

## FORMING A COMPANY – AN LLC

As a business owner, you will be faced with many important decisions, including what business structure to use in your company formation. While many countries allow the typical structures of sole proprietorship, partnership, or corporation for business ownership, Americans have the ability to form a **limited liability company**.

### What is a Limited Liability Company?

A limited liability company (LLC):

- is a type of business ownership combining several features of corporation and partnership structures
- is not a corporation or a partnership
- may be called a limited liability corporation, the correct terminology is limited liability company
- owners are called members not partners or shareholders
- number of members are unlimited and may be individuals, corporations, or other LLC's

### Advantages of Limited Liability Company

**Limited Liability:** Owners of a LLC have the liability protection of a corporation. A LLC exists as a separate entity much like a corporation. Members cannot be held personally liable for debts unless they have signed a personal guarantee.

**Flexible Profit Distribution:** Limited liability companies can select varying forms of distribution of profits. Unlike a common partnership where the split is 50-50, LLC have much more flexibility.

**No Minutes:** Corporations are required to keep formal minutes, have meetings, and record resolutions. The LLC business structure requires no corporate minutes or resolutions and is easier to operate.

**Flow Through Taxation:** All your business losses, profits, and expenses flow through the company to the individual members. You avoid the double taxation of paying corporate tax and individual tax. Generally, this will be a tax advantage, but circumstances can favor a corporate tax structure.

### Disadvantages of Limited Liability Company

**Limited Life:** Corporations can live forever, whereas a LLC is dissolved when a member dies or undergoes bankruptcy.

**Going Public:** Business owners with plans to take their company public, or issuing employee shares in the future, may be best served by choosing a corporate business structure.

**Added Complexity:** Running a sole-proprietorship or partnership will have less paperwork and complexity. A LLC may federally be classified as a sole-proprietorship, partnership, or corporation for tax purposes. Classification can be selected or a default may apply.

### Setting-up a Limited Liability Company

All 50 states now allow the formation of LLC's. Forming your own LLC may not be as simple as a sole proprietorship; however, the process is much less than a corporation. There are two main actions:

**1. Articles of Organization:** If you plan to set up a limited liability company, you will have to file articles of organization with the Secretary of State and pay the required fees. Articles may be prepared by a lawyer or filed yourself.

**2. Operating Agreement:** Although it is not required in many states to draft an operating agreement, it is advisable. Much like corporate by-laws or partnership agreements, the operating agreement can help define your company profit sharing, ownership, responsibilities, and ownership changes. Each state has different rules governing the formation of a limited liability

company. For instance, in North Dakota, a foreign LLC is not allowed for banking or farming. Some states will want a publication notice with the local newspaper that a company has been formed. Check with the State office for further details.