

Small Business Clinic

*****This information sheet is intended to highlight certain rules and statutes relating to California C-corporations. It is not legal or professional advice, is not intended to be an exhaustive summary or comprehensive in nature and is not a substitute for personalized advice from a knowledgeable lawyer. Because this information is general in nature, it should not be relied upon as complete information regarding any of the matters discussed, but rather, should be used to complement a general understanding of the subject matter. (In addition, this information sheet does not attempt to include all required or associated filings, fees or costs and even the filings, fees and costs discussed are, of course, subject to change.) While we hope this information is helpful, we can undertake no responsibility to provide updates to this information. If you require legal assistance, please consult an attorney licensed to practice in your state.***

C-CORPORATION

Structure

- A corporation is considered a separate “person” under the law. A corporation is owned by its “shareholders.”
- Management.
 - The shareholders elect a “Board of Directors,” which consists of one or multiple “Board members.” The Board is responsible for making decisions on behalf of the corporation.
 - The Board of Directors appoints “officers” to manage the corporation. Each California corporation is required to have at least the following officers: President/CEO, Treasurer, and Secretary.
 - A California corporation must have three directors on the Board, unless the corporation is owned by fewer than three shareholders. In that case, the number of directors may be equal to or greater than the number of shareholders.
 - One person may serve as the sole shareholder, sole Board member, and as each of the President, Treasurer, and Secretary.
- The corporation’s shareholders contribute capital (or items with monetary value) to the corporation in exchange for shares of “stock,” representing ownership in the corporation. Stock typically entitles a shareholder to vote and to receive dividends.



Limited Liability

- A Corporation's shareholders have limited liability assuming that the necessary rules are followed. Such rules include:
 - assuring that the corporation is properly formed and organized (e.g., filing Articles of Incorporation, adopting Bylaws, conducting an organizational meeting, issuing stock and making any other required filings);
 - adequately capitalizing the corporation (-- making sure there is enough money in the corporation to operate the business properly);
 - following corporate formalities (e.g., conducting annual meetings of the shareholders and the directors, maintaining minutes, approving corporate actions); and
 - treating the corporation as a separate entity (e.g., not comingling business funds with personal funds, separating the corporation's business affairs from the shareholders' personal affairs, not paying personal bills from the corporation's bank account).
- If a third-party wants to hold the shareholders personally liable, the third-party must attempt to "pierce the veil."
 - The third-party must typically show:
 - (1) the corporation and shareholder(s) are not separate and
 - (2) injustice or fraud will occur if the veil is not pierced.

Dividends

- A corporation's shareholders typically receive distributions from the corporation in the form of "dividends."
- Dividends are paid to shareholders at the discretion of the Board and are distributed based on the stock ownership percentage and the "class" of stock, held by each shareholder.
- Although a C-corporation pays taxes on its profits, shareholders are also taxed on the dividends received from a C-corporation. (This is known as "double taxation." *See below.*)

Taxes

Federal

- C-corporations, as a separate entity, pay tax at the corporate tax rate, based on the corporation's taxable income. The current Federal corporate tax rate is 21%.
 - Double Taxation: In addition to the tax that corporations pay on their taxable income, when dividends are paid to shareholders, shareholders must pay income tax on that dividend.
- This is different than "pass through taxation," in which the corporation's tax liability is passed through to the shareholders. S-corporations are taxed in this manner.
 - S-corporations are not subject to double taxation as the tax liability is already passed through to the shareholders.
 - *Note: this is a common reason that founders of corporations choose to form an S-Corporation (or an LLC) rather than a C-Corporation.*

State

- Each C-corporation that does business in California is subject to an annual state tax of 8.84% of its net income or \$800, whichever is greater.
 - The \$800 minimum is waived for the corporation's first year taxable year, but the 8.84% is not. (For example, if the corporation's taxable income is \$10,000, the state tax will be \$884 (8.84% of \$10,000) for the first year).

Filing Fees, Costs & Forms and Necessary Documents

- Articles of Incorporation. A corporation is formed by filing Articles of Incorporation with the Secretary of State.
 - \$100.00 (plus a \$15 over-the counter fee if the Articles are filed in person)
 - \$30 per amendment or restated Articles
 - There may be additional fees if a filing service is used (e.g., \$45)
- Action of Incorporator. Appoints the initial directors of the corporation and may adopt Bylaws.
 - No Cost – Internal Document
- Bylaws. Set forth the rules, procedures and structure for the operation of the corporation.
 - No Cost – Internal Document
- Action by Unanimous Written Consent/Minutes. Action of the Board that elects officers, may name directors, approves the sale of stock and approves other elements in the organization of the corporation.
 - No Cost – Internal Document
- Statement of Information. Must be filed within 90 days of the LLC's organization and annually thereafter.
 - \$25.00 per filing

When to form a C-corporation

C-corporations are often formed when:

- Venture capital, foreign or public financing is sought.
- The business is planning to "go public."
- More than one ownership class is desired and a pass-through entity is not appropriate or available as an option.
- At least one owner will be an entity rather than an individual and a pass-through entity is not appropriate or available as an option.
- The business is planning to reinvest profits into the business, rather than distribute profits as dividends, and the ultimate goal is the sale of the business.