

Unincorporated Business Entities

Based on Presentation for
NCET2 Course on Researcher
Commercialization

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My Legal Practice

- Outside counsel to major national research institutions for more than 15 years.
- Independent practice focuses on representation of research institutions, emerging companies and venture funds in corporate, securities and licensing matters.
- Former partner at Squadron, Ellenoff and Hogan & Hartson.



Why Form an Entity?

- Multiple owners
- Continuity of structure, separation of functions
- Desire for limited liability
 - Owner generally not liable for obligations of entity
 - Doesn't preclude liability for individual's acts
 - Contractual variation
 - Insurance
- Investor requirements, including form of investment and governance, control, tax, investor rights, transfer and exit agreements



Attributes of Business Organizations

					Tax Separation
					Limited Liability (General)
					Limited Liability (Restricted)
					Contract
					Business
Sole Prop.	GP	LP, LLP, PLLP, PLLC	LLC, S-Corp.	C-Corp.	
Form of Organization					Attribute



Sole Proprietorship

- Single owner
- Appropriate if few liability concerns
- Advantages: simplicity, lowest up-front cost, no separate taxation
- Disadvantages: no separateness (for liability or tax purposes), no continuity, generally not suitable for investment



General Partnership

- Multiple owners
- Appropriate if few liability concerns
- Advantages: simplicity , low up-front cost, flow-through taxation
- Disadvantages: general liability (including for other partners' acts), phantom income
- Contrasted with limited partnerships
 - Limited partners have limited liability and few decisional rights
 - Limited partnerships are often used for funds or other investment vehicles



Limited Liability Company (LLC): Attributes

- Single or multiple owners
- Advantages: limited liability, greatest contractual flexibility, flow-through taxation, possibility of conversion or merger with corp.
- Disadvantages: generally higher up-front costs than sole proprietorship or GP, contractual issues, phantom income, not suitable investment vehicle for most venture funds



Limited Liability Company (LLC): Process

- Business planning
- Involving professionals, including tax advisor
- Developing members' understanding of their roles and terms of their deal
- Deciding on name; IP issues
- Deciding on jurisdiction of organization
- State filing (Certificate of Designations, Articles of Organization)
- Preparing LLC or operating agreement



LLC or Operating Agreement

- What are members contributing to LLC?
- What will their roles be?
- Who will manage – members, managers, officers?
- Duties of members and managers (fiduciary duties, non-competition, IP provisions, financial obligations)
- Voting rights of members, other decisional mechanisms
- Compensation, distributions (tax distributions), allocations of profit and loss
- Transferability of interests
- Investor rights
- Withdrawal, termination, conversion, exits/liquidity
- Dispute resolution



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Questions?

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