

How to Choose the Right Business Structure for you

Part of the Start Up series

Consider the Options: Sole Proprietorship, Partnership & Corporation

Before registering your business, you should consider the different options available to you. From a legal point of view, there are three common types of businesses: Sole Proprietorship, Partnership, and Corporation. Each structure has different and important implications for liability, taxation, and succession. Unsure of the advantages for your business of incorporating a company versus registering a partnership or a sole proprietorship? Contact a lawyer or accountant to assess the specific needs of your business and advise the type of structure most suitable to your business.

Please note that sole proprietorship and partnership names have no statutory name protection. If name protection is important to you, you may wish to incorporate your business or to register for a trademark at www.cipo.gc.ca.

Sole Proprietorship: Advantages & Disadvantages

Starting a sole proprietorship is the simplest way to set up a business. The sole proprietor is said to be self-employed. As a sole proprietor you would be fully responsible for all debts and obligations related to your business. A creditor with a claim against a sole proprietor would normally have a right against the sole proprietor's assets, whether business or personal. This is known as unlimited liability.

In a sole proprietorship, you would perform all the functions required for the successful operation of the business. These include:

- Securing the capital
- Establishing and operating the business
- Assuming all risks
- Accepting all profits and losses
- Paying all taxes

Advantages of Sole Proprietorship	Disadvantages of Sole Proprietorship
<ul style="list-style-type: none"> • Low start-up costs • Greatest freedom from regulation • Owner in direct control of decision making • Minimal working capital required • Tax advantages to owner • All profits to owner 	<ul style="list-style-type: none"> • Unlimited liability • Lack of continuity in business organization in absence of owner • Difficulty in raising capital • No name protection

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General Partnership: Advantages & Disadvantages

A partnership is an agreement in which you and one or more people combine resources in a business with a view to making a profit. In a General Partnership, you and one or more other owners would share the management of a business, and each partner would be personally liable for all debts and obligations incurred. This means that each partner is responsible for, and must assume, the consequences of the actions of the other partner(s).

In order to establish the terms of the Partnership and to protect yourself in the event of a disagreement or dissolution of a Partnership, a partnership agreement should be drawn up. You can access some sample partnership agreements at the Small Business BC library, and standard form Partnership agreements can also be purchased from the bookstore at Small Business BC. You would share in the profits according to the terms of the partnership agreement.

Advantages of Partnership	Disadvantages of Partnership
<ul style="list-style-type: none"> • Ease of formation • Low start-up costs • Additional sources of investment capital • Possible tax advantages • Limited regulation • Broader management base 	<ul style="list-style-type: none"> • Unlimited liability • Divided authority • Difficulty in raising additional capital • Hard to find suitable partners • Possible development of conflict between partners • Partners can legally bind each other without prior approval • Lack of continuity • No name protection

Incorporation: Advantages & Disadvantages

A corporation, also known as a limited company, is a legal entity that is separate and distinct from its members (shareholders). Companies are incorporated in BC according to the provisions of the Business Corporations Act.

When a company is incorporated, it acquires all of the powers of an individual, an independent existence – separate and distinct from its shareholders, and an unlimited life expectancy. In other words, the act of Incorporation gives life to a legal entity known as the corporation, commonly referred to as a company. A company can acquire assets, go into debt, enter into contracts, sue or be sued. Ownership interests in a corporation are usually easily changed. Shares may be transferred without affecting the corporation’s existence or continued operation.

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The following characteristics distinguish a corporation from a partnership or sole proprietorship:

- **Limited Liability:** normally no member can be held personally liable for the debts, obligations or acts of the corporation beyond the amount of share capital the members has subscribed. Each shareholder has limited liability. A creditor with a claim against the assets of the company would normally have no rights against its shareholders, although in certain circumstances shareholders may be held liable. We recommend that you seek professional legal advice.
- **Perpetual Succession:** because the corporation is a separate legal entity, its existence does not depend on the continued membership of any of its members.

Advantages of Incorporation	Disadvantages of Incorporation
<ul style="list-style-type: none"> • Limited liability • Possible tax advantage (if you qualify for a small business tax rate) • Specialized management • Ownership is transferable • Continuous existence • Separate legal entity • Easier to raise capital • Name protection 	<ul style="list-style-type: none"> • Closely regulated • Most expensive form of business to organize • Charter restrictions • Extensive record keeping necessary • Possible double taxation of profits • Shareholders (directors) may be held legally responsible in certain circumstances • Personal guarantees undermine limited liability advantages

Incorporating a Company in British Columbia

Incorporation can be a very involved process and it is recommended that you seek the advice and services of a lawyer and/or an accountant. Small Business BC also has literature and seminars to help with this process.

Companies are incorporated in British Columbia according to the provisions of the Business Corporations Act. By filing in the necessary paperwork and paying the prescribed fees, one or more individuals can form an incorporated company.

The following Acts provide for an incorporation and formation structure for people going into business. They do not enable entry into the marketplace or provide licensing.

- **Business Corporations Act:** This Act stipulates the rights of shareholders, directors and the rights of other parties.
- **Cooperative Association Act:** This act provides for the incorporation of associations for the purpose of carrying on business on a cooperative basis. Unlike the Business Corporations Act, each member of a cooperative association has one vote, regardless of the number of shares held by each member.

Federal Incorporation

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You have the option to incorporate at a provincial level or at a federal level. If the company intends to carry on its activities solely in one province, provincial incorporations may be preferable. If the company wishes to expand its activities outside of its provincial jurisdiction at a later date, it must obtain an extra-provincial license from every other province in which it wishes to open an office or obtain a physical presence.

You should consider federal incorporation if you want to carry on business in more than one province or outside the country. The heightened name protection to federal corporations is also a reason for choosing incorporation under the Canada Business Corporation Act. This is seen as an important element of the right to carry on business throughout Canada. Once federally incorporated, the corporate name has a protected status second only to Trade Mark protection.

How Small Business BC Can Help You

- *Guided Name Request & Registration Package* for sole proprietorships and general partnerships. Includes guided name reservation and company registration, and printed registration certificate. Price: \$139 plus taxes.
- *Incorporation Kit for British Columbia by Simply Legal*. Includes easy-to-follow instructions, CD-ROM with all required legal forms to incorporate properly, and minute book with customized tabs. Price: \$99 plus taxes.
- *Business Structures: Tips from a Lawyer* seminar helps you understand the differences between proprietorship, partnership and incorporation. Delivered by Brian Rudy of Synergy Business Lawyers, the seminar will cover business structures, nonprofit societies, cooperatives the advantages and disadvantages for each. Price \$20 plus taxes

For more information, contact Client Services at 604-775-7085 or 1-800-667-2272, or by email at askus@smallbusinessbc.ca. If you would like to get the latest information relevant to your business, join our Small Business BC community at www.smallbusinessbc.ca/community.