

What is an LLC?

And how does it differ from a Corporation, General Partnership, or a Limited Liability Partnership (LLP)?

The Limited Liability Company is a new form of business entity. It is a hybrid of the best characteristics of corporations and partnerships. Like shareholders of a corporation, members are generally exempt from personal liability from company debts. Resembling the General Partnership, the LLC can pass-through the profits and losses directly to its members (no double taxation as with a C-Corporation). Similar to a Limited Liability Partnership or a Corporation, the members of an LLC may choose a manager or managers to run the company, or they may run the company themselves, as in a General Partnership.

The LLC has the benefit of simplicity of operation, designed with the small business owner in mind. The LLC works pursuant to an Operating Agreement drafted and signed by the members. Maine legislation follows the doctrine of “freedom of contract,” allowing the members to agree how the company will be run (as long as it is legal) and the courts will usually uphold LLC agreements. Maine default statutes cover any area not covered by an Operating Agreement. The only requirement imposed on the LLC by the Secretary of State is the filing of the Annual Report by the Registered Agent.

Corporations, and especially S-Corporations, on the other hand, must comply with some different rules and regulations that can seriously jeopardize the benefits that the corporate form provides. Corporations that fail to maintain minutes and resolutions are sitting ducks for IRS audits or a lawsuit. Attacking the validity of a corporation is commonly referred to as “piercing the corporate veil” to go after the stockholders personally.

The LLC can be the best vehicle to raise money for a real estate or venture capital project. Membership in an LLC can be as little as one to as many as thirty-five members, who can be individuals, corporations, trusts, pension plans, or foreigners. Shareholders of an S-Corporation must be individuals or “qualified” estates or trusts, and cannot be nonresident aliens.

The LLC is easy and inexpensive to organize, is easy to maintain, provides liability protection for all of its members, and is taxed as a partnership. However, if the Operating Agreement is not properly structured, the IRS may tax it as a corporation. The advice of both a tax consultant and an attorney, who are knowledgeable in the field of business organization, is key to effectively organizing a Limited Liability Company.