Comparison of Business Entities

	Sole Proprietor	**General Partnership**	**Limited Partnership**	**LLP**	**LLC**	**S Corp**	**C Corp**
Number of Owners	one individual	unlimited partners	unlimited partners	unlimited partners	unlimited members	maximum of 100 stockholders	unlimited stockholders
Limited Liability	no	no	only for LPs	yes	yes	yes	yes
Tax Treatment	pass-through	pass-through	pass-through	pass-through	pass-through; except some states (FL, CA and TX) impose an entity level tax	pass-through; but built-in gains and passive net income are taxed at entity level.	double-tax
Massachusetts Statute	MGL c 110, § 5 & 6 – DBA or "fictitious name" law	MGL c 108A Uniform Partnership Act	MGL c 109 Massachusetts Uniform Limited Partnership Act	MGL c 108A, §§ 45 et seq. Massachusetts Limited Liability Partnership Act	MGL c 156C Massachusetts Limited Liability Company Act	MGL c 156D Massachusetts Business Corporation Act	MGL c 156D Massachusetts Business Corporation Act
Formation Documents	- DBA filing	- Partnership Agreement; if no agreement is executed, default provisions of statute would apply	- LP Certificate - LP Agreement; if no agreement is executed, default provisions of statute would apply	- LLP Certificate - Partnership Agreement; if no agreement is executed, default provisions of statute would apply	- Certificate of Organization - Operating Agreement; if no agreement is executed, default provisions of statute would apply	- Articles of Organization - Bylaws - Organizational Board Votes - Stock Certificates - Stock Ledger - Sub S Election	- Articles of Organization - Bylaws - Organizational Board Votes - Stock Certificates - Stock Ledger
Filing Fees	$10-50 DBA filing fee	$10-50 DBA filing fee	$200 filing fee	$500 filing fee $500 annual report	$500 filing fee $500 annual report	$275 filing fee (min) $125 annual report $456 excise tax	$275 filing fee (min) $125 annual report $456 excise tax
Management of The Business	owner	partners	general partners	partners	managers members	officers directors stockholders	Officers directors stockholders
Form of Equity	owner's name	partnership interest	partnership interest	partnership interest	member interest profits interest shares units	common stock non-voting stock (one class allowed)	common stock preferred stock

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Limitations and Drawbacks	- only one owner - no limited liability - may affect credibility	- no limited liability for partners - statute requires that intentions must be to conduct business "for profit"	- no limited liability for GPs - limited partners may not participate in management without exposure to liability	- relatively new form of entity with limited case law to use as precedent - no tax-qualified stock options	- relatively new form of entity with limited case law to use as precedent - no tax-qualified stock options - LLC must file list of members and consents with its annual state tax return; non-residents must consent to federal and/or state tax jurisdiction; LLC must withhold allocable share of taxes for non-consenting members	- maximum of 100 stockholders - may not own 80% or more of subsidiary corporation (C or S) - stockholders limited to individuals, legal residents, certain trusts and certain tax-exempt organizations (no corporations or non-resident aliens) - only one class of stock permitted (other than voting differences)	- double tax - entity losses not deductible - must observe corporate formalities
Legal and Administration Costs	lowest	formation low, but amendments and equity incentives more costly	formation low, but amendments and equity incentives more costly	formation low, but amendments and equity incentives more costly	formation low, but amendments and equity incentives more costly	formation more costly, but amendments and equity incentives relatively low	formation more costly, but amendments and equity incentives relatively low
Suitability for Investors	N/A	relatively low due to liability exposure; also requires distribution of Form K-1	low because less familiar to average person and requires distribution of Form K-1	low because less familiar to average person and requires distribution of Form K-1	good, but less familiar to average person and requires distribution of Form K-1	good, but limited to individuals who qualify under Sub S rules and requires distribution of Form K-1	high

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Tax Filings	Form 1040, Schedule C	Form 1065 Form K-1	Form 1065 Form K-1	Form 1065 Form K-1	Form 1065 Form K-1 for multiple members Form 1040, Schedule C for single member Form 8832, election to be taxed as a corporation	Form 1120S Form K-1 Form 2553, election to qualify as Sub S must be filed on or before 15th day of the third month of tax year.	Form 1120
Tax Year	12/31	usually 12/31	usually 12/31	usually 12/31	usually 12/31	usually 12/31	fiscal year
Reduced Taxes for FICA including Medicare	no	no	no	no	no	yes	yes, but subject to double tax
Deductions for fringe benefits of owners	no	no deductions for fringe benefits paid to employee-partners	no deductions for fringe benefits paid to employee-partners	no deductions for fringe benefits paid to employee-partners	no deductions for fringe benefits paid to employee-members	limited deductions for fringe benefits paid to employee-stockholders	yes
Distributions to Employee-Owners		Distributions can be directed to labor or capital, in proportions that may vary from owner to owner and from year to year (within reason), in order to minimize tax burden and most appropriately reward owners	Distributions can be directed to labor or capital, in proportions that may vary from owner to owner and from year to year (within reason), in order to minimize tax burden and most appropriately reward owners	Distributions can be directed to labor or capital, in proportions that may vary from owner to owner and from year to year (within reason), in order to minimize tax burden and most appropriately reward owners	Distributions can be directed to labor or capital, in proportions that may vary from owner to owner and from year to year (within reason), in order to minimize tax burden and most appropriately reward owners	There is a temptation to minimize salaries (and associated taxes) of employee-owners and distribute earnings instead to owners as pass-through income is limited by the IRS.	Advantages to maximizing salaries to employee-owners in order to minimize taxable income (taxed at both shareholder and entity level) is offset by increased FICA taxes. Deductions for fringe benefits available

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Distributions to Investors	N/A	Special allocations are possible.	Special allocations are possible.	Special allocations are possible.	Special allocations are possible.	Single class of stock limits special allocations to more substantial investors.	Multiple classes of stock makes special allocations to substantial investors possible.
Distributions of Appreciated Assets	appreciated assets can be distributed back to original contributors without recognizing gains.	appreciated assets can be distributed back to original contributors without recognizing gains.	appreciated assets can be distributed back to original contributors without recognizing gains.	appreciated assets can be distributed back to original contributors without recognizing gains.	appreciated assets can be distributed back to original contributors without recognizing gains.	Gains penalties may be somewhat less severe than C corporations	Taxable gains may be recognized at both the individual and entity levels.
Tax-deferred equity incentives	no	no	no	No	profit interests	ISOs (be careful to avoid creating 2nd class of stock)	ISOs
Gain on Redemption taxed at ordinary rate to the extent of receivables	yes	yes	yes	yes	yes	no	no
Retention of Earnings	taxed at shareholder's marginal tax rate	taxed at shareholder's marginal tax rate	taxed at shareholder's marginal tax rate	taxed at shareholder's marginal tax rate	taxed at shareholder's marginal tax rate	taxed at shareholder's marginal tax rate	marginal corporate tax rate may be lower for corporation than individual on first $75K of income
Losses	pass-through	pass-through	pass-through; deductible basis increased by entity liabilities	pass-through; deductible basis increased by entity liabilities	pass-through; allocation permitted; deductible basis increased by entity liabilities	pass-through, but can't be allocated; losses limited to adjusted basis of stock and any debt owed to stockholder	can't pass-through

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Special Allocations			Very flexible allocation of profits and losses		Very flexible allocation of profits and losses	"S" Corporation may not specially allocate tax attributes to its shareholders. Those attributes pass through pro rata. This fact restricts the type of debt the corporation may issue, hampers efforts to gradually shift control of family-owned businesses, and in general makes passive investments difficult to structure.	
Conversion subject to tax on built-in gains	no	no	no	no	no; LLC to S no; LLC to C	no; S to C yes; S to LLC	yes; C to S yes; C to LLC
Basis Adjustments when transferring ownership interests		favorable adjustments in the basis in its assets when ownership interests are sold	favorable adjustments in the basis in its assets when ownership interests are sold	favorable adjustments in the basis in its assets when ownership interests are sold	favorable adjustments in the basis in its assets when ownership interests are sold	no adjustment in the basis of assets when there is a transfer of ownership.	no adjustment in the basis of assets when there is a transfer of ownership.
Cash method of accounting	allowed	allowed	allowed	allowed if partners actively participate	allowed if 65% or more of LLC is owned by managers and LLC not owned by particular types of C corporations	allowed	less than $5 million/year allowed

The selection of business entity depends on many factors. Often, the best choice may be a hybrid of two or more of the different forms of entity. Such a "multiple entity model" combines, for example, the LLC and C corporation. The above table is intended to provide a checklist of the characteristics of each business form. This information is not comprehensive. It is strongly suggested that consultation with legal and financial professionals be sought to identify the best fit for each situation.

ABOUT THE AUTHOR: Roger Glovsky is an entrepreneurial attorney who founded Indigo Venture LLC, which provides business legal services for traditional and high-tech companies which include incorporation and LLC formation, financing, sales and distribution agreements, software and technology licensing, and e-commerce agreements. He has over twenty years of legal experience, working as outside general counsel at two major Boston law firms and as in-house counsel for three software development companies. He is the founder and organizer of LEXpertise.com, an online resource providing access to lawyers, information and tools. Roger can be reached at his Lexington office at 781-676-1900 or roger@indigoventure.com.