

The Right Foot Workshop Series

Presentation by:
Dennis McCarthy
RI Small Business Development Center
Jude Kostas
Kostas & Melcher



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

Jude J. Kostas, Esquire

KOSTAS AND MELCHER

Foxboro/Boston/Rockland

774-215-0057

jude@kostasmelcherlaw.com

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 (ie: 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 r 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

A dark blue, solid-colored shape that starts as a thin line at the bottom left and expands diagonally upwards to the right, filling the bottom right portion of the slide.

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. 716-5
- 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

SELECTING THE BEST ENTITY FOR YOUR BUSINESS

Presented by
Jude J. Kostas, Esquire
KOSTAS AND MELCHER
Foxboro/Boston/Rockland
774-215-0057
jude@kostasmelcherlaw.com

Thank You

Contact Us:

401-874-7232

www.risbdc.org

susandavis@uri.edu

