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Austin S. Paladeau

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When starting a new business venture, a commonly asked question is: "What business structure is best for me and my business?". There are a variety of different options for conducting business in Alberta, each with their own benefits and drawbacks. This article provides a brief overview on a few of these choices and the potential legal implications that may result.

Sole Proprietorship

A sole proprietorship is where an individual directly operates a business with no legal entity in between. Essentially, if you operate as a sole proprietor, you are the business as Alberta law does not distinguish between the two. What this means is that income of the business is your personal income and liabilities of the business are also your personal liabilities.

The primary advantage of a sole proprietorship is that it is the least expensive way of setting up and operating a business. All decisions are made directly by the business owner without any structure in between. As well, any profits of the business are the profits of the owner. A consequence of this is that any income you earn through the business will be considered your personal income and taxed at your personal income tax rate.

The disadvantage to a sole proprietorship is that you are personally liable for the operations of the business. This means that you are personally sued if the business is sued. There is no barrier or shield that protects you from the liability associated with the business. Since your personal assets and business assets are one and the same, all your personal assets are at risk in the event of judgment against you.

Incorporation

Incorporating a company means an individual creates a legal entity through which a business is operated. The company is a separate entity, created by statue, which can contract, hold assets and run a business apart from its shareholders. The company is owned by shareholders and run by directors elected by the shareholders.

The main advantage of incorporation is that a 'liability shield' is created between the business operations and the owners of the business. Any liability associated with the business operations is restricted to the assets of the company. The money put into the business by the shareholders is at risk, but not their personal assets. In addition, corporations allow for multiple owners, may be able to more easily raise funds, will survive their owners and may benefit from reduced taxes.

The disadvantage of incorporation is that it is more expensive and more complex than a sole proprietorship. There are costs and complications associated with the incorporation of the company as well as its annual maintenance and filing tax returns. Business owners should be aware that there are limits on the liability afforded to shareholders when the shareholder is a director of the corporation. In certain situations, directors may become liable for their actions, which would negate the limited liability afforded by the company.

Partnership

A partnership means two or more entities jointly act in a business venture. In a partnership, the partners pool their resources in order to operate a business together, sharing the profits and losses from such operation. A partnership is not a separate legal entity, but rather a joint operation between two or more entities.

As the partnership is not a separate legal entity, generally, there is no limitation of liability. However, if the partners agree to operate through a limited partnership, the general partner operates the business and accepts the liability for the partnership. The limited partners can thereby reduce their exposure while also benefitting from a key advantage of a partnership – the ability to flow through tax losses.

For further information, please contact one of the authors, Garrett Hamilton at 403.254.3685, Austin Paladeau at 403.873.3738 or any member of our Corporate and Commercial group.