

# Choosing an Entity Comparison Chart

As of February 13, 2017

*A comparison chart that highlights the various structure, liability, tax and management differences among C-corporations, S-corporations, limited liability companies, and partnerships.*

This chart focuses on the laws of Delaware business entities. Because different states have different laws concerning business entities, it is important to consult the appropriate state statutes before finalizing your choice of entity.

There are many different considerations when choosing the appropriate business entity. Which entity form you choose depends on what the intended purpose is for the entity (for example, to make an acquisition). The following table provides a comparison of the differences among the most common entities: C-corporations, S-corporations, limited liability companies, and limited partnerships. Use this table as a resource when deciding which entity to form.

Since most LLCs are treated as partnerships or disregarded entities for tax purposes, this chart assumes that is the case.

Type of Entity	C-Corporation	S-Corporation	Limited Liability Company (LLC)	Limited Partnership (LP)
Ownership Requirements	One or more stockholders.  No restrictions on the types of owners.	One to 100 stockholders.  With certain limited exceptions, only US individuals (citizens or residents) can be stockholders. Certain trusts and exempt organizations can also be stockholders.  Only eligible US entities can make an S-corporation election (generally a US C-corporation or other US business entity eligible to elect C-corporation tax status).  An S-corporation automatically converts to a C-corporation if it does not meet the requirements of	One or more members. Two or more members required if LLC wants to be taxed as a partnership.  No restrictions on the types of owners.	Two or more partners.  No restrictions on the types of owners.

# Choosing an Entity Comparison Chart

As of February 13, 2017

Type of Entity	C-Corporation	S-Corporation	Limited Liability Company (LLC)	Limited Partnership (LP)
		an S-corporation (meaning, no more than 100 stockholders, only specific types of stockholders, and only one class of stock).		
Form of Equity and Restrictions	<p>Capital stock is held by one or more stockholders. There are two basic types of capital stock: common stock and preferred stock.</p> <p>Permissible to have multiple classes and series of stock with different rights and preferences.</p> <p>Distributions must be proportionate to stock ownership within each class of stock (preferential distributions permitted for one class over another).</p>	<p>Capital stock is held by one or more stockholders. Only one type of capital stock: common stock.</p> <p>Only one class of stock is permitted, but there can be differences in voting rights among shares of common stock. Certain debt instruments as well as certain options, warrants, or similar instruments may be treated as a second class of stock under the S-corporation rules.</p> <p>Distributions must be proportionate to stock ownership.</p>	<p>Percentage of membership interests are held by one or more members.</p> <p>Permissible to classify membership interests into different classes (like common and preferred stock) with different rights and preferences.</p> <p>Distributions do not need to be proportionate to LLC ownership.</p> <p>Distribution, liquidation, and voting preferences can be specified in the limited liability company agreement.</p>	<p>Two classes of partners:</p> <ul style="list-style-type: none"> <li>• A general partner (generally responsible for management).</li> <li>• A limited partner (typically a silent investor).</li> <li>• At least one general partner (who may or may not have made a contribution) is required to form an LP.</li> <li>• Distributions do not need to be proportionate to partnership ownership.</li> <li>• The limited partnership agreement can specify distribution preferences.</li> </ul>
Organizational Documents	<p>Formation document: certificate of incorporation filed with the secretary of the state of incorporation.</p> <p>Governing document: by-laws (in addition to the certificate of incorporation). Stockholders</p>	<p>Formation document: certificate of incorporation filed with the secretary of the state of incorporation.</p> <p>Governing document: by-laws (in addition to the certificate of incorporation). Stockholders may</p>	<p>Formation document: certificate of formation filed with the secretary of the state of formation.</p> <p>Governing document: limited liability company agreement.</p>	<p>Formation document: certificate of limited partnership filed with the secretary of the state of formation.</p> <p>Governing document: limited partnership agreement.</p>

# Choosing an Entity Comparison Chart

As of February 13, 2017

Type of Entity	C-Corporation	S-Corporation	Limited Liability Company (LLC)	Limited Partnership (LP)
	may also enter into a stockholders' agreement.	also enter into a stockholders' agreement.  An eligible US entity makes a timely S-corporation election on <b>IRS</b> Form 2553, no more than two months and 15 days after the beginning of the tax year the election is to take effect.		
Levels of Tax and Other Tax Considerations	At the corporate and stockholder level.  Can participate in tax-free reorganizations under IRC Section 368.	At the stockholder level only unless S- corporation was formerly a C-corporation. Some states do not recognize S-corporations for state tax purposes and instead tax them as C-corporations.  Can participate in tax-free reorganizations under IRC Section 368.	At the member level only.  Cannot participate in tax-free reorganizations under IRC Section 368.	At the partner level only.  Cannot participate in tax-free reorganizations under IRC Section 368.
Liability	Stockholder's liability is limited to amount of capital contributed.	Stockholder's liability is limited to amount of capital contributed.	Member's liability is limited to amount of capital contributed.	Limited partner's liability is limited to amount of capital contributed.  General partner has unlimited liability.
Management	A C-corporation is governed by a board of directors. The board	An S-corporation is governed by a board of directors. The board of	Management is initially vested in the members. Members can	Management is initially vested in the general partner(s). The general

# Choosing an Entity Comparison Chart

As of February 13, 2017

Type of Entity	C-Corporation	S-Corporation	Limited Liability Company (LLC)	Limited Partnership (LP)
	<p>of directors must designate officers to manage the day-to-day operations. Certain major decisions need to be approved by the stockholders.</p> <p>The board of directors may delegate certain decision making to committees.</p> <p>There is a well-developed body of corporate case law and statutes which provides greater certainty, but less flexibility than other entity forms.</p>	<p>directors must designate officers to manage the day-to-day operations. Certain major decisions need to be approved by the stockholders.</p> <p>The board of directors may delegate certain decision making to committees.</p> <p>There is a well-developed body of corporate case law and statutes which provides greater certainty, but less flexibility than other entity forms.</p>	<p>delegate management to a managing member, non-member manager, or board of managers. The manager(s) can (but do not need to) designate officers to manage day-to-day operations. Certain major decisions typically have to be approved by the members.</p> <p>The management structure is flexible and is primarily determined by the members and set out in the limited liability company agreement.</p>	<p>partner(s) may delegate management and may (but do not need to) designate officers to manage day-to-day operations. Certain major decisions typically have to be approved by the limited partners.</p> <p>The powers of the general partner can be limited by the limited partners in the limited partnership agreement.</p> <p>If limited partners participate in management, they risk losing the benefit of limited liability.</p>
Employee Incentive Considerations	<p>Stock options can be granted to employees (can qualify as <b>incentive stock options</b> (ISOs) under the IRC).</p> <p>Other common forms of equity compensation include:</p> <ul style="list-style-type: none"> <li>• <b>Stock appreciation rights</b> (SARs).</li> <li>• Restricted stock.</li> <li>• <b>Restricted stock units</b> (RSUs).</li> <li>• Performance awards.</li> </ul>	<p>Stock options can be granted to employees (can qualify as incentive stock options (ISOs) under the IRC).</p> <p>Other common forms of equity compensation include:</p> <ul style="list-style-type: none"> <li>• Stock appreciation rights (SARs).</li> <li>• Restricted stock.</li> <li>• Restricted stock units (RSUs).</li> <li>• Performance awards.</li> </ul>	<p>Profits interests or non-qualified options (to acquire a membership interest) can be granted to employees. ISOs are not available. Profits interests provide favorable tax treatment to employees and are much more common than options. Both profits interests and options to acquire a membership interest are less familiar than traditional stock options and may result in an employee being treated as a partner for tax and employee benefit purposes.</p>	<p>Profits interests or non-qualified options (to acquire a partnership interest) can be granted to employees. ISOs are not available. Profits interests provide favorable tax treatment to employees and are much more common than options. Both profits interests and options to acquire a partnership interest are less familiar than traditional stock options and may result in an employee being treated as a partner for tax and employee benefit purposes.</p> <p>Other equity compensation</p>

# Choosing an Entity Comparison Chart

As of February 13, 2017

Type of Entity	C-Corporation	S-Corporation	Limited Liability Company (LLC)	Limited Partnership (LP)
			Other equity compensation arrangements (such as RSUs) can be replicated in the LLC context but are uncommon.	arrangements (such as RSUs) can be replicated in the partnership context but are uncommon.
Capital Raising Considerations	C-corporations raise capital through the issuance of equity (stock) and the incurrence of debt. Stock can be issued by private placements or if the C-corporation is public, by a public offering with stock that is registered with the <b>SEC</b> and listed on a public stock exchange. There is a lot of flexibility in the type of stock (for example, common, preferred, convertible debt, phantom) that can be issued, but the C-corporation is limited by the number of shares authorized in its certificate of incorporation (usually a very large number). The number of shares authorized can be increased by amending the certificate of incorporation which requires stockholder approval. The C-corporation may also be restricted from diluting its current stockholders by the terms of a stockholders'	S-corporations raise capital through the issuance of equity (stock) and the incurrence of debt.  An S-corporation must be converted to a C-corporation before an initial public offering.  It is easier for an S-corporation to convert to a C-corporation than it is for an LLC or LP to convert to a C-corporation because an S-corporation automatically converts to a C-corporation if it does not meet the requirements of an S-corporation.	LLCs raise capital through the issuance of equity (membership interests) and the incurrence of debt. Membership interests are typically issued in private placements. Members can create membership interests that mirror the properties of different types of stock. LLCs are not limited by a preset number of authorized interests, but may be restricted from diluting its current members by provisions in the limited liability company agreement.  Except in certain industries (such as energy), LLC's are not typically publicly traded. Often the members convert the LLC to a corporation before an initial public offering. If an LLC is publicly traded (called a PTP), it generally will be treated and taxed like a corporation under the IRC unless 90% or more of the LLC's gross income consists of qualifying passive income (such as	LPs raise capital through the issuance of equity (partnership interests) and the incurrence of debt. Partnership interests are typically issued in private placements. LPs are not limited by a preset number of authorized interests, but may be restricted from diluting its current partners by provisions in the limited partnership agreement.  Because limited partners are prohibited from managing the partnership, it is a good vehicle when raising capital with silent investors.  Except in certain industries (such as energy), LPs are not typically publicly traded. Often the partners convert the LP to a corporation before an initial public offering. If an LP is publicly traded (called a PTP), it generally will be treated and taxed like a corporation under the IRC unless 90% or more of the LP's gross income consists of qualifying passive income (such as dividends, interest, real property rents,

# Choosing an Entity Comparison Chart

As of February 13, 2017

Type of Entity	C-Corporation	S-Corporation	Limited Liability Company (LLC)	Limited Partnership (LP)
	<p>agreement. If the corporation has current holders of preferred stock, they may also have anti-dilution protection. The terms of the preferred stock are typically set out in a certificate of designation.</p> <p>A C-corporation is the most common entity form for a public company. LLCs and LPs are typically converted to C-corporations before an <b>initial public offering</b>. An S-corporation must be converted to a C-corporation before an initial public offering.</p>		<p>dividends, interest, real property rents, natural resource income, certain commodities income, and gains from assets that produce passive income) (see IRC § 7704). If an LLC is publicly traded, units of membership interests (instead of shares of stock) are bought and sold.</p>	<p>natural resource income, certain commodities income, and gains from assets that produce passive income) (see IRC § 7704). If an LP is publicly traded, units of LP interests (instead of shares of stock) are bought and sold.</p>
Other Considerations	<p>Regulators and employees are most familiar with this form.</p> <p>More regulated than LLCs or LPs.</p>	<p>There are more limitations on the availability of the S-corporation election than the C-corporation election (only US entities can make the election, no more than 100 stockholders, only specific types of stockholders, and only one class of stock).</p> <p>More regulated than LLCs or LPs.</p>	<p>Statutory and case law is less developed than corporation and LP law. This provides more freedom, but less certainty.</p> <p>Regulators and employees are least familiar with this form.</p>	<p>LPs (like LLCs) are subject to fewer formalities than corporations.</p> <p>Partnership law is more developed than LLC law.</p>

# Choosing an Entity Comparison Chart

As of February 13, 2017

---