by:
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The RISBDC exists to train, educate, and support entrepreneurs of both new (pre-venture) and established small businesses. Positioned within the nationwide network of SBDCs, we offer resources, key connections at the state and national level, workshops, and online and in-person support that equips us to help Ocean State entrepreneurs reach the next level of growth.
SELECTING THE BEST ENTITY FOR YOUR BUSINESS

Presented by
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Factors to Consider

- Liability
- Taxation
- Ownership and Capital Structure
- Organizational Structure
- Ease of Formation
- Continuity of Business Entity
- Operational Limitations
- Business Sale and Other Exit Strategies
- Special Business Situations
TYPES OF BUSINESS ENTITIES

- Sole Proprietorship
- General Partnerships
- S Corporations
- C Corporations
- Limited Partnerships
- Limited Liability Companies
Personal Liability versus Limited Liability

- **Sole Proprietorship**
  - Operates business without a statutory authority
  - FULLY LIABLE for the obligations of the business to the extent of his/her business assets AND personal assets
  - Includes liability for the acts of employees
General Partnership

- General Partner is liable for business obligations to the extent of his/her personal assets (as well as partnership assets) R.I.G.L. 7-12-26
- General Partner liable for:
  - Own Torts (i.e. negligence)
  - Torts or Breach of Contract committed by a partner within the scope of the partnership R.I.G.L. 7-12-24
Partnership Agreements

- One partner agrees to indemnify the other partner for his/her acts
- NO EFFECT ON THIRD PARTIES
S and C Corporations

- In general, owners of the corporation are not liable for the obligations of the corporations.
- Liability of the shareholders of the corporation usually limited to the consideration paid or contributed to the corporation (R.I.G.L 7-1.2-612).
- When can be individually liable?
  - Liable FOR OWN TORTS
  - Formalities of the corporation not observed….PIERCE THE CORPORATE VEIL.
LIMITED LIABILITY COMPANIES

- Owners and managers of an LLC have limited liability R.I.G.L. 716-18
- Unlike an LP, members who participate in an LLC do not lose their limited liability
- May have different levels of ownership
FINAL THOUGHTS

- Personal liability for personal acts – doesn’t matter what business form you are
- Liability for employees – business form DOES matter
- Insurance
ENTITY TAXATION VERSUS PASS - THROUGH TAXATION

- Entity taxation means the business entity is itself taxed, whereas pass-through taxation means that the business entity is not taxed but the owners are taxed as if the income, loss, expenses and deductions were earned directly by them.
Pass-Through Entities

- Sole Proprietorships
- General Partnerships
- LLC (if elects to be) have income pass-through
CORPORATIONS

- S Corporation (as opposed to a C Corp.)
  - A corporation that qualifies to be treated as an S Corp also offers pass-through treatment
    - Must have one class of stock
    - No more than 100 stockholders
    - It is an IRS election
OWNERSHIP AND CAPITAL STRUCTURE
Sole Proprietorship and General Partnership

- No corporate filings or writing required to create
- No equity to own, just business assets under your name
LLC

- May have one or more owners (members) - R.I.G.L. 7-16-5
- Can be managed by owners/members or by a manager(s)
- May allocate a disproportionate amount income and losses
- Need to have an operating agreement
S Corporation

- Created by filing with the Secretary of State’s Office R.I.G.L. 71.2-201
- S Corp. is an IRS election, not a state law designation
- Must have less than 100 shareholders, who cannot be non-resident aliens, partnerships, LLC’s, corporations or most trusts
- Limited to one class of stock
- Along with LLC, preferred form of business entity for small or upstart businesses
ORGANIZATIONAL STRUCTURE AND EASE OF FORMATION

- Sole Proprietorships and General Partnerships—no formalities to create or maintain.
- C Corp: Must have President, Treasurer, and Secretary, Board of Directors, annual meeting, and file annual report. Must file with Secretary of State.
- S Corp: Same as C Corp.
- LLC: Managed by a manager, who could be an owner as well. Must file with Secretary of State.
BUSINESS SALE AND EXIT STRATEGIES

- Sole proprietorships and general partnerships cannot sell interest in business, as none exist
- LP may transfer interest BUT there may be restrictions
- S. Corp or C. Corp, usually freely unless restricted

ISSUES:
- What happens if an owner dies?
- What happens if an owner wants to leave?
  - Buy/Sell Agreement
  - Key Man Insurance
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Thank You

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