Choosing a business structure

Eventually one of the business decisions you'll need to make when planning your business will be its structure. For legal and tax purposes, every business needs to comply with a specific 'structure' and the most common are:

Sole proprietorship where you run the business on your own.

Partnership when you have two or more owners of the business.

A limited liability structure, which can be a limited liability partnership (LLP) or a limited liability company (LLC):

- LLC, owners are not personally liable for the company's debts or legal obligations. If the LLC is sued, only the business assets are at risk, not personal assets.
- LLP, each partner is protected from the negligence or misconduct of other partners. However, a partner may still be liable for their own malpractice or for partnership debts.

Find out more on business structures on Sunbiz.org*, the State of Florida website.

You must select one and then operate your business according to its guidelines. It's important to choose the structure that best suits the needs of your business.

Registration

You will need to register a business regardless of the structure, and it's useful to protect your business name at the same time. You may want to register a 'doing business as' name, especially if you're a sole proprietor. Register as a fictious name on the State of Florida website here*.

Going solo

Deciding to run your business as a sole proprietor is your simplest option, and the one that many small business owners choose as it's the easiest to set up. It's the default structure if you don't choose anything else.

The potential advantages of going solo include:

- Having the freedom to take full control and make all the decisions without anyone else to ask
- Lower set-up costs or legal fees
- Some tax advantages, such as deducting losses and expenses from your personal income
- You earn all the profit.

There are also some potential disadvantages of becoming a sole owner, such as:

- Being accountable for all parts of your business, so all the debts and losses are your own
- A creditor can claim against your personal assets as well as the business if you don't pay a debt
- No-one to share the load or work with who has complementary skills.

It's the most straightforward way to structure your business, less paperwork, and you are up and running immediately. You can also decide later to change the structure (add in a partner or form a LLC) as your business grows.

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Teaming up

A partnership is a group of two or more people who set up a business together, often where there are synergies to offer more to customers than on your own.

The potential pros of starting a partnership include:

- It could be inexpensive to set up a partnership agreement, shared equally between you and your partners
- Each member of the partnership is liable for the debts of the business with shared responsibility for losses while profits are divided between partners
- If income from the partnership is negative (the business loses money) you and your partners may be able to include the share of the loss against your individual tax returns
- You have the support and (ideally) complimentary skill sets in the business.

The potential cons of creating a partnership are that:

- There's no legal difference between you and your business, so you're still liable for all business activities in the same way a sole proprietor is
- Each person in your partnership is responsible for its debts, regardless of whether you directly caused the debt or not
- Finding the right partner can be difficult and there's always the possibility of disagreements on the direction of the business
- If one or more of the partners leave, the partnership is ended.

Note there are two types of partnerships in the US:

- 'Limited' partnerships, where one partner has unlimited liability (often it's the person that started the business or is more involved in the business), and other partners have limited liability. Exactly who relates to which, is documented in a partnership agreement
- 'Limited liability' partnerships, where all partners have limited liability, protecting each partner from debts against the partnership and any actions of other partners.

If you're forming a partnership, finding the right person or people is essential. You want to be in business with someone you can trust, because you're responsible for their decisions. While having a partner who brings a different perspective to the discussion is great, being in a partnership where decision making is delayed due to difference of opinions could impact on your success.

Limited Liability Company (LLC)

An LLC provides limited liability and the option to have multiple owners or shareholders in your business (called members).

Pros

- As in the name, there is limited liability if something goes wrong. Your personal assets may be protected from business debts and lawsuits against the business
- LLCs are taxed as either a sole proprietorship or partnership, depending on whether there's one member or multiple members. Your share of business income and expenses are reported on your personal tax return, so you pay personal income tax on profits
- You don't need to have shareholder meetings or have a board
- If approved by the Florida Department of State, you have exclusive rights to use your business name in your state. You can check if the name you want is taken using the Sunbiz.org name search tool here*.
- It may help with credibility to have LLC at the end of your name (suppliers and customers know you're one level above a sole trader or partnership).

Possible cons

- You need to register your LLC, so there are a few legal costs, and you may need to file annual reports
- Membership isn't easy to transfer like a corporation with shares, where one person can sell their shares to another. If there is a change in ownership, you may need to dissolve the LLC and form a new one
- It isn't as easy to get outside investment like it is with a corporation

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Forming a corporation (C corp)

A corporation is a separate legal entity from you, where it's set up formally with a certain number of shares (which you decide). People (you and others) are then allocated a percentage of these shares which indicates ownership of the corporation. You'd get a salary (and maybe a dividend) from the corporation.

Advantages include:

- Your personal assets and the corporation assets are separate, so if the company is in debt, it's less likely you will be personally liable (unless you've given a personal guarantee)
- A corporation lives on despite change of management, so you can more easily pass on or sell the business to others
- it may appear more profession and credible for suppliers and customers
- You can sell shares to raise money for expansion or growth projects.

The disadvantages can be:

- The cost in legal fees to set-up
- Yearly compliance costs.

Next steps

- It's important to understand your options, their tax implications, and their advantages and disadvantages. Spend some time learning about the different business structures so that you can choose the best one for you and your business.
- It's a good idea to get advice when deciding on a business structure so consult either a lawyer/attorney, accountant or any professional adviser to check you're making the right decision.
- If you're unsure what to do, visit your local business advice center. Start with the Florida SBDC Network*, the principal provider of small business assistance, that's nationally accredited and has over 40 offices statewide.

Note

This is a guide only and should neither replace competent advice, nor be taken or relied upon as financial or professional advice. Seek professional advice before making any decision that could affect your business.

* This is an external link. We are not responsible for the content or privacy practices of external sites.