BARBADOS INVESTMENT & DEVELOPMENT CORPORATION

BIDC SMALL BUSINESS GUIDE 05 |

Structuring your Small Business

At the very outset you should identify and put in place the legal structure that will best suit your venture.

There are 3 basic legal forms of a business

SOLE PROPRIETORSHIP

PARTNERSHIP

INCORPORATED COMPANY (INC.)

No one of these legal forms is exclusively suited to a particular type of business. Each form has its specific advantages and disadvantages. Your particular situation, concerns and goals should dictate your choice.

The following outlines of the **3 forms** will help you to make your choice.

Sole Proprietorship

A **Sole Proprietorship** is a business which is owned and operated by one person. Legally, the business has no existence apart from its owner. This individual has a right to all of the profits, losses, debts and obligations of the business. Additionally, the individual also has unlimited liability, which means that his/her business and personal assets stand behind the financial obligations of the operation. If the business gets into a situation where it cannot meet its financial obligations, the owner can be legally forced to forfeit whatever personal assets he/she owns in order to satisfy the creditors.

ADVANTAGES

Ease of formation: There is less formality and fewer restrictions associated with establishing a sole proprietorship than with any other legal form.

The process, which takes only a few weeks to complete, involves choosing a business name that is acceptable to the Registrar of Companies at the **Corporate Affairs & Intellectual Property Office (CAIPO)**. Following that, a certificate with the new business name is issued.

Relatively inexpensive formation of the business, i.e. registering the business name.

Freedom from corporate business taxes: Proprietors are taxed as individual tax payers and not as businesses.

The owner maintains sole ownership of profits.

DISADVANTAGES

Unlimited liability: The individual is personally responsible for all of the business' debts.

Lack of continuity: Since there is no separate legal entity, the business terminates upon the death of the owner.

Dependence on one individual for financial and managerial expertise: This dependency may limit the scope of the business.

Partnership

A **Partnership** is an association of two (2) or more people acting as co-owners of a business for profit. Each partner contributes money, property, labour and skills and each share in the profits and losses of the business. As a rule, it is strongly recommended to have written terms of a partnership agreement. The reason for this is that unless otherwise agreed to in writing, the law assumes equal partnership, which means equal sharing of profits, losses, assets, management and other aspects of the business.

The following are examples of the types of information which is normally written into a partnership agreement:

- Name of Business
- Separate debts
- Salaries
- Contributions by partners (at inception, at later date)
- Type of partners (general, active,silent)
- Death of a partner
- Required and prohibited acts
- Division of profits and losses
- Duration of partnership agreement
- Additions, alterations, or modifications of partnership (e.g. buying out a partner)

If you want to start a business partnership, it is strongly recommended that you consult the services of an Attorney-At-Law.

THE LIMITED PARTNERSHIP

Limited Partners are an association of two (2) or more people who operate and manage a business for profit. Unlike the partnership mentioned before, which only has "general partners", all of whom work in the business, a limited partnership has ***general partners*** and ***limited partners***.

The ***general partners*** are solely responsible for managing the business' activities and are totally liable for its debts and losses. However, the ***limited partners*** don't usually work in the business, they only invest their monies and they have limited liability. This means that they are only liable, in the event of any losses, for the amount of funds that they have invested in the business, and not totally liable, like the ***general partners.***

ADVANTAGES

- Ease of formation: Legal formalities and expenses are few compared with those of creating a corporation.
- Efforts by directly sharing in profits/losses. Access to the expertise of more than one individual.
- Because of the increase in resources available through partnership, it is sometimes easier to obtain capital than in the case of a sole proprietorship.
- Tax advantages: Most partnerships pay taxes as individuals, thus escaping the high rates associated with corporation tax.

DISADVANTAGES

- Unlimited liability of at least one partner.
- Lack of continuity: If one partner dies or withdraws from the business, the partnership arrangement ceases.
- The buying out of a partner may be difficult unless specifically arranged for in the written agreement.

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Incorporated Company (Inc)

An **incorporated company** is a legal entity, independent of its owner(s), which has many of the same legal rights and responsibilities as a person does, like the ability to enter into contracts, borrow money, own assets, hire employees, the right to sue (and be sued) and the responsibility to pay taxes. This form of business requires an attorney to obtain the articles of incorporation which clearly set out the powers and limitations of the particular business. The process incurs relatively high expenses.

ADVANTAGES

Limited Liability - an individual shareholder's liability is limited to the amount they have invested in the company.

Continuance and Transfer - it will exist even if shareholders leave (or die), or the ownership of the business changes and can be transferred.

Easier access to financing – lenders look more favourably on a well-organized corporation, including equity financiers, angel investors and venture capitalists.

Tax Optimization and Tax Benefits – shareholders can determine when and how they get paid by the business and reap benefits through deferrals and any allowed deductions which may be in force from time to time.

DISADVANTAGES

An additional tax return – business owner(s) will be required to file an additional tax return annually, incurring increased accounting fees.

Incorporated companies are required to keep comprehensive records, including the bylaws, minutes of corporate meetings, the register of directors, the share register, the transfer register, cash inflows and outflows, the income statement and balance sheet.

Limitations of liability may be undermined by lending institutions which require personal guarantees or credit agreements from owners to cover insufficient corporate assets to secure debt financing.

Expense – the legal establishment of a corporate business structure is more complex, so the legal costs will be higher.

To dissolve an incorporated entity requires the completion and submission of an articles of resolution form, winding up payroll accounts filing the final tax returns for the corporation. All documents and records of the company shall be kept for six years from date of dissolution.

REMEMBER In addition to registration with **CAIPO**, to establish a **Sole Proprietorship**, you need only obtain the relevant licenses which may be necessary to begin operations (such as medical certificate, liquor license).

To establish a **Partnership**, sign a **Partnership Agreement** and consult an Attorney-At-Law.

To establish a **Limited Liability Company**, consult an Attorney-At-Law.

How can we Help You?

CONTACT US TODAY!

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