

Starting a Business in DC:

What Type of Business is Right for You?

The Limited Liability Company (LLC)



One of the most important decisions for a businessman or businesswoman is determining the form of business organization to use for his or her enterprise. There are several forms of business organization that are available to you. This information sheet discusses the benefits and disadvantages of limited liability companies (LLCs). This information sheet reflects changes in the DC Code that went into effect on January 1, 2012.

- **What is an LLC?**

An LLC is a statutorily created business entity. The owners of an LLC are called members. LLCs are a relatively new type of entity and are especially attractive because they offer both tax benefits and limited liability for their members and provide flexibility as to governance and structure.

- **What are the advantages of an LLC?**

- *Limited Liability*

LLCs offer limited liability for their members. While partners in a partnership can be personally liable for the debts and wrongs of the partnership, the liability of LLC members is limited to the amount that they have invested in the LLC. This means that members' personal assets, such as a home and personal banking accounts, do not have to be used to pay off debts or other liabilities incurred by the LLC.

- *"Pass-Through" Taxation*

Unless LLC members elect otherwise, LLCs are treated with "pass-through taxation" for U.S. income tax purposes. Thus, net income of an LLC is taxed only once, at the member level. There is no taxation of an LLC's income at the entity level. This differs from the taxation of a C-Corporation. A C-Corporation would have to pay tax on its income as an entity, and then when the remaining income is distributed to the shareholders, the shareholders would also have to pay tax on the income they received from the corporation.

- *Do not require more than one person*

Single member LLCs can be an efficient way to provide limited liability to the owner of a business that otherwise might be operated as a sole proprietorship.

- *Liquidity and Additional Capital*

LLCs offer flexibility for members to transfer their interests (including only a non-participatory financial interest) and for additional members to be admitted after formation. Unless otherwise restricted by an operating agreement, interests in an LLC are freely transferrable. However, admittance of a new member after formation through the issuance of additional interests requires the consent of existing members because such an issuance would result in dilution of existing members' interests. Also, an operating agreement may include provisions related to the resignation or expulsion of a member.

- **What are the disadvantages of an LLC?**

Setting up an LLC can be costly and time consuming. To start an LLC, the members usually must agree upon a detailed operating agreement covering all aspects of the operation of the LLC. The DC Code includes certain default provisions which apply to LLCs unless the LLC elects to alter them through the operating agreement.

A single member LLC would not necessarily have to create an operating agreement. However, even the owner of a single member LLC may benefit by creating an operating agreement in order to alter the default provisions.

It is recommended that persons forming an LLC consult a lawyer for assistance in drafting an Operating Agreement.

- **How are LLCs operated?**

Like a partnership, LLCs allow for flexible operation. Generally, all members participate in managing the LLC's business. However, the members can agree to select members or non-members to manage the LLC.

- **How do I form an LLC?**

- *Registration of the LLC*

D.C. requires LLCs to register with the DCRA, which is done by filing "Articles of Organization." Registration costs \$220. Form DLC-1, an instruction sheet and sample Articles of Organization, is available to [download](#) and can also be completed online at <https://corponline.dcradepartment.gov>.

Note that while the DC Code now designates the formation document for an LLC as a "Certificate of Organization," the available forms on the DCRA website still use the term "Articles of Organization."

When filing your Certificate of Organization, you will have to choose a name for your LLC. This name cannot be deceptively similar to that of another business entity and must include the words "limited liability company" or "limited company" or the abbreviations "L.L.C.," "LLC," "L.C" or "LC." A business name can be registered or reserved online at <https://corponline.dcradepartment.gov> or by [downloading form GN-3](#).

An LLC may also operate under a registered trade name that differs from its legal name. This can be completed online at <https://corponline.dcradepartment.gov> or by mail by [downloading form TN-1-4](#).

- *Registration of an Agent*

LLCs must register a "registered agent" within DC. The registered agent receives official notices. It can be either an individual or a business entity, provided that the registered agent has a street address in DC that is not a post office box. The agent need not be someone who is a part of the business; for a small fee, third-party services will act as a registered agent. For further information consult:

<https://dcra.dc.gov/service/corporate-registration-registered-agent>

To change a previously designated registered agent, complete the form online at <https://corponline.dcra.dc.gov> or by mail by [downloading form RA-1-7](#).

- *Drafting an Operating Agreement*

Subject to few requirements, LLC members can structure an operating agreement as they wish. Common topics addressed in an operating agreement include a process for dividing profits or losses between members, a management structure, the members' ability to sell or transfer their interest and a process for terminating the LLC. LLC members should draft a written operating agreement with assistance of legal counsel.

- **What reports must LLCs make?**

LLCs must file a two-year report with DCRA that provides basic information such as the names and addresses of the LLC's governors (e.g., any managers). The fee is \$300. Form BRA-25 is available to [download](#) or can be completed online at <https://corponline.dcra.dc.gov>.

- **What other licenses and certificates must I obtain?**

DC requires many types of businesses to obtain specific licenses and permits. Even if a specific license is not required, a general basic business license often is. A list of business activities having special license and permit requirements and information about the general basic business license can be found at:

<https://dcra.dc.gov/node/514522>

After determining your business' location, you will need to obtain either a Certificate of Occupancy (running the business from an office or storefront) or a Home Occupation Permit (running the business from your home). Generally, if you are leasing space and the owner of the building has already obtained a Certificate of Occupancy that covers your type of business, then you do not need to apply. Applications for these permits must be submitted in person at the DCRA Permit Center, and can be downloaded from:

<https://eservices.dcra.dc.gov/DocumentManagementSystem/Home/retrieve?id=Certificate%20of%20Occupancy%20Application.pdf>

(Certificate of Occupancy)

<https://eservices.dcra.dc.gov/DocumentManagementSystem/Home/retrieve?id=Home%20Occupation%20Permit%20Application.pdf>

(Home Occupation Permit)

- **What tax-related requirements should I know about?**

LLCs must obtain a Federal Employment Identification Number (FEIN) for tax filing and reporting purposes. The FEIN Form SS-4 can be found at: <https://www.irs.gov/pub/irs-pdf/fss4.pdf>

Organizations can now apply for a FEIN online at: <https://sa.www4.irs.gov/modiein/individual/index.jsp>

DC businesses must also complete the Combined Business Tax Registration, Form FR-500. For FR-500 requirements and online registration information, visit:

<https://otr.cfo.dc.gov/page/new-business-registration>

A single member LLC will report the LLC's income and expenses on the member's personal IRS Form 1040. The single member will need to submit Schedule C, and may also need to file Schedule E or F, when filing a return. LLCs with multiple members will need to report the LLC's income and expenses on IRS Form 1065. This is an informational return only; the LLC does not pay taxes. Instead the 1065 informs the IRS of the LLC's expenses and income, upon which the members will each pay taxes. The LLC then gives each member an IRS Form K-1. This informs each member of his or her share of the LLC's income, deductions and tax credits. The member then reports the information on the K-1 on his or her individual 1040.

The employees of LLCs are subject to federal withholding tax, and the LLC needs to submit W-2 and W-3 forms. An LLC with employees needs to file a Form 941 every quarter and Form 940 annually. These forms are available at:

<http://www.irs.gov/app/picklist/list/formsPublications.html>

- **Where can I find more information?**

For general DC business information visit the DC Department of Consumer and Regulatory Affairs website at

<http://www.dcra.dc.gov> or call at (202) 442-4400.

For DCRA documents and forms, visit:

<https://eservices.dcra.dc.gov/DocumentManagementSystem>

For additional information on starting and maintaining a business, visit <https://business.dc.gov>

For an overview of federal tax information, visit the IRS website at: <http://www.irs.gov>

For more information about small businesses, you can visit the Small Business Administration website at:

<http://www.SBA.gov>

For the Uniform Limited Liability Company Act of 2010 (DC Code, Title 29, Chapter 8), visit:

<https://code.dccouncil.us/dc/council/code/titles/29/chapters/8>

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