

BUSINESS ENTITIES

Sole Proprietor-Partnership-Corporation



- SOLE PROPRIETORSHIP

- Sole Proprietorship: owned and run by one person and in which there is no legal distinction between the owner and the business entity.



•How to set up sole proprietorship in New York:

•1. Choose a business name: You can use your legal name or a fictitious name.

Alexandra Dolce doing business as or d/b/a “THE CHAMPAGNE QUEEN”

•Avoid using a name that is already in use and a name that can get you in trouble for trademark infringement.



2. File the assumed name with the county:

- If your business name is different from your legal name New York requires you to register your business name with the county clerk of each county where you do business. (N.Y. Gen. Bus. Law § 130 (2023)). For instance, I live in Manhattan, I would file my business name with the New York County Clerk's Office.

3. Apply for licenses, permits, and zoning clearance:

Business License/Permit: Business licenses are permits issued by government agencies that allow individuals or companies to conduct business within the government's geographical jurisdiction.

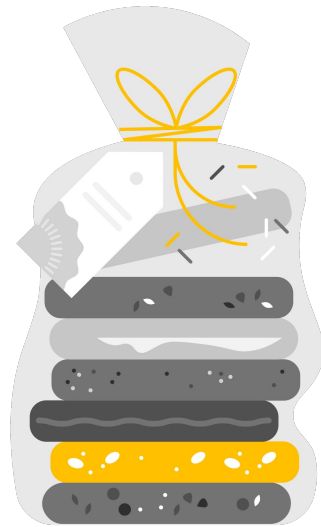


- ZONING CONTINUED

- Zoning Clearance: Clearance means an administrative, review conducted by planning staff to certify that an existing or proposed use or development on a property conforms with zoning ordinance.

- For example, If an area is zoned for residential property only no commercial property or activity should be allowed.

- I can't open my champagne store because I don't have zoning clearance. That area is for residences only.



HYPO:

- I am interested in opening a bakery. I live in a wonderful residential neighborhood and all my neighbors love my cookies, cupcakes and pies. I decide to go into business as a sole proprietor. I start baking goods and selling them in my garage. What may be a consequence of me working out of my home?

4. Obtain an EIN

If you plan to have employees, you need an EIN. An EIN is a 9-digit number issued by the U.S. Internal Revenue Service (IRS) for tax reporting purposes.

Don't need EIN if you plan to have no employees because you can use your personal social security number.

However, some banks require that you have an EIN number in order to open a banking account.



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Question slide

What is most important when starting a sole proprietorship?

Applying for an EIN

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Filing your assumed name with the county

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Applying for licenses, permits, etc.

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• BENEFITS OF HAVING A SOLE PROPRIETORSHIP:

- Easy setup and low cost
- No corporate business taxes
- No annual reports or filings
- Not restricted by formal business structure
- Easy record keeping



DISADVANTAGE OF HAVING A SOLE PROPRIETORSHIP:

- Unlimited **PERSONAL** liability: You are not separate for the company. If your business is sued, your assets (car, home, bank account) are vulnerable.
- Must pay self-employment tax on all earnings.
- It's difficult to raise money.
- Inability to take on business debt- Hard to get loans because you are small. Don't have shareholders, etc.



A major disadvantage of having a sole proprietorship is:

Banks are not always willing to lend you money.

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There is unlimited personal liability.

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It's difficult to find employees.

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- PARTNERSHIP:

- Partnership: A partnership is two or more persons that carry on as co-owners in a business for profit.

- The intention of the parties to carry on as partners must be expressed in an agreement.

- Where there is no agreement, you have an implied partnership.



• **Implied Partnership:** When there is no enforceable or expressed partnership agreement, the party seeking to establish an implied partnership must show that a partnership nevertheless exists based on the conduct, intention, and relationship between the parties.



- IMPLIED PARTNERSHIP (CONT.)

- What the court looks at to see if one exists:

- Sharing Profits
- Sharing of losses
- Ownership of partnership assets
- Joint Management Control
- Joint liability to creditors
- Intention of the parties
- Compensation
- Contribution of capital
- Loans to the organization

HYPOTHESIS:

Michael and Lee are best friends. They decide to go into business as partners, but there is nothing in writing. For the first six months they share all the profits and responsibilities. After six months, Lee decides that he is too busy to help Michael run the business, so he cuts back on his responsibilities. At the end of the month, he goes to Michael to collect his share of the profits. The profits for that month are \$5,000.00. Michael gives Lee \$1,500.00. If Lee sues Michael for the remaining \$1,000.00, will he win?



- **HOW TO SET UP A PARTNERSHIP:**

- Determine if you should start a general partnership.
- Choose a business name.
- File a DBA name (if needed)
- Draft and sign partnership agreement.

- ***WHAT SHOULD GO INTO PARTNERSHIP AGREEMENT: EVREYTHING UNDER IMPLIED PARTNERSHIP.***

- Obtain licenses, permits, and clearances.
- Get an Employer Identification Number (EIN)
- Get New York state tax identification numbers.

ADVANTAGES OF HAVING A PARTNERSHIP:

- Two heads (or more) are better than one.
- Your business is easy to establish, and start-up costs are low.
- More capital is available for the business.
- High-caliber employees can be made partners.

Advantages to Partnership (Cont.)

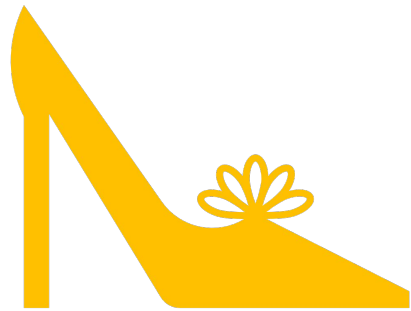
- There is opportunity for income splitting, an advantage of particular importance due to resultant tax savings.
- Partners' business affairs are private
- There is limited external regulation.
- It's easy to change your legal structure later if circumstances change.

DISADVANTAGES OF HAVING A PARTNERSHIP:

- . The liability of the partners for the debts of the business is unlimited
- . Each partner is 'jointly and severally' liable for the partnership's debts; that is, each partner is liable for their share of the partnership debts as well as being liable for all the debts.
- . There is a risk of disagreements and friction among partners and management.

DISADVANTAGES TO PARTNERSHIP (CONT.)

- Each partner is an agent of the partnership and is liable for actions by other partners.
- If partners join or leave, you will probably have to assess all the partnership assets, and this can be costly.



- HYPO:

- Rita and Garcelle entered a partnership to sell Italian shoes. The name of the partnerships is “**Girls Luv Shoes**”. They both signed a written agreement. Garcelle decides that she wants the business to grow. As a result, she buys shoes from an unknown vendor, and promises to pay later. She did not consult with Rita before she purchased the shoes. The shoes don’t sell because the vendor is unknown and as a result, Garcelle refuses to pay the vendor. The vendor sues Girls Luv Shoes. Rita says she is not responsible because she knew nothing about the sale and did not agree to it. Is Rita still liable for payment if the vendor wins?



- **TYPES OF PARTNERSHIPS:**

- **Limited partnerships (LP)**

- A limited partnership involves a general partner who typically runs the business and assumes all liability and also has a limited partner (a.k.a. a “silent partner”) who contributes capital but doesn’t participate in day-to-day operations. Silent partners typically earn a proportional share of profits, and their liability is limited to their initial investment in the company.



- TYPES OF PARTNERSHIPS (CONT.)
- LIMITED LIABILITY PARTNERSHIP: LLP
- A limited liability partnership is a partnership in which some or all partners have limited liabilities. It therefore can exhibit aspects of both partnerships and corporations. In an LLP, each partner is not responsible or liable for another partner's misconduct or negligence.
- Find this usually in professional settings, doctors, lawyers, accountants, etc.

ADVANTAGES OF CREATING A Limited Liability Partnership (LLP):

- You're protected from other partners' negligence.
- Flexibility in business management structure.
- Relatively easy to set up.



- DISADVANTAGE OF CREATING AN LLP:
- LLPs are not recognized in every state. May be restricted to certain professions.
- LLPs must have at least two partners
- Must have a managing partner, but all partners must help to run the business.
- **Managing Partner: In charge of the day-to-day running of the business.**
- State filing requirements are sometimes more complicated; depends on the state.



D & P start a business. P contributed 50% of the start-up costs. She has nothing to do with the daily operations of the business. P is a:

General Partner

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Limited Liability Partner

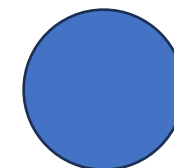
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A Limited Partner

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All of the above

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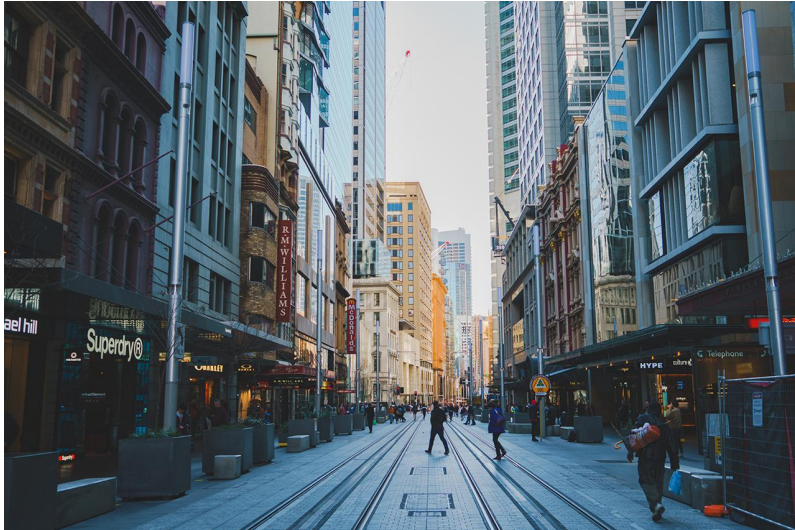
All of the above

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RESULTS SLIDE

CORPORATIONS

- A corporation is an artificial person. It **CAN**; sue or be sued, pays taxes; distributes profits to shareholders.
- A corporation is SEPARATE from its owners. Strongest protection for its owners from personal liability, but the cost to form a corporation is higher than other structures.





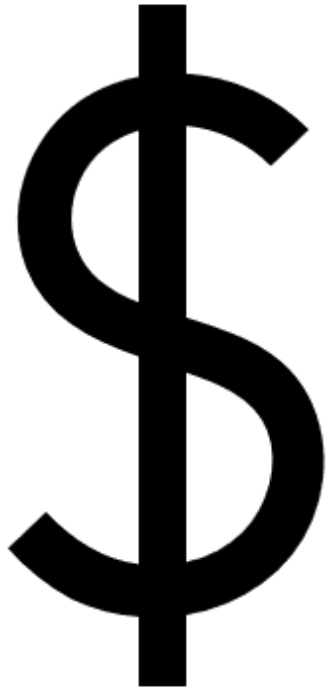
- STOCKS:** Capital raised by a corporation through the issuance of shares.

- SHARES:** Units of stocks issued by a corporation that represent ownership.

- Example: The Champagne Store issued stock and a buyer purchased 10 shares of it. If each share represents 1% ownership of the company, the buyer owns 10% of the company.**

- DIVIDEND:** Is a sum of money paid regularly (quarterly) by a company to its shareholders out of its profits.

- Dividend payments and amounts are determined by a company's board of directors.

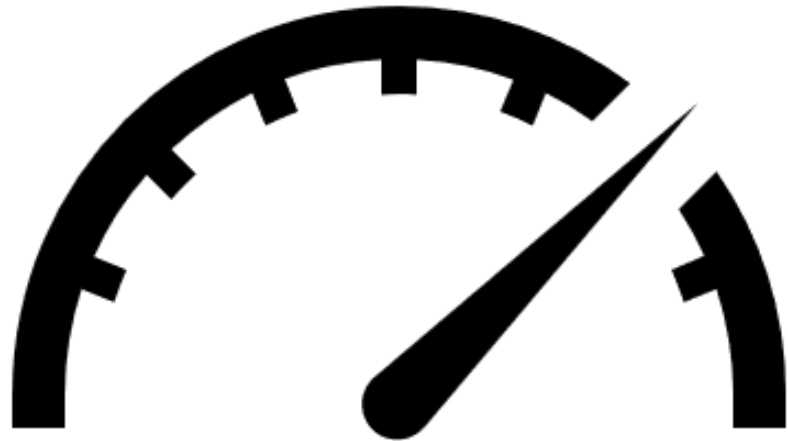


- Incorporating in Delaware:
- The incorporation process is different in all states. However, most companies incorporate in the state of **DELAWARE** because:
 - The most famous reason Delaware has attracted the eye of corporations across the world is the **lenient taxes** imposed by the state. Corporations registered in Delaware that **do not do business** in the state do not pay corporate income tax.



- Reasons to Incorporate in Delaware:

- Privacy:** As with registering a business in most states, companies must assign a registered agent who maintains a physical address to be the official address and to receive mail and collect paperwork. Unlike most states, however, in Delaware, the registered agent is the only name that must be disclosed in association with the company. Other officers and directors are not required to disclose their names, allowing an extra degree of anonymity. Because of this lack of reporting, officers, directors and shareholders are also not required to maintain residency in Delaware.



- Reasons to Incorporate in Delaware:

- Expediency and Simple Structure:**

- Often, the incorporation process can take **less than an hour** to complete. To make things even easier, Delaware law allows only one person to hold numerous positions in the company such as the role of officer, director and even shareholder. In other states, this can often only be accomplished with sole proprietorships or LLCs.

- Reasons to Incorporate in Delaware:

- Corporation Court**

- Instead of a traditional trial system, corporate lawsuits in Delaware are resolved by the **Court of Chancery**, a court made up of judges who specialize in corporate law. Because of this, Delaware has well-developed and predictable legal precedents that may benefit corporations. While the average civil lawsuit may take several years to resolve, Delaware's use of judges instead of juries and prioritization of corporate-related cases means similar cases can be decided more quickly.





The most popular reason people incorporate in Delaware is:

Disputes are decided quickly.

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It takes less time to incorporate in Delaware.

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Tax obligations are more favorable in Delaware.

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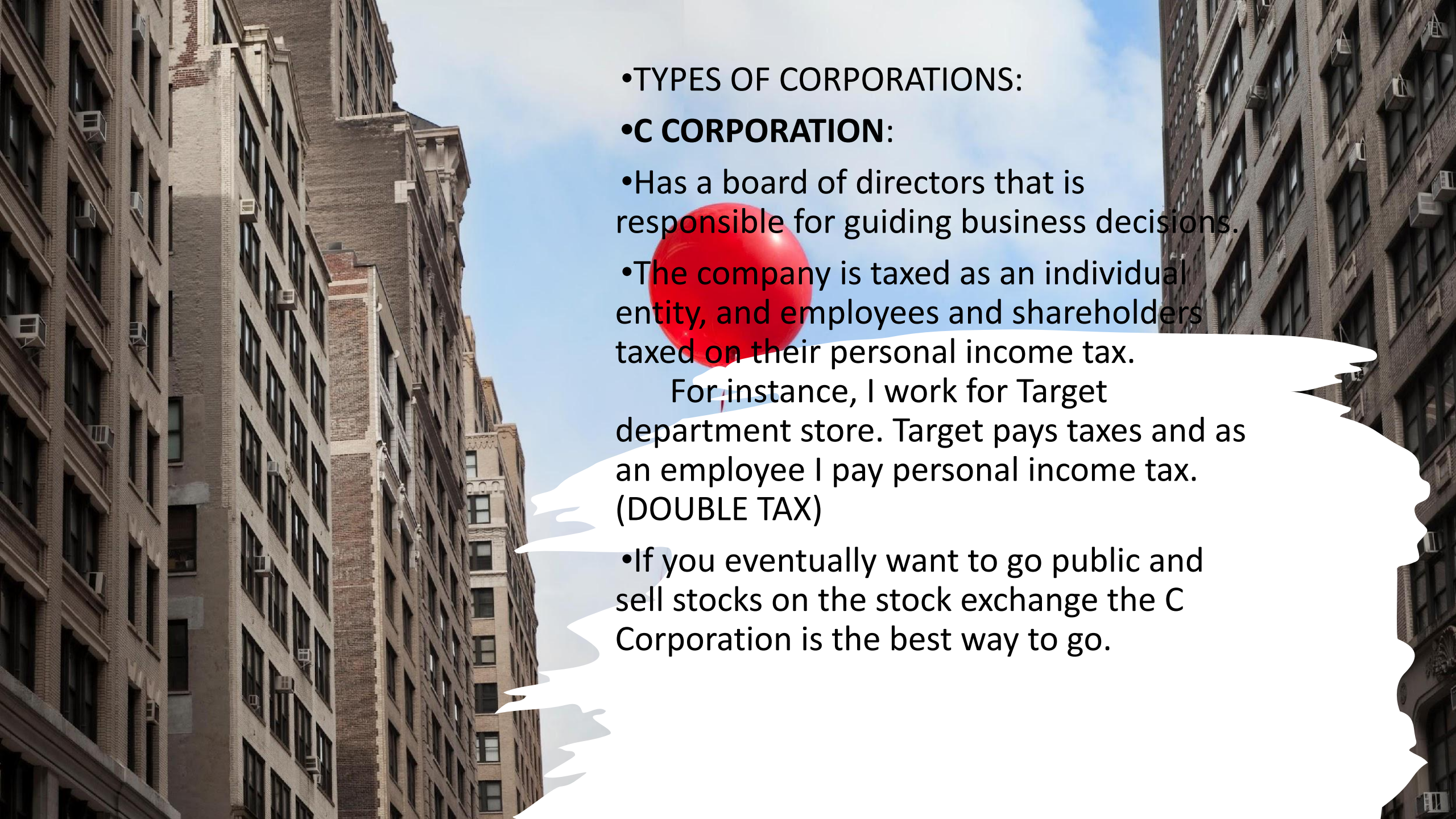
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HOW DO YOU INCORPORATE IN DELEWARE ? (THIS IS SIMILAR TO OTHER STATES)

- Choose a name for your business. “Sam’s Ice Cream Palace, Inc.
- Designate a registered agent in Delaware. (Registered Agent)-Receives legal documents.
- File a Certificate of Incorporation in Delaware.
- Create Corporate by-laws.
- Appoint Corporate Directors.
- Hold first meeting of Corp. Directors.
- Authorize the issuance of shares and stocks.
- Obtain Delaware business licenses and permits.
- Get an EIN number for your business.



- TYPES OF CORPORATIONS:

- **C CORPORATION:**

- Has a board of directors that is responsible for guiding business decisions.

- The company is taxed as an individual entity, and employees and shareholders taxed on their personal income tax.

For instance, I work for Target department store. Target pays taxes and as an employee I pay personal income tax. (DOUBLE TAX)

- If you eventually want to go public and sell stocks on the stock exchange the C Corporation is the best way to go.



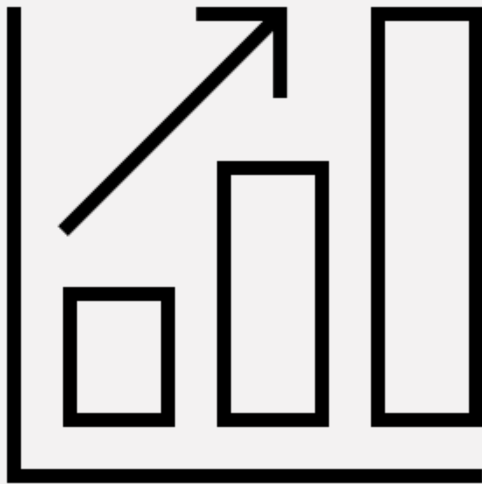
•S CORPORATION:

- Separate legal entity with the governance structure similar to a C Corporation.
- But like sole proprietorships and partnerships S Corps are pass-through entities.
- **Pass-through entity** means that the shareholders claim business profit on personal income taxes. This avoids double taxation.
- Can only have up to 100 shareholders. This makes it difficult to raise capital through the sale of stocks.
- Shareholders must reside in the United States.
- Only have one **class of stock**. C Corps can offer different classes of stock that gives preferential treatment to shareholder votes and offer different dividend benefits.

Different Types of Stock:

Preference Share: Preference shares give their holder a **preferential right to a fixed amount of dividend**, meaning that they will receive dividends ahead of ordinary shareholders. Preferred shareholders also have a higher priority claim to the company's assets in case of **insolvency**.

Non-Voting Shares: Non-voting shares **do not give the holder any voting rights in the company**. This means that the holder is entitled to a portion of the company's capital but is not able to take part in its **general meetings** .



- **Different Types of Stock (Cont.):**

- **REDEEMABLE SHARES:** Redeemable shares are shares that **can be bought back by the company at some point in the future**. The redemption date can either be fixed in advance (e.g., 3 years from the date the share is issued) or decided at the company's discretion. The redemption price is usually the same as the issue price, but not always.

The best type of stock to own is:

- A. Preference (Preferred) Shares
- B. Non-Voting Shares
- C. Redeemable Shares



- CLOSE CORPORATION:

- They are not publicly traded and are also known as “privately held companies” or “family corporations”.

- They have more flexibility to operate and looser governance rules, which gives shareholders flexibility associated with a partnership.

Pros of Close Corporations

- **Fewer formalities.** The most obvious advantage of a close corporation is fewer rules to follow. You still must abide by regulations concerning the filing of **incorporation documents**, but beyond that, owners can focus on running the company instead of worrying about corporate regulatory compliance.
- **Limited liability.** In general, shareholders of a close corporation are not personally liable for the business's debt. However, there are exceptions, such as when a shareholder has signed an agreement to be personally responsible for corporation debts.

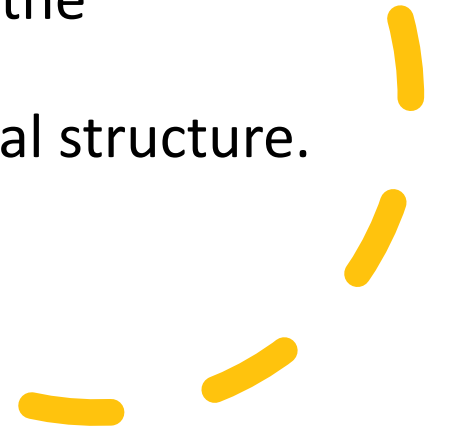
Pros of Close Corporations (Cont.)

- **More shareholder control.** With fewer shareholders and a relaxed corporate structure, a close corporation provides each shareholder with more control over shares. For example, if one owner wants to leave the company, the other shareholders can better control those shares.



•Pros of Close Corporation (Cont.)

•**More freedom.** Without having to comply with corporate regulations, business owners are free to operate the company exactly as they want, such as exploring new markets or donating profits to charity without consulting with a board of directors or answer to public shareholders. The close corporation shareholder agreement should detail the important aspects of its management and financial structure.





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Question slide

Which, if any, is the most popular corporate structure in Russia?

C Corporation

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S Corporation

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Close Corporation

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None of the above

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C Corporation



##.##%

S Corporation



##.##%

Close Corporation



##.##%

None of the above



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THANK YOU!

REFERENCES

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