L. Kerry Vickar
BUSINESS LAW CLINIC
Helping Manitobans Succeed

Sole Proprietorships

- A sole proprietorship is the simplest form of business, owned and operated by one person, with no separate legal existence from its owner. If an individual is doing business and has not formed a partnership with another person or incorporated the company, then the individual is doing business as a sole proprietorship.
- A sole proprietorship can be operated under an individual's name or under a registered business name

Advantages of Sole Proprietorships

- Easy and inexpensive to set up
  - There is no special procedure that must be followed to set up a sole proprietorship, as it arises automatically whenever a person carries on a business or profession in their own right
- Allows for direct control of decision making.
  - There is no board of directors, other stakeholders, or partners to answer to in a sole proprietorship
- Business losses can be written off against the owner's other income streams
  - The owner may be able to deduct any financial losses suffered by the business against other sources of income

Disadvantages of Sole Proprietorships

- Owner of the business is personally liable for all debts incurred by the business
  - The owner is fully liable for the debts, losses and any other liabilities incurred by the business. Creditors are able to recover outstanding debts against the owner's personal assets such as their house or car
- Business profits are combined with the owner's other income and taxed at personal rates regardless of how much money the owner actually withdraws from the business for personal salary/use during the fiscal year
- Difficulty in obtaining financing
  - Some programs, loans, and subsidies are only available to incorporated businesses
- Sharing the business
  - Some owners may wish to give interest in their business to other members in their family. This process is much easier under a partnership or incorporation then within a sole proprietorship

Partnerships

- A partnership is a legal entity made up of more than one person carrying on a business. The partnership itself is a relationship that subsists between persons carrying on a business in common. A person can include a natural person and/or those created by law (for example, corporations).
- All partnerships must be registered with the Manitoba Companies Office

Advantages of Partnerships

- Low setup costs
  - Partnerships are set up similarly to corporations, with the additional requirement of a partnership agreement and registration of the partnership
- Collaboration between different partners
  - This allows partners to combine their knowledge and resources within a business while maintaining a share of the business

Disadvantages of Partnerships

- Partners are legally responsible for debt obligations and/or wrongful acts/omissions by other partners in the course of business
- Each partner's share of profits/losses are combined with income and taxed at personal rates regardless of how much money they withdraw from the partnership during the year
- Within a family business, mixing business with family may sometimes have a negative effect within the family dynamic and relationships
  - This may occur between partners operating the business (ex. brothers disagreeing on certain business practices leading to an argument), or between the current and next generation (ex. succession plan)

Partnership Agreements

- A written document that outlines the relationship between the different partners within a business
- Matters normally addressed within a partnership agreement
  - Effective date and term of partnership
  - Names of each of the partners and business
  - Partnership interests
    - Different categories of partnership interests (if applicable)
    - Initial financial contributions made by each partner
  - Description of business
    - Create a defined scope of what the business does and what each partner is responsible for
    - This description can be used to settle future disputes between partners

Limited Partnerships

- A limited partnership may consist of one or more people who are “general partners” and one or more people who are “limited partners”
    - Limited partners are individuals who contribute capital to the partnership, akin to shareholders
    - Limited partners are not liable for the debts of a limited partnership beyond the amounts they contributed to the capital of the limited partnership
    - A person who is both a general partner and a limited partner in the same partnership has the rights, powers, restrictions and liabilities of a general partner.
        - In respect to his contribution as a limited partner, this person would have the same rights against the other partners as a limited partner

Corporations

- A corporation is a legal entity that is separate and distinct from its owner(s). The corporation's name must include a legal element identified by the terms "Limited", "Ltd", "Incorporated", "Inc", "Corporation", or "Corp"
- Articles of Incorporation are legal documents are filed to officially create a corporation
- Key requirements for articles of incorporation
  - The name of the corporation
  - The places in Manitoba where the registered officer is to be situated
  - The classes of shares and any specifications on maximum number of shares that the corporation is authorized to use
    - If there are multiple classes of shares, explain the rights, privileges, restrictions and conditions attaching to each of the different classes
  - A statement regarding the nature of the restrictions of the transfer of or ownership of shares if these are desired
  - The number of directors, or the minimum and maximum number of directors of the company
  - Any restrictions on the business that the corporation may carry on

<u>Advantages of Corporations</u>

- Limited liability for personal assets
  - A corporation is a separate legal entity from its founder/owners. The personal assets of the owners (shareholders) are protected from the debts and liabilities of the corporation
  - If your corporation goes bankrupt, your shareholders only lose up to what they have invested
- Easier to access capital
  - Corporations are often able to borrow money at lower rates
  - Corporations can also raise money for the business through the issuance of shares and bonds
- Lifespan of the business is not affected by owner/shareholder death.
  - In other business structures, there are often complications that arise when the owner dies. With a corporation, the business is a separate legal entity that continues beyond the owner's passing

<u>Disadvantages of Corporations</u>

- High setup and administrative costs
  - If incorporating a named corporation, a Request for Name Reservation and Articles of Incorporation must be filed. This comes at combined cost of $395.00 ($45.00 + $350.00).
- Extra administrative requirements
  - These include shareholders meetings, minute books, records, separate company tax return

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A few important useful links can be found here:

Information about business structures from the Manitoba Government website:
https://www.gov.mb.ca/jec/busdev/business/business_structures.html

Manitoba Business Structures Wizard:
https://open.bizpal-perle.ca/apps/bet-manitoba.html

The Manitoba Partnership Act:
https://web2.gov.mb.ca/laws/statutes/archive/p030(2020-06-26)e.php?df=2003-02-25

Manitoba Companies Office:
https://companiesoffice.gov.mb.ca