

Choosing an Entity Comparison Chart (DE)

by Practical Law Corporate & Securities

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A Chart that highlights the various structure, liability, tax, and management differences among C-corporations, S-corporations, limited liability companies, and partnerships formed in Delaware. It discusses ownership requirements, forms of equity, formation and governing documents, liability, management, fiduciary duties, distributions, and other important considerations.

Ownership Requirements

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This chart focuses on the requirements for Delaware business entities. Because different states have different laws concerning the formation and operation of business entities, it is important to consult the appropriate state statutes before finalizing your choice of entity (see [Corporation Law: State Q&A Tool](#)). In Delaware, the formation and operation of entities is primarily governed under:

- The [Delaware General Corporation Law](#) (DGCL).
- The [Delaware Limited Liability Company Act](#).
- The [Delaware Revised Uniform Partnership Act](#).
- The [Delaware Revised Uniform Limited Partnership Act](#) (DRULPA).

There are many different considerations when choosing the appropriate business entity. The type of entity chosen often depends on the intended purpose for the entity (for example, to make an acquisition). This Chart provides a comparison of the differences in Delaware law among the most common entities:

- [C-corporations](#).
- [S-corporations](#).
- [Limited liability companies \(LLCs\)](#).
- [Limited partnerships \(LPs\)](#).

This Chart does not address [non-profit corporations](#), public benefit corporations, [professional corporations](#), professional LLCs, or series LLCs. For more information about some of these entities, see Practice Notes:

- [Public Benefit Corporations \(DE\)](#).
- [Series LLCs](#).
- [Forming and Organizing a Non-Profit Corporation: 501\(c\)\(3\) Public Charity](#).

This Chart also does not address sole proprietorships. A sole proprietorship is a natural person who directly owns all assets used in the business. A sole proprietor is not required to file a formation document with the Delaware Division of Corporations, but must register with the Delaware Division of Revenue (see [Division of Revenue: Combined Registration Application](#)). If the sole proprietorship will transact business in Delaware using a name other than the owner's name, it must register the trade or fictitious name with the prothonotary of each county in which it will transact business ([6 Del. C. § 3101](#) and see [Delaware Superior Court: Trade, Business & Fictitious Names](#)). One significant drawback of the sole proprietorship is that the owner is personally liable for all business debts, obligations, and liabilities so it is strongly discouraged as a form of business.

This Chart assumes that an LLC will be treated as a partnership or disregarded entity for tax purposes (see [Tax Considerations](#)). This Chart addresses some general aspects of US federal income tax law, but the tax consequences of selecting an entity are complex and also depend on other factors such as:

- The type of business in which the entity is engaged.
- The ownership structure and composition.
- The jurisdiction of formation and jurisdictions in which the entity engages in business.

The entity organizers should consult with a tax specialist familiar with both state and federal taxation issues before forming an entity. Some basic state tax information is available from the [Delaware Department of Finance](#). For more information on US federal income taxation of corporations, LLCs, and partnerships, see Practice Notes:

- [Choice of Entity: Tax Issues](#).
- [Taxation of Corporations](#).

- [Taxation of S-Corporations.](#)
- [Taxation of Partnerships.](#)

The entity form selected may also affect the types of retirement plans, health and welfare plans, and other employee benefits that can be offered to employees and business owners. A full explanation of these matters is outside the scope of this Chart. Persons who are organizing a business entity should consult with an employee benefits attorney (see [Practice Area Essentials: Employee Benefits & Executive Compensation Toolkit](#)).

If the entity will be engaged in a business that requires licensing or is in a regulated industry, the organizers should consult with counsel knowledgeable about the requirements for the particular business or industry. Information about state taxation and other business registration and licensing requirements are available at the [State of Delaware's One Stop Business Registration and Licensing System](#).

In addition, this Chart does not discuss state or federal securities laws, which apply to the issuance (and transfer or resale) of securities. Securities counsel should be consulted before undertaking the issuance, transfer, or resale of securities.

For more information about forming corporations or LLCs, see [Practice Notes, Forming and Organizing a Corporation](#) and [Forming and Organizing an LLC \(DE\)](#).

Ownership Requirements

C-Corporation	S-Corporation	Limited Liability Company (LLC)	Limited Partnership (LP)
<p>One or more stockholders.</p> <p>No restrictions on the types of owners.</p>	<p>One to 100 stockholders.</p> <p>With certain limited exceptions, only US individuals (citizens or residents) can be stockholders. Certain trusts and exempt organizations can also be stockholders.</p> <p>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).</p> <p>(IRC §1361(b).)</p>	<p>One or more members (6 Del C. § 18-101(6)). Two or more members required if LLC wants to be taxed as a partnership.</p> <p>A single-member LLC will be treated as a corporation or a sole proprietorship. (Treas. Reg. § 301.7701-2(a).)</p> <p>No restrictions on the types of owners (6 Del. C. § 18-101(11), (12)).</p>	<p>Two or more persons, consisting of one or more general partners and one or more limited partners (6 Del. C. § 17-101(11)).</p> <p>No restrictions on the types of owners.</p>

	<p>Delaware automatically recognizes a general or close corporation as an S-corporation if a federal S-corporation election is made (30 Del. C. § 1902(b)(9).)</p> <p>An S-corporation automatically converts to a C-corporation if it does not meet the requirements of an S-corporation (meaning, no more than 100 stockholders, only specific types of stockholders, and only one class of stock).</p> <p>For more information, see Practice Note, Eligibility Requirements for an S-Corporation Election.</p>	
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Form of Equity and Restrictions

C-Corporation	S-Corporation	Limited Liability Company (LLC)	Limited Partnership (LP)
<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 (DGCL § 151).</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 (IRC § 1361(b)(1)(D), (c)(4)). 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 (Treas. Reg. 1.1361-1(l)(4)).</p>	<p>An LLC interest is a member's share of the LLC's profits and losses and right to receive distributions of the LLC's assets (6 Del. C. § 18-101(8)).</p> <p>A person may be admitted as a member without making or being obligated to make a contribution (6 Del. C. § 18-301(d)).</p> <p>A member's contribution may be in cash, property, or services rendered or a promissory note to contribute cash, property, or to perform services (6 Del. C. § 18-501).</p>	<p>Two classes of partners:</p> <ul style="list-style-type: none"> A general partner (generally responsible for management). A limited partner (typically a silent investor). <p>General and limited partners are not required to make a contribution to receive a partnership interest (6 Del. C. §§ 17-301(d) and 17-401(a)).</p>

		<p>The limited liability company agreement (LLC agreement) may classify membership interests into different classes (for example, common and preferred interests) with different rights and preferences (6 Del. C. 18-302).</p> <p>Distribution, liquidation, and voting preferences can be specified in the LLC agreement. (6 Del. C. § 18-302).</p>	
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Formation and Governing Documents

Information about the forms and fees for forming an entity in Delaware is available from the [Delaware Division of Corporations](#).

C-Corporation	S-Corporation	Limited Liability Company (LLC)	Limited Partnership (LP)
<p>Formation document: certificate of incorporation filed with the Delaware Secretary of State (SOS) (DGCL § 101(a) and see Standard Documents, Certificate of Incorporation (Short-Form DE) and Public Company Certificate of Incorporation (Delaware Corporation)).</p> <p>Governing document: by-laws (in addition to the certificate of incorporation) (DGCL § 109 and see Standard Documents, Private Company By-Laws (Delaware Corporation) and Public Company By-Laws (Delaware Corporation)).</p>	<p>Formation document: certificate of incorporation filed with the SOS (DGCL § 101(a)).</p> <p>Governing document: by-laws (in addition to the certificate of incorporation) (DGCL § 109 and see Standard Document, By-Laws: DE S-Corporation).</p> <p>Other documents: Stockholders may also enter into a stockholders' agreement (see Practice Note, Stockholders Agreement Commentary and Standard Document, Stockholders Agreement (Two-Party)).</p>	<p>Formation document: certificate of formation filed with the SOS (6 Del. C. § 18-201 and see Standard Document, Certification of Formation (DE)).</p> <p>Governing document: LLC agreement. See, for example, Standard Documents:</p> <ul style="list-style-type: none"> • LLC Agreement (Single Member). • LLC Agreement (Multi-Member, Manager-Managed) (Short Form) (DE). 	<p>Formation document: certificate of limited partnership filed with the SOS (6 Del. C. § 17-201 and see Standard Document, Certificate of Limited Partnership (DE)).</p> <p>Governing document: limited partnership agreement (LP agreement) (see Standard Document, Limited Partnership Agreement (Initial Form DE)).</p>

<p>Other documents: Stockholders may also enter into a stockholders' agreement (see Practice Note, Stockholders Agreement Commentary and Standard Document, Stockholders Agreement (Two-Party)).</p>	<ul style="list-style-type: none"> • LLC Agreement (Single Class, Multi-Member).
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Tax Considerations

For a more detailed discussion of the various tax considerations when choosing an entity type, see [Practice Note, Choice of Entity: Tax Issues](#).

C-Corporation	S-Corporation	Limited Liability Company (LLC)	Limited Partnership (LP)
<p>Tax level: Generally subject to two levels of tax on income:</p> <ul style="list-style-type: none"> • At the entity level when earned. • At the stockholder level when distributed. <p>Reorganization: Can participate in tax-free reorganizations under IRC § 368.</p> <p>For more information, see Practice Note, Taxation of Corporations.</p> <p>Annual taxes: Most Delaware corporations are required to file an annual report with the SOS and pay an annual franchise tax in addition to the state corporate income tax (8 Del. C. §§ 501 and 502).</p>	<p>Tax level: Pass-through entity for tax purposes. Profits and losses pass through to the stockholders who include their share of those items on their income tax returns.</p> <p>Taxation generally only occurs at the stockholder level unless the S-corporation was formerly a C-corporation (IRC §§ 1363 and 1374).</p> <p>Reorganization: Can participate in tax-free reorganizations under IRC § 368.</p> <p>For more information, see Practice Notes, Taxation of S-Corporations and Tax-Free Reorganizations with S-Corporations.</p> <p>Annual taxes: Most Delaware corporations are required to file an annual</p>	<p>Tax level: At the member level only.</p> <p>Reorganization: Cannot participate in tax-free reorganizations under IRC § 368.</p> <p>For more information, see Practice Note, Taxation of Partnerships.</p> <p>Annual taxes: Delaware LLCs must pay a flat annual tax to the SOS in the amount of \$300 (6 Del. C. § 18-1107(b)).</p>	<p>Tax level: At the partner level only.</p> <p>Reorganization: Cannot participate in tax-free reorganizations under IRC § 368.</p> <p>For more information, see Practice Note, Taxation of Partnerships.</p> <p>Annual taxes: Delaware LPs must pay a flat annual tax to the SOS in the amount of \$300 (6 Del. C. § 17-1109(a)).</p>

	<p>report with the SOS and pay an annual franchise tax in addition to the state corporate income tax (8 Del. C. §§ 501 and 502).</p> <p>Other: Unlike some states, Delaware automatically recognizes S-corporations for state tax purposes if a federal S-corporation election is made (30 Del. C. § 1902(b)(9)).</p>		
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Liability

C-Corporation	S-Corporation	Limited Liability Company (LLC)	Limited Partnership (LP)
<p>Unless the certificate of incorporation provides otherwise, stockholders are generally insulated from liability for corporate obligations (DGCL §102(b) (6) and see <i>Cigna Health & Life Ins. Co. v. Audax Health Sols., Inc.</i>, 107 A.3d 1082, 1096 (Del. Ch. 2014)).</p> <p>See Fiduciary Duties for information about director and officer liability.</p>	<p>Unless the certificate of incorporation provides otherwise, stockholders are generally insulated from liability for corporate obligations (DGCL §102(b) (6) and see <i>Cigna Health & Life Ins. Co. v. Audax Health Sols., Inc.</i>, 107 A.3d 1082, 1096 (Del. Ch. 2014)).</p> <p>See Fiduciary Duties for information about director and officer liability.</p>	<p>Members and managers are not liable for the LLC's debts, obligations, and liabilities, except as provided by the Delaware Act or under the LLC agreement (6 Del. C. § 18-303).</p> <p>See Fiduciary Duties for information about managing member and manager liability.</p>	<p>A limited partner is not liable for the LP's obligations unless the limited partner either:</p> <ul style="list-style-type: none"> Is also a general partner. Participates in the control of the business. Liability extends only to those doing business with the LP and who reasonably believe the limited partner is a general partner. <p>(6 Del. C. § 17-303(a) to (f).)</p> <p>General partners are jointly and severally liable for all of the LP's obligations unless otherwise agreed by the claimant or provided by law (6 Del. C. §§ 15-306(a) and 17-403(b)).</p>

			See Fiduciary Duties for information about general partner liability.
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Management

C-Corporation	S-Corporation	Limited Liability Company (LLC)	Limited Partnership (LP)
<p>Governing authority: A C-corporation is governed by a board of directors unless otherwise provided in the certificate of incorporation (DGCL § 141(a)). The board of directors must designate officers to manage the day-to-day operations (DGCL § 142).</p> <p>A Delaware close corporation may provide in its certificate of incorporation for management by stockholders in lieu of a board of directors (DGCL § 351).</p> <p>Delegation: The board of directors may delegate certain decision making to committees (DGCL § 141(c)(2)).</p> <p>Stockholder approvals: Certain major decisions must be approved by the stockholders, including:</p> <ul style="list-style-type: none"> A merger or consolidation (DGCL § 251(c)). A sale, lease, or exchange of all or 	<p>Governing authority: An S-corporation is governed by a board of directors unless otherwise provided in the certificate of incorporation (DGCL § 141(a)). The board of directors must designate officers to manage the day-to-day operations (DGCL § 142).</p> <p>A Delaware close corporation may provide in its certificate of incorporation for management by stockholders in lieu of a board of directors (DGCL § 351).</p> <p>Delegation: The board of directors may delegate certain decision making to committees (DGCL § 141(c)(2)).</p> <p>Stockholder approvals: Certain major decisions must be approved by the stockholders, including:</p> <ul style="list-style-type: none"> A merger or consolidation (DGCL § 251(c)). A sale, lease, or exchange of all or 	<p>Governing authority: Management is initially vested in the members, unless otherwise provided in an LLC agreement, which can be highly variable and is intended to be given broad deference (6 Del. C. §§ 18-402 and 18-1101(b)).</p> <p>Delegation: Members can delegate management to a managing member, non-member manager, or a board of managers. (6 Del. C. § 18-402). The manager(s) can (but do not need to) designate officers to manage day-to-day operations (6 Del. C. § 18-407).</p> <p>Member approvals: Unless they are otherwise provided for in an LLC agreement, certain major decisions typically have to be approved by the members, including:</p> <ul style="list-style-type: none"> Admitting new members (6 Del. C. § 18-301(b)). Amending the LLC agreement (6 Del. C. § 18-302(f)). 	<p>Governing authority: Management is initially vested in the general partner(s). The powers of the general partner can be limited by the limited partners in the LP agreement (6 Del. C. § 17-403(a)).</p> <p>Unless otherwise provided by the LP agreement or DRULPA, general partners are agents of the LP and have apparent authority to bind the LP in transactions in the ordinary course of business unless both:</p> <ul style="list-style-type: none"> The general partner did not have authority to act for the LP in a particular matter. The other party had notice that the general partner lacked authority. <p>(6 Del. C. §§ 15-301(1) and 17-403(a).)</p> <p>Delegation: The general partner(s) may delegate management and may (but do not need to) designate officers to manage day-to-</p>

<p>substantially all of the corporation's assets (DGCL § 271(a)).</p> <ul style="list-style-type: none"> Dissolution (DGCL § 275(b)). 	<p>substantially all of the corporation's assets (DGCL § 271(a)).</p> <ul style="list-style-type: none"> Dissolution (DGCL § 275(b)). 	<ul style="list-style-type: none"> Dissolving the LLC (6 Del. C. § 18-801(a)(3)). 	<p>day operations.(6 Del. C. § 17-403(a), (c).)</p> <p>Limited partner approvals: Certain major decisions typically have to be approved by the limited partners:</p> <ul style="list-style-type: none"> Merger or consolidation (6 Del. C. § 17-211(b)). Conversion (6 Del. C. § 17-219(b)). Transfer, domestication, or continuance (6 Del. C. § 17-216(b)). Becoming a limited liability limited partnership (6 Del. C. § 17-214(a)). Amending the limited partnership agreement (6 Del. C. § 17-302(f)). Admitting a person (including an assignee of a partnership interest) as a limited partner (6 Del. C. §§ 17-301(b) and 17-704(a)). Dissolving the LP (6 Del. C. § 17-801(2)). Terminating a series of partners, partnership interests, or assets (6 Del. C. § 17-218(k)).
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Fiduciary Duties

C-Corporation	S-Corporation	Limited Liability Company (LLC)	Limited Partnership (LP)
<p>Duties owed: The directors and officers owe fiduciary duties to the corporation and its stockholders. The corporation itself does not owe fiduciary duties to the stockholders (<i>Arnold v. Soc'y for Sav. Bancorp, Inc.</i>, 678 A.2d 533, 539 (Del. 1996) and <i>Gantler v. Stephens</i>, 965 A.2d 695, 709 (Del. 2009)).</p> <p>Elimination or limitation of liability: The certificate of incorporation may eliminate or limit a director's personal liability for money damages to the corporation or its stockholders for breaches of the fiduciary duty of care, but not liability for:</p> <ul style="list-style-type: none"> • Breaches of the duty of loyalty. • Acts or omissions that were not made in good faith or involved intentional misconduct or a knowing violation of law. • Unlawful dividends, stock purchases, or stock redemptions under DGCL § 174. • Transactions from which the director received an improper personal benefit. <p>(DGCL § 102(b)(7).)</p>	<p>Duties owed: The directors and officers owe fiduciary duties to the corporation and its stockholders. The corporation itself does not owe fiduciary duties to the stockholders (<i>Arnold v. Soc'y for Sav. Bancorp, Inc.</i>, 678 A.2d 533, 539 (Del. 1996) and <i>Gantler v. Stephens</i>, 965 A.2d 695, 709 (Del. 2009)).</p> <p>Elimination or limitation of liability: The certificate of incorporation may eliminate or limit a director's personal liability for money damages to the corporation or its stockholders for breaches of the fiduciary duty of care, but not liability for:</p> <ul style="list-style-type: none"> • Breaches of the duty of loyalty. • Acts or omissions that were not made in good faith or involved intentional misconduct or a knowing violation of law. • Unlawful dividends, stock purchases, or stock redemptions under DGCL § 174. • Transactions from which the director received an improper personal benefit. <p>(DGCL § 102(b)(7).)</p>	<p>Duties owed: Unless otherwise provided in the LLC agreement, managing members and managers owe the default fiduciary duties of care and loyalty (6 Del. C. §§ 18-1101(c) and 18-1104).</p> <p>Elimination or limitation of duties or liability: The LLC agreement may expand, restrict, or eliminate duties (including fiduciary duties) and limit liability for breaches of duties (including fiduciary duties) but may not:</p> <ul style="list-style-type: none"> • Eliminate the implied contractual covenant of good faith and fair dealing. • Limit or eliminate liability for breach of contract or breach of duty for acts or omissions that constitute a bad faith violation of the implied contractual covenant of good faith and fair dealing. <p>(6 Del. C. § 18-1101(c), (e).)</p> <p>Reliance: Members and managers can rely in good faith on information, opinions, reports, or</p>	<p>Duties owed: Unless otherwise provided by the LP agreement, general partners owe the fiduciary duties of loyalty and care to the LP and the other partners (6 Del. C. §§ 15-404 and 17-403(a)).</p> <p>Elimination or limitation of duties or liability: The LP agreement may expand, limit, or eliminate a partner's fiduciary duties and limit liability for breaches of duties but may not:</p> <ul style="list-style-type: none"> • Eliminate the implied contractual covenant of good faith and fair dealing. • Limit or eliminate liability for a bad faith violation of the implied contractual covenant of good faith and fair dealing. <p>(6 Del. C. § 17-1101(d), (f).)</p> <p>Reliance: In fulfilling its fiduciary duties, a general partner can rely in good faith on the records of the LP and information, opinions, reports, or statements from other partners, officers, employees,</p>

<p>Reliance: Directors can rely in good faith on information, opinions, reports, or statements from officers, employees, board committees, or any other person regarding matters the director reasonably believes are within that person's professional or expert competence after being selected with reasonable care by or on behalf of the corporation (DGCL § 141(e)).</p> <p>Business judgment rule: Delaware courts follow the business judgment rule, under which director action is presumed valid if the director acted on an informed basis, in good faith, and in the honest belief that the action was in the corporation's best interest (see Brehm v. Eisner, 746 A.2d 244, 258-65 (Del. 2000)).</p> <p>For more information, see Practice Notes, Fiduciary Duties of the Board of Directors and Fiduciary Duties of Officers of Corporations.</p>	<p>Reliance: Directors can rely in good faith on information, opinions, reports, or statements from officers, employees, board committees, or any other person regarding matters the director reasonably believes are within that person's professional or expert competence after being selected with reasonable care by or on behalf of the corporation (DGCL § 141(e)).</p> <p>Business judgment rule: Delaware courts follow the business judgment rule, under which director action is presumed valid if the director acted on an informed basis, in good faith, and in the honest belief that the action was in the corporation's best interest (see Brehm v. Eisner, 746 A.2d 244, 258-65 (Del. 2000)).</p> <p>For more information, see Practice Notes, Fiduciary Duties of the Board of Directors and Fiduciary Duties of Officers of Corporations.</p>	<p>statements from other members or managers, officers, employees, committees, or any other person regarding matters the member or manager reasonably believes are within that person's professional or expert competence (6 Del. C. § 18-406).</p> <p>For more information, see Practice Note, Fiduciary Duties in LLCs and LPs.</p>	<p>committees, or any other person regarding matters the general partner reasonably believes are within that person's professional or expert competence (6 Del. C. §§ 15-409(c) and 17-403(a)).</p> <p>For more information, see Practice Note, Fiduciary Duties in LLCs and LPs.</p>
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Employee Incentive Considerations

C-Corporation	S-Corporation	Limited Liability Company (LLC)	Limited Partnership (LP)
<p>Stock options can be granted to employees and can qualify as incentive stock options (ISOs) under IRC § 422. For more information, see Practice Note, Stock Options: Overview: Incentive Stock Options.</p>	<p>Stock options can be granted to employees and can qualify as ISOs under IRC § 422. For more information, see Practice Note, Stock Options: Overview: Incentive Stock Options.</p>	<p>Profits interests or non-qualified options (to acquire a membership interest) can be granted to employees.</p> <p>ISOs are not available.</p>	<p>Profits interests or non-qualified options (to acquire a partnership interest) can be granted to employees.</p> <p>ISOs are not available.</p>

<p>Other common forms of equity compensation include:</p> <ul style="list-style-type: none"> • Stock appreciation rights (SARs). • Restricted stock. • Restricted stock units (RSUs). • Performance awards. 	<p>Other common forms of equity compensation include:</p> <ul style="list-style-type: none"> • SARs. • Restricted stock. • RSUs. • Performance awards. 	<p>Profits interests provide favorable tax treatment to employees and are much more common than options.</p> <p>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>Other equity compensation arrangements (such as RSUs) can be replicated in the LLC context but are uncommon.</p> <p>For more information, see Practice Notes, Profits Interests and Partnership Equity Compensation.</p>	<p>Profits interests provide favorable tax treatment to employees and are much more common than options.</p> <p>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 arrangements (such as RSUs) can be replicated in the partnership context but are uncommon.</p> <p>For more information, see Practice Notes, Profits Interests and Partnership Equity Compensation.</p>
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Capital Raising Considerations

C-Corporation	S-Corporation	Limited Liability Company (LLC)	Limited Partnership (LP)
<p>Methods: C-corporations raise capital through the issuance of equity (stock) and the incurrence of debt.</p> <p>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 SEC and listed on a public stock exchange. For more information about</p>	<p>Methods: S-corporations raise capital through the issuance of equity (stock) and the incurrence of debt. Restrictions: An S-corporation must be converted to a C-corporation before an initial public offering.</p> <p>It is easier for an S-corporation to convert to a C-corporation than</p>	<p>Methods: LLCs raise capital through the issuance of equity (membership interests) and the incurrence of debt.</p> <p>Membership interests are typically issued in private placements. Members can create membership interests that mirror the properties of different types of stock.</p>	<p>Methods: LPs raise capital through the issuance of equity (partnership interests) and the incurrence of debt.</p> <p>Partnership interests are typically issued in private placements. An LP is a good vehicle for raising capital with silent investors because limited partners are prohibited from managing the partnership.</p>

<p>private placements, see Practice Note, Unregistered Offerings: Overview.</p> <p>Form of Equity: There is a lot of flexibility in the type of stock, including common, preferred, convertible debt, and phantom.</p> <p>Restrictions: A C-corporation's equity issuance is limited by:</p> <ul style="list-style-type: none"> • The number of shares authorized in its certificate of incorporation (usually a very large number) (DGCL §§ 151 and 161). It can only be increased by amending the certificate of incorporation which requires stockholder approval (DGCL § 242(a)(3), (b)(1)). • The terms of a stockholders' agreement regarding dilution of current stockholders. • The terms of a certificate of designation granting anti-dilution protection to the current holders of preferred stock. 	<p>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 (IRC § 1362(d)(2)).</p>	<p>If an LLC is publicly traded, units of membership interests (instead of shares of stock) are bought and sold.</p> <p>Restrictions: LLCs are not limited by a preset number of authorized interests, but the LLC agreement may include provisions restricting dilution of the current members' interests.</p> <p>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 dividends, interest, real property rents, natural resource income, certain commodities income, and gains from assets that produce passive income) (IRC § 7704(c)).</p>	<p>If an LP is publicly traded, units of LP interests (instead of shares of stock) are bought and sold.</p> <p>Restrictions: LPs are not limited by a preset number of authorized interests, but the LP agreement may include provisions that restrict dilution of the current partners' interests.</p> <p>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, natural resource income, certain commodities income, and gains from assets that produce passive income) (IRC § 7704(c)).</p>
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Distributions

C-Corporation	S-Corporation	Limited Liability Company (LLC)	Limited Partnership (LP)
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<p>Manner: Distributions must be proportionate to stock ownership within each class of stock. Preferential distributions are permitted for one class over another (DGCL § 151(c)).</p> <p>Dividends may be paid in cash, in property, or in shares of the corporation's capital stock (DGCL § 173).</p> <p>Restrictions: Distributions must be paid out of surplus or, if there is no surplus, out of net profits for the current or preceding fiscal year (DGCL § 170(a)).</p> <p>Liability: Directors who willfully or negligently consent to an unlawful distribution are jointly and severally liable for the full amount of the unlawful distribution (DGCL § 174(a)).</p> <p>For more information about the requirements for and limitations on making corporate distributions, see Practice Note, Dividends, Redemptions, and Stock Purchases.</p>	<p>Manner: Distributions must be proportionate to stock ownership. Only one class of stock is permitted (IRC § 1361(b)(1)(D)).</p> <p>Dividends may be paid in cash, in property, or in shares of the corporation's capital stock (DGCL § 173).</p> <p>Restrictions: Distributions must be paid out of surplus or, if there is no surplus, out of net profits for the current or preceding fiscal year (DGCL § 170(a)).</p> <p>Liability: Directors who willfully or negligently consent to an unlawful distribution are jointly and severally liable for the full amount of the unlawful distribution (DGCL § 174(a)).</p> <p>For more information about the requirements for and limitations on making corporate distributions, see Practice Note, Dividends, Redemptions, and Stock Purchases.</p>	<p>Manner: The LLC agreement may specify the manner in which distributions of cash or other assets are allocated among the members or classes of members. If the LLC agreement does not specify, distributions are made on the basis of the agreed value of each member's unreturned contributions (6 Del. C. § 18-504).</p> <p>Restrictions: Distributions cannot be made if, after giving effect to the distribution, the LLC's liabilities exceed the fair value of its assets. When determining if a distribution is allowed:</p> <ul style="list-style-type: none"> Liabilities to members on account of their ownership interests and liabilities for which the creditor's recourse is limited to specified property are not considered. Property that is pledged as security for a liability is not considered an asset, except to the extent that the fair value of the property exceeds the debt it secures. <p>(6 Del. C. § 18-607(a).)</p> <p>Liability: A member who knowingly receives an improper distribution is personally liable to the</p>	<p>Manner: The LP agreement may specify the manner in which distributions of cash or other assets are allocated among the partners or classes of partners. If the LP agreement does not specify, distributions are made based on the agreed value of each partner's unreturned contributions. (6 Del. C. § 17-504.)</p> <p>Restrictions: Distributions cannot be made if, at the time of the distribution, the distribution causes the LP's liabilities to exceed the fair value of its assets. When determining if a distribution is allowed:</p> <ul style="list-style-type: none"> Liabilities to partners on account of their partnership interests and liabilities for which the creditor's recourse is limited to specified property are not considered. Property that is pledged as security for a liability is not considered an asset, except to the extent that the fair value of the property exceeds the debt it secures. <p>(6 Del. C. § 17-607(a).)</p> <p>Liability: A limited partner who knowingly receives an improper distribution is liable to the LP for the amount of</p>
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		LLC for the amount of the distribution. (6 Del. C. § 18-607(b)).	the distribution (6 Del. C. § 17-607(b)).
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Other Considerations

C-Corporation	S-Corporation	Limited Liability Company (LLC)	Limited Partnership (LP)
<p>Regulators and employees are most familiar with this form.</p> <p>Corporations are more regulated and have more recordkeeping requirements than LLCs or LPs.</p> <p>There is a well-developed body of corporate case law and statutes that provides greater certainty but less flexibility than for other entity forms.</p>	<p>S-corporation election is limited to US entities with no more than 100 eligible stockholders of a single class (IRC § 1361(b)).</p> <p>S-corporations are more regulated than LLCs or LPs.</p>	<p>Regulators and employees are least familiar with this form.</p> <p>LLCs provide the limited liability benefits of a corporation with the flexible management of a partnership and the option for pass-through taxation.</p> <p>Case law is less developed than corporation and LP law. This provides more freedom, but less certainty.</p>	<p>LPs (like LLCs) are subject to fewer formalities than corporations.</p> <p>Partnership law is more developed than LLC law.</p>