

ENTITY CHOICE AND FORMATION AND HOW TO BRING YOUR EMPLOYEES TO THE U.S.

PART I. ENTITY CHOICE AND FORMATION IN THE STATE OF MICHIGAN

The following addresses entity formation in the State of Michigan, more specifically the “C” Corporation (“Corporation(s)”) and Limited Liability Company (“LLC(s)”), the advantages and disadvantages of Corporations and LLCs, and other related issues .

Although LLCs are becoming increasingly popular, the Corporation is still one of the most common forms of business entity used for the organization and operation of businesses. Both Corporations and LLCs offer the following:

- Personal liability protection to the owners for debts and obligations of the business.
- Both have no limitation to the numbers of owners and both allow foreign individuals or corporations as owners.
- Both must maintain a registered office and registered agent in the State of Michigan.
- Both are relatively easy and inexpensive to form.



CORPORATIONS vs. LLCs

OWNERSHIP, FORMATION, AND MANAGEMENT	<p>•Corporation A Corporation is incorporated by filing the Articles of Incorporation with the State of Michigan, Consumer and Industry Services. Owners are referred to as “shareholders”. A Corporation is governed by its By-Laws (the internal governing rules and regulations).</p>	<p>•LLC An LLC is formed by filing the Articles of Organization with the State of Michigan, Department of Labor and Growth. Owners of an LLC are referred to as “members.” An LLC is governed by its Operating Agreement.</p>
CAPITAL STRUCTURE	<p>•Corporation & LLC Corporations and LLCs both offer great flexibility in different classes of stock. For Corporations, stocks may also be separated in non-voting and voting stock.</p>	
GOVERNING BODIES AND FORMALITIES	<p>•Corporation Generally managed by the board of directors (elected by the shareholders). The board of directors selects the officers of the Corporation, who undertake the day-to-day duties.</p>	<p>•LLC Generally managed by the members unless otherwise provided in the articles of organization. The LLC can be member-managed or management can be given to managers. An LLC may also have a board of managers (similar to a board of directors). Advantage: No requirement to maintain the formalities of meetings, notices, minutes, etc. (as is required in a Corporation).</p>
TRANSFERABILITY OF INTERESTS	<p>•Corporation Generally, shareholders may easily transfer their interests, subject to any shareholder or other agreements.</p>	<p>•LLC Generally, the membership interests transferred do not confer full rights on the transferees.</p>
TAX CONCERNS	<p>•Corporation The main distinction of Corporation and LLCs is the tax treatment. Corporations are subject to double taxation, once at the corporation level and then at the shareholder level. This may or may not be a disadvantage. The minimum percentage of taxation is 15% (up to a taxable income of \$50,000) and a maximum percentage of taxation of 35%. Corporations may “zero out” dividends by distributing all of their taxable income in the form of reasonable salaries and bonuses. The corporate taxed income may be left in the company for expenditures. Corporations also enjoy additional itemized deductions, such as health care.</p>	<p>•LLC The default tax treatment of an LLC is a partnership. This means that at the end of the tax year, all members must report and assume liability for their share of the gain or loss. Note: LLCs may elect “C” corporation or other tax status.</p>



PROCEDURE

The actual procedure for establishing a Corporation or LLC is relatively simple. Generally, the attorney will draft appropriate documents and file all necessary documents in the capacity of Incorporator. The associated filing fees are generally \$50-60 dollars. The attorney fees range from \$500-1,500 depending on the complexity of the organization and the number of communications and changes involved.