

## LLCs, LPs, S Corps & C Corps – Choosing the Best Business Entity for Optimal Results

I recently attended a seminar sponsored by the Pennsylvania Bar Institute entitled, “*LLCs, LPs, S Corps & C Corps - Choosing the Best Business Entity for Optimal Results.*” The seminar was conducted by some of the top business attorneys in the state. The attorneys conducting the seminar concluded that the Limited Liability Company (LLC) is the default entity of choice. In other words, when choosing the best entity through which to conduct business, one should presume the LLC to be the best entity unless the presumption is overcome by a compelling reason to use a different entity.

Of all the various entities studied at the seminar, including the C corporation, S corporation, General Partnership (GP), Limited Partnership (LP) and the Limited Liability Partnership (LLP), the attorneys conducting the seminar concluded the LLC is the default entity of choice because it provides the most liability protection (like corporations) while providing the most advantageous tax and the most flexible governance considerations (like partnerships).

Like corporations, the LLC enjoys explicit statutory liability limitation for its owners. Thus, according to state law, the liability of the owners of LLCs is limited. The limited liability enjoyed by owners of an LLC is in contradistinction to the unlimited liability imposed upon General Partners in a GP and the General Partner of the LP. Furthermore, the LLP, which was designed to provide general partners operating in a partnership with some form of limited liability, only provides a partial and not full liability shield to those general partners.

While both the LLC and the LLP are limited liability entities, the LLP provides less liability protection to its owners who participate in the business than the LLC. Unlike members of an LLC, general partners in an LLP do not receive limited liability protection from the traditional commercial debts or obligations of the business. This lack of a full liability shield is what is compelling more businesses to use the LLC rather than the LLP.

There is legislation currently pending before the Pennsylvania General Assembly to amend the LLP statute to “provide the same liability shield for restricted professional partnerships as is provided for restricted professional companies.” If this legislation is enacted, the LLP will have the same full liability shield as the LLC. Importantly, this proposed amendment to extend the full liability shield would apply only to the restricted professional LLPs, which are limited to businesses involving the practice of certain professions.

During the seminar, the instructors talked about some of the common practices that have been developing in recent years. For instance, it is becoming increasingly common to use an LLC as the General Partner of an LP in order to maximize liability protection for the business and minimize the Pennsylvania Capital Stock & Foreign Franchise Tax (CSFFT) imposed upon the business. The General Partner of an LP, according to Pennsylvania statute, has full personal liability for the debts, obligations and liabilities of the LP. Thus, it is critical to limit this liability exposure by having the General Partner be a LLC. Furthermore, by allocating a small percentage of the interest of the business to the LLC and a much greater percentage interest in

the business to the Limited Partners, the CSFFT, which is imposed upon the LLC and not the LP component of the business, can be minimized.

If you have any questions about choice of business entity or any questions concerning business law, please do not hesitate to contact me at 1-877-LAW-2555.

By:

Marc A. Scaringi  
Attorney-At-Law