aberdeen
DEVELOPMENT CORPORATION

(605) 229-5335

adcsd.com

416 Production Street N.
Aberdeen, SD 57401

New Business Guide

Contents

New Business Contacts

Business Formation

Consult an attorney or accountant to ascertain which business structure best meets your needs.

Business Name Registration

State law requires partnerships and sole proprietorships that use fictitious names to register their businesses with the county Register of Deeds Office.

Contact:
Roberta Nichols – Register of Deeds
Brown County Register of Deeds
25 Market St.
Aberdeen, SD 57401
(605) 626-7140

Contact:
Secretary of State Office
500 East Capitol Avenue Suite 204
Pierre, SD 57501-5070
(605) 773-4845
https://sdsos.gov/

Federal Taxes and Federal Identification Number

When first starting your business, you will need to obtain an employer identification number and withhold taxes if you hire employees or are operating as a corporation or partnership.

Contact:
IRS
800-829-1040 or 800-829-3676
http://www.irs.gov/Business

State Sales and Use Tax License

Contact:
Department of Revenue, Business Tax Division
14 S Main Street Suite 1-C
Aberdeen, SD 57401
(605) 626-2218
bustax@state.sd.us
http://dor.sd.gov/Taxes/Business_Taxes

Tax License Application

https://apps.sd.gov/rv23cedar/main/main.aspx

Obtaining a Building Permit

Contact:

Building Inspection Department
123 S. Lincoln St.
Aberdeen, SD 57401
3rd floor of City Hall
(605) 626-7017

City Building Inspection

The Building Inspection Department is responsible for ensuring that all commercial and residential construction meets the minimum standards of the following codes:

- American National Standard Institute (ANSI)
- International Building Code
- International Residential Code
- International Mechanical Code
- Uniform Plumbing Code

Fire Codes

Types of Business Fire Inspections

- Fire/life safety for commercial, industrial, and multi-family (three or more units) residential buildings
- Fire alarms and fire suppression system installations
- Underground fire lines
- Natural gas piping installations
- Flammable and combustible liquid piping installations
- Solid fuel burning appliances, including fireplaces, wood burners, corn burners, etc.
- Public assemblies
- Malt beverage, liquor, and wine licensing, including renewals, transfers, and new application

Contact:

Chad Nilson - Fire Marshal

121 2nd Ave SE
Aberdeen, SD 57401
(605) 626-7024

Employer Responsibilities

Know your rights and responsibilities as an employer.

Contact:
Department of Labor, Reemployment Assistance (formerly Unemployment Insurance)
PO Box 4730
420 South Roosevelt
Aberdeen, SD 57401
(605) 626-2452
https://dlr.sd.gov/ra/default.aspx

Environmental Standards

Businesses must meet all air, water, and solid waste standards and requirements.

Contact:
Department of Environment and Natural Resources
Foss Building
523 East Capitol Avenue
Pierre, SD 57501
(605) 773-3151

Landscape Requirements

Landscape guidelines for Commercial and Industrial projects.

Contact:
Aaron Kiesz - City Forester
225 3rd Ave. SE
Aberdeen, SD 57401
(605) 626-7015
http://www.aberdeen.sd.us/742/Landscape-Ordinance

Downtown Softscape Ordinance

The City Council desires to maintain a high quality of community aesthetics in the Downtown Business District.

Contact:
Shelley Westra-Heier -Executive Director
Aberdeen Downtown Association

208 S. Main St.
Aberdeen, SD 57401
(605) 226-3441
shelley@aberdeendowntown.org
http://www.aberdeendowntown.org/index.aspx?nid=288

Zoned for Business

Find the best location for your business. Contact your city or county equalization or zoning office for information on business zoning.

City Contact:
Brett E. Bill – Planning
Zoning Director/Building Official
Brown County Planning and Zoning
123 S Lincoln St.
Aberdeen, SD 57401
(605) 626-7017
brett.bill@aberdeen.sd.us
http://www.aberdeen.sd.us/20/Planning-Zoning-Code-Enforcement

County Contact:
Gene Loeschke – Director of Equalization
Brown County Equalization
25 Market St.
Aberdeen, SD 57401
(605) 626-7105
https://www.brown.sd.us/department/county-assessor

Source of Assistance

Aberdeen Development Corporation or the Small Business Development Center can provide management advice and counseling to you.

Contact:
Aberdeen Development Corp.
416 Production St N
Aberdeen, SD 57401
(605) 229-5335
contact@adcsd.com
www.adcsd.com

Contact:
Kelly Weaver – Regional Director
Small Business Development Center
416 Production St N
Aberdeen, SD 57401
Phone: (605) 626-2565
kelly@growsd.org
http://sdbusinesshelp.com

Utility Service

Check with local utility providers for service, cost, deposit and supply information.

Contact:
Northwestern Energy
113 Centennial St. S
Aberdeen, SD 57401
1-800-245-6977

Contact:
Northern Electric Cooperative
39465 133rd St.
Bath, SD 57427
605-225-0210

Public Works

Provides all engineering design and inspections, as well as operation and maintenance of all water main, sewer main, storm sewer, solid waste collection, contracted recycling, water treatment, storage and metering, sewage collection, and treatment services.

Contact:
Robin Bobzien - Public Works Director/City Engineer
123 S. Lincoln St.
Aberdeen, SD 57401
(605) 626-7010

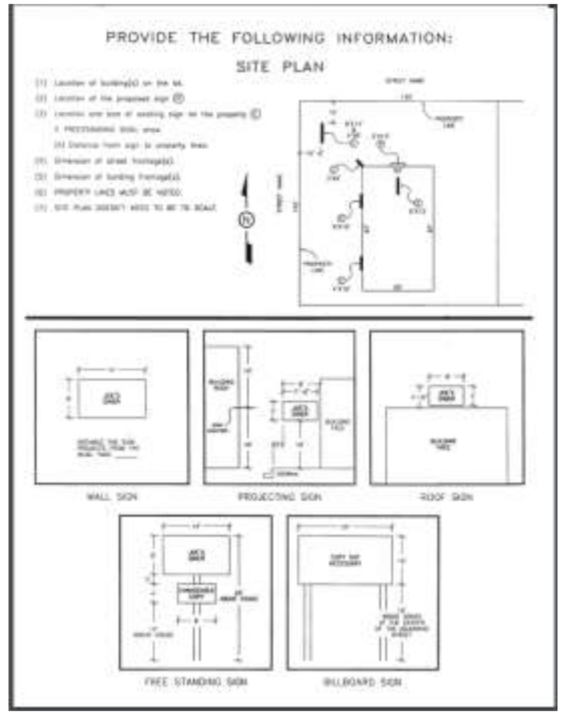
Downtown Sign Ordinance

In the central business district, all signs must comply with the Downtown Ordinance.

Contact:
Shelley Westra-Heier -Executive Director
Aberdeen Downtown Association
208 S. Main St.
Aberdeen, SD 57401
(605) 226-3441
shelley@aberdeendowntown.org
http://www.aberdeendowntown.org/index.aspx?nid=288

City Sign Ordinance

All signs require a permit to be issued prior to placing the sign. All signs, political signs included, are held to certain size restrictions. The City's Sign Ordinance defines what signage is permitted based upon what the property is zoned and where it is located.



The document to the right identifies some of the basic information about your proposed sign that you will need to provide to the Planning & Zoning Office. With this information, the Planning and Zoning Staff can assist you in determining the permitted:

- Sign Type
- Sign Size
- Sign Location

Contact:
Planning and Zoning Department
123 S. Lincoln St.
Aberdeen, SD 57401
(605) 626-7017
http://www.aberdeen.sd.us/636/Signage

Structure Setbacks

Structure setbacks define how close a house, building, garage, shed, or other structure may be built to property lines, or in some cases to other structures or roads. The setback requirement varies from one Zoning District to another.

Contact:
Planning and Zoning Department
123 S. Lincoln St.
Aberdeen, SD 57401
(605) 626-7017
http://www.aberdeen.sd.us/633/Structure-Setbacks

Business Insurance

Identify liability risks. Contact local insurance agents to determine the types and amounts of insurance your business will require.

Business Licenses

List of City Business Licenses:

- Advertising/Sign Hanging
- Animal Kennel
- Commercial Garbage Hauler
- Dance
- Delivery for Hire
- Out of Business
- Day Care Provider
- Junk Dealer
- Merchant/Private Security
- Pawn Broker
- Residential Building Contractor
- Plumbing
- Sewer Builder
- Shooting Gallery
- Sidewalk Contractor

Assess Yourself and Your Idea

Factors That Contribute to Success

Patience: Most successful business owners find they must work harder than ever and constantly try to solve problems. They plan for a modest personal income at first and have the patience to wait for success.

Health: When you are the boss, all duties fall on you if they are not delegated to someone else. If you do not get the job done or delegate effectively, it will not get done. That means good health is important. If you are sick, who will do your job?

Learning: Are you willing to keep learning? One of the biggest challenges you may face is learning from your own mistakes or mistakes other businesses have made. In small business, the educational process never stops.

Family Support: Another major consideration is the effect your business will have on your family. Are they willing to make the sacrifices involved? If you are a family person and do not have their support over the long haul, you may find it very difficult to persevere when the going gets rough.

Risk: You are risking your capital in hopes of gain but face the possibility of loss. More small businesses fail than succeed, so consider fully what a loss could mean to you.

Feelings: Can you handle discouragement? If there is any trait that determines success in business, it is the ability to receive criticism. You will be fighting for survival. Unless you can accept adversity and come back stronger, you may want to consider less demanding work.

Getting along with people: Courtesy and understanding are important. You need to get along with people, understand their needs, and inspire their confidence, whether they are customers, suppliers, or bankers.

Taking Responsibility: As the boss, you are responsible for outcomes both positive and negative. Long after others have gone home, you may have to stay on the job checking odds and ends, getting books in order, going over inventory, rearranging stock, meeting clients, seeing that repairs are made, and handling a thousand-and-one other details.

Selling: Sales skills inspire confidence. You must convince others that they need what you provide. Unless you are a natural, you need to develop your sales skills. Books on selling are readily available at stores and libraries, and you may also want to take courses.

Decision-making ability: Entrepreneurs often must make decisions quickly. Some do this naturally; others learn through experience.

Resourcefulness: You must be able to react quickly as circumstances change, to learn quickly, and to recognize and remedy mistakes.

Organized: It is important to keep organized and be able to pay attention to administrative details. You must be self-disciplined and effectively manage your time. If you have employees, you also need to budget their time to obtain maximum productivity. You must pay your bills and your employees on time and manage your cash flow to avoid having surplus funds one month and a shortage the next.

Know yourself: If you love a challenge, can accept the unknown and want to make it on your own, starting a business may be right for you. Only you can decide.

Knowledge

Your foundation for success is a good general education, preferably supplemented by business courses. South Dakota's state universities are ideal providers of the business courses prospective entrepreneurs must take.

Round out your business education with books and magazines. Trade magazines, which focus on specific fields, are very helpful.

You must know your business and your market. This includes potential customers, product or service demand, competition, and location. Successful entrepreneurs spend months researching and preparing.

Most businesses require technical knowledge. Successful entrepreneurs often worked for someone else before starting a similar business. Some people turn a hobby into a full-time job. Others receive formal education or training in their chosen field.

Do You Have a Feasible Idea?

A good business idea must be able to fill a need or a want of consumers; furthermore, your business must provide a solution for a problem. Generally, this successful idea is one of the biggest steps in the development of a business. As the idea develops, the entrepreneur will find there is a great deal of work necessary to see the idea to fruition. Many underlying questions must be answered before a business can be deemed viable. A carefully written business plan based on thorough research can answer these questions for you. The entrepreneur should ask: Why will someone buy from me instead of my competition? What value do I add to the business or product/service?

Successful Characteristics

A successful business idea should have most, if not all, of the following characteristics:

- It should have a relative advantage over existing products or services.
- The idea must be compatible with existing attitudes and beliefs. It shouldn't require a drastic change in the buyer's behavior.
- It should not be so complex that the buyer has a difficult time understanding how to use it.
- The results or benefits of the innovation must be easy to explain to potential users.
- It is helpful if users can try the innovation without incurring a large risk, such as through samples or trial usage.
- The innovation must be readily available to purchase by the consumer.
- The buyer must believe that the innovation satisfies a personal need by giving some immediate benefit.

New Products and Inventions

If your idea is a new product or invention, it should pass the following four tests in order to be successful.

1. Is the idea original? There are a few ways to determine this. If it is a consumer product, you should check stores, catalogs, trade associations, publications, and shows. If it is an invention that can be patented, a patent search should be done.
2. How will the invention be produced and distributed? The extremes range from starting your own company, producing items yourself, working out of your home and selling by mail-order, to convincing a big business to buy the idea. Any method presents challenges that must be carefully considered.
3. Will your idea make money? This is a question that is difficult to answer with any certainty. Many factors need to be considered. Is there a market, and where is it? Could the size of the market change suddenly? Will competition drive you out?

The preparation of a carefully organized business plan can help shed light on these questions.

4. Can you protect your idea? If you have tentatively satisfied the question of originality, production, distribution, and salability, the protection of the idea through patent laws should be considered.

Three Ways to Start a Business

There are three ways to go into business. You can start from scratch, you can buy or inherit an existing business, or you can buy a franchise.

Start from Scratch

Starting a business is often least expensive and allows the most freedom in the terms following areas: the name, location, equipment, and employees are yours to choose. If you sell products, you start with a new inventory, unaffected by previous purchasing decisions. Also, you are not affected by prior commitments to employees, leases, and other obligations.

On the other hand, it is hard to raise money for a new business, and the risks are much higher. Because you probably do not have an established clientele, advertising expenses are expected to be higher than those of an established business. You may have to go through a long period of trial and error as you develop a marketing strategy. Initially, there may also be insufficient cash flow and without a history of operations to draw on, your projections may be too optimistic.

Acquire a Business

For some people, acquiring a business through purchase or trade may be an excellent alternative to starting a new business from scratch.

As with any business entity, good judgment and competent advice are essential. Just as the term “business” has many meanings, exactly what is being acquired in a business may be understood differently by different people. Caution, prudence, and diligence must be practiced in acquiring an existing business.

Where to Find Businesses to Buy

- Personal friends, acquaintances, and contact with other business activities
- Business opportunity advertisements and general business newspapers
- Acquisition wanted advertisements
- Trade associations
- Chambers of Commerce directories
- Government agency publications, directories, and yellow page
- Business brokers and consultants
- Commercial real estate brokers
- Bank trust officers
- Commercial loan officers with banks, savings and loans, and thrifts
- Public accounting firms
- Law firms
- Venture capital firms
- Insurance brokers and agents

What is Being Acquired?

Seek competent financial and legal advice. This does not need to be expensive if information is gathered and questions for advisors are prepared in advance.

- What assets are included in the acquisition?
- How much "good will" is part of the price?
- If the seller leaves, does the good will evaporate?
- What liabilities will be assumed?
- Can a similar business be started for less?

A deal should be made only after careful review. Determine whether a seller is:

- Serious

- Willing to discuss the pricing
- Willing to have all terms reviewed by your advisor

Signed agreements, properly reviewed, are essential. A competent business consultant can help arrive at proper values.

Caution: When purchasing a business, the purchaser may be liable for debts of the seller or the acquired business. Always seek professional legal advice from an attorney to help avoid serious legal liabilities.

Consult the Better Business Bureau in your area, which can help you avoid swindlers. Have the business you are buying investigated by both a lawyer and an accountant.

Franchising

Franchises are one of the most prevalent industries in the American economy, and it's easy to see why. Becoming a franchisee offers an individual the opportunity to run his or her own business while in an environment where there is a proven system in place. A franchisee gets to start the franchised business but does not have to address many of the typical aspects of a startup, such as incorporation or trademarking, thus avoiding many of the problems and costs of starting a business. If you are interested in starting your own business but looking for a way in without necessarily starting from scratch, franchising may be for you.

Choosing the Right Franchise. The first step in becoming a franchisee is to choose which franchise you would like to pursue. A franchise should fit with the franchisee's schedule. If the franchisee is uninterested in working nights and weekends, franchises that are open non-traditional hours probably aren't a good choice. The franchisee's available budget to start the business is also a major consideration. Some franchises are distinctly more expensive to start than others, such as opening a hotel versus a service store. Becoming a business owner is an investment of time and money; the franchisee will want and need to enjoy going to work, in order to make the franchise a success.

Impressing the Franchisor. Most franchisors receive numerous calls from prospective franchisees but can only offer so many opportunities to join. As a result, becoming a franchisee in a highly desired franchise is a competitive process. Franchisors are looking for people who share the dream and will support the company but are also motivated and successful. The best thing a franchisee can do to improve his chances of being selected is to thoroughly research the company and arrive promptly and prepared for all meetings. This conveys the impression that the franchisee is dependable and sincerely interested in the franchise, two key qualities cited by franchise hiring departments.

Negotiating with the Franchisor. Another obstacle in becoming a franchisee is drafting the contract and interacting with the franchisor. Before committing, it is wise for a franchisee to consult an attorney regarding the contract. While a franchisee may not have much leeway in terms of changing the contract, it is very important that the franchisee know what to expect from the relationship. A franchisee may also want to have a lawyer look over the Franchisor Disclosure Document, which serves as the discloser for the franchise, like a disclosure circular from a company to a potential investor. The Franchisor Disclosure Document lays out much of the necessary information for the franchisee, including the history of the franchise, financing specifics, trademark usage regulations, and provisions for future conflict (both legal and financial). Since the franchisor continues to control many of the business decisions of the franchisee, the franchisee should enter the relationship with the franchisor with as much information as possible to avoid problems.

Financing the Franchise. Just like any other business, a franchisee must finance the startup costs of running a new franchise. Some franchisees may be in the quite enviable position of being able to finance their own dreams, however most will need an outside source of funding. A franchisee is typically not in the position to take on investors for financing but there are many other sources of funding in today's world. Friends and family may be a good place to start. These “loans” will, in many cases, have better interest rates and payment schedules. Friends and family are always looking to see those close to them to succeed and as a result, are more willing to be involved informally. Personal loans and credit cards are a second way to make money to start the franchise. If a franchisee has good credit, this may be a good choice, however it puts the franchisee’s personal assets at risk in the event the franchise fails. A franchisee can also get small business loans or grants. In the current economy, these have been hard to come by, but it is getting better. There are many options for a franchisee seeking funding, some are more obvious than others, but a little research can unearth a variety of choices.

Engaging in a franchise relationship is one of the best ways for someone to become a business owner. In many respects, the franchisee gets to do the fun part of being a business owner without addressing many of the problems of starting a business. If you’re looking to start your own business but not quite sure where to start, franchising may be for you!

Selecting Your Business Structure

Business Structure Options

Business activity may be conducted through a variety of organizational structures. An attorney, accountant, financial advisor, tax advisor or banker can suggest which form would be most suitable. One of the primary considerations in selecting a business organization is protection of a business owner from liability. Other considerations are the transferability of ownership rights, the ability to continue as a business in the event of the death or withdrawal of one or more of the owners, the capital needs of the business and tax liabilities.

Note: Legal requirements are determined by the selected business structure and the state you are operating in. The laws are very specific on the regulations required as you set up your business structure. Legal counsel or the assistance of a professional accountant may be needed. The most common business structures are as follows.

Sole Proprietorship

The single owner of the business is a sole proprietor. The single owner has sole control and responsibility. The sole proprietorship is easily formed, allows important decisions to be made quickly and may enjoy fewer legal restrictions.

The sole proprietorship is the simplest form of organization and the least expensive to establish. There are no statutory requirements unique to this form of organization. The business owner only needs to obtain the necessary business licenses and tax identification numbers, register the business name and begin operations. Many individuals begin their business as a sole proprietorship. As the business expands or more owners are needed for financial or other reasons, a partnership or corporation may be formed.

The sole proprietor is personally liable for the debts of the business, even if those debts exceed the owner's investments in the business. All the owner's assets, both those used in the business and personal property, can be attached by creditors and sold to pay business debts. The sole proprietor may be able to minimize certain risks such as property loss, personal injury or product liability by obtaining adequate insurance.

The sole proprietor has full and complete authority to manage and control the business. There are no partners or shareholders to consult before making decisions. This form of organization gives the proprietor maximum freedom to run the business and respond quickly to day-to-day business needs. The disadvantage of this form is that the sole proprietor, as just one person, will have limited time, energy and expertise to devote to the business. His or her experiences may not provide the breadth of skills and knowledge necessary to deal with all phases of the business. Further, he or she may be unable to leave the business for extended periods of time without jeopardizing its operations. As the business expands, the proprietor may be able to hire managers to perform some of these functions and provide additional expertise, but in the early years of the business, the sole proprietor often will perform many of these tasks alone.

A sole proprietor transfers ownership of the business by transferring the assets of the business to the new owner. The prior proprietorship is terminated, and a new proprietorship is established under the new owner. The business entity terminates at the death of the proprietor or if the proprietor becomes unable to manage it.

In a sole proprietorship, the taxpayer is the individual business owner. The proprietor is taxed on the entire income from the business, regardless of whether the income is withdrawn for personal use or retained in the business. Income and expenses from the business are reported on a Schedule C or Schedule C-EZ (Form 1040) and any related forms and schedules. The net income or loss from the business is then transferred to the proprietor's individual Form 1040. The proprietor uses Schedule SE to report net self-employment income for purposes of computing the Social Security and Medicare self-employment tax.

If the business is to operate as a sole proprietorship, the entrepreneur should consider recording a declaration of business name at the local county Register of Deeds office or by going to https://sosenterprise.sd.gov/BusinessServices/Fictitious/FictitiousHome.aspx. State law permits this action and if the business is going to operate under a "fictitious name", it is required. If the business is simply called the "Acme Company" the business owner must file a sworn declaration stating the names of the owners and participants, their present addresses, etc. If the business name includes the owner's last name, the owner may still want to consider filing to be assured of exclusive rights to use that name in that county.

General Partnership

A partnership is an association of two or more people acting as co-owners of a business for profit. Partnerships have specific attributes, which are defined by statute. All partners in a general partnership share equally in the right, and responsibility, to manage the business, and each partner is responsible for all debts and obligations of the business.

Distribution of profits and losses, allocation of management responsibilities, and other issues affecting the partnership usually are defined in a written partnership agreement. A general partnership is more complex than a sole proprietorship but involves fewer formalities and legal restrictions than a corporation, or limited liability company, Basic elements of partnership law are established by statute, but most issues can be determined by agreement of the partners. A written partnership agreement is highly recommended but is not legally required.

In a general partnership, each partner may be personally liable for up to the full amount of debts of the business, even if the debts exceed the owner's investment in the business. Unless care is taken in the partnership agreement to limit a partner's authority and potential creditors are notified of the limitation, any partner may bind the partnership. The partner with greater personal assets thus risks losing more than a partner with fewer personal assets. With a sole proprietorship, many business risks can be lessened by obtaining adequate insurance.

All partners share equally in the right and responsibility to manage and control the business. The partnership agreement may centralize some management decisions in a small group of partners, but all partners continue to share ultimate responsibility for these decisions. The right to share equally in decisions can make the decision-making process cumbersome, and the risk of major disagreements can impair effective operation of business. An advantage of the partnership that is not present in a sole proprietorship is that the partnership, with its several owners, can bring a broader range of skills, abilities and resources to the business. The owners' combined experiences can also promote more informed decision making and the workload can be shared to lessen the physical and other demands on the individual owners.

The transfer of a partner's economic interest in a partnership is determined by the partnership agreement or by statute if there is no partnership agreement. Unless permitted by the partnership agreement, no person may become a partner without consent of all the other partners. If a partner attempts to transfer his or her interest in the partnership without such an agreement, the transferee does not become a partner but instead becomes entitled to receive profits which the transferring partner otherwise would receive. A properly drawn partnership agreement will address the conditions under which an ownership interest may be transferred, and the consequences to the transferee and the partnership.

General partnerships do not automatically cease to exist when a partner dies or otherwise withdraws from a partnership. The partnership continues, unless certain other events occur.

The partnership itself is not a taxable entity. The partnership serves as a conduit through which income, deductions and credits are passed through to the individual partners. Each partner is taxed on his or her share as defined in the partnership agreement. All income of the partnership is taxed to the partners, whether or not it is distributed. The partnership itself files an information return which reports partnership income and distributions to the partner. The partnership files Form 1065, which is an information return. No tax is paid by the partnership with this return. Other forms and schedules may be required, including Schedule K and K-1. Individual partners use Schedule E (Form 1040) which is prepared with information from their schedule K-1 of Form 1065, to report their distributive share of partnership income, deductions, credits and losses on their individual Form 1040. Schedule SD (Form 1040) is used to compute Social Security and Medicare self-employment tax.

One or more individuals may register a general Partnership Statement of Authority with the Office of the Secretary of State. A statement of authority costs $125. This should be done at the Capitol Building, Suite 204, Pierre, SD. Phone: (605) 773-4845.

Limited Liability Partnership (LLP)

Limited liability partnerships are more closely regulated than general partnerships permitting investors to become silent or limited partners without assuming unlimited liability. In an LLP, the personal assets of the partners are shielded against liabilities incurred by the partnership in tort and contract situations. This is different from a general partnership, in which partners may be personally liable up to an unlimited extent for the debts and obligations of the partnership.

An existing general partnership may elect LLP status by filing an LLP registration with the South Dakota Secretary of State Office. Such registration is effective for an indefinite period. It is recommended to seek advice of counsel when forming an LLP. The Secretary of State’s Office will revoke the LLP if the required annual report is not filed.

A limited partnership is a type of partnership in which the limited partners share in the partnership’s liability only up to the amount of their investment in the limited partnership. By statute, the limited partnership must have at least one general partner and one limited partner. The general partner has the right and responsibility to control the limited partnership and is responsible for the debts and obligations of the limited partnership. The limited partner, in exchange for limited liability, is usually not involved in the day-to-day management and control of the business. Limited partnerships must be established in compliance with statutory requirements, and the tax and securities laws. Because of their complex nature, limited partnerships should not be undertaken without competent professional advice.

A limited partnership must meet specific statutory requirements at the time of organization, and the offering of ownership interests in the limited partnership is subject to tax and securities laws. Accordingly, the limited partnership will be more complex and expensive to organize than a general partnership.

In a limited partnership, so long as the statutory formalities are met and the limited partnership is not relied upon by others as a general partner, the limited partner generally is not liable for the obligations of the limited partnership. Thus, the limited partner risks loss only up to the amount of his or her investment.

A limited partnership does not terminate when a limited partner dies or becomes disabled. The limited partner’s interest may be assigned, and if the limited partner dies, his or her legal representative may exercise all the partner’s rights for purposes of settling the estate.

South Dakota has adopted the Uniform Limited Partnership Act. One or more individuals may form a domestic LLP or limited partnerships with the Office of the Secretary of State. The Certificate of Limited Partnerships and the Statement of Qualification cost can be found on the Secretary of State's website. An annual report with a filing fee is due each year on the anniversary date for LLP's only. Limited Partnership does not file annual reports. These forms can be obtained from the Office of the Secretary of State at the Capitol Building, Suite 204, Pierre, SD. Phone: (605) 773-4845.

Business Corporation

A corporation is a more complex form of business organization. A corporation is a legal entity and exists apart from its owners or shareholders. As a separate entity, it has its own rights, privileges, and liabilities apart from the individuals. The corporation must be established in compliance with the statutory requirements of the state of incorporation. The shareholders elect a board of directors which has the responsibility for management and control of the corporation. Because the corporation is a separate legal entity, the corporation is responsible for the debts and obligations of the business. In most cases, shareholders are insulated from claims against the corporation.

Because of the complexities involved in incorporating, corporations often will make greater use of professional advisors, which will increase costs. Other costs associated with incorporation include filing fees, which are greater for corporations, and the costs associated with tax compliance and preparing various government reports. If the corporation does business in other states, it generally will be required to register to do business in those states, thus further increasing the cost and complexity of incorporation.

The corporation, in most cases, is the entity that is liable for the debts of the business. The shareholders generally are exempt from personal liability for those debts and thus risk loss only up to the amount of their investment in the corporation. It should be noted, however, that in a small, closely held or newly created corporation without an established credit history, some or all the shareholders may be expected to personally guarantee repayment of certain corporate debts as a condition of obtaining a loan or credit. Also, under certain circumstances such as fraud or personal wrongdoing, shareholders may be held partially liable for wrongful acts. Finally, it is possible for courts to “disregard” the corporate entity and make shareholders liable under certain circumstances.

The rules for corporate decision making are established by statute, but many rules may be modified by the articles of incorporation or bylaws. Shareholders elect the board of directors, which in turn manages the operations of the business. The corporation also must have one or more natural persons exercising the functions of chief executive and chief financial officer. Except in very small corporations in which the shareholders are also the directors, shareholders as a group generally will not directly participate in management decisions. This concentration of decision making in a relatively few individuals promote flexibility in decision making, but also result in overruling of minority interests or in some cases manipulation or exploitation of minority shareholders. To resolve this problem, corporations may adopt provisions in the articles of incorporation or bylaws to give minority shareholders a stronger voice in management decisions. Decision making authority also may be delegated by the shareholders and/or directors to hired managers, who may or may not be shareholders. This delegation further removes decision making authority from the shareholders. Like a partnership, the corporation can draw on the skills and expertise of more than one individual in running the business. This can broaden the base of information for decision making and reduce workload demands on individual managers.

A corporation is a separate legal and taxable entity. For tax purposes, the corporation may be a “C corporation” or it may be treated as an “S corporation”. In a C corporation, the corporation itself pays tax on corporate profits. After taxes are paid, remaining corporate profits may be distributed to shareholders in the form of dividends. The shareholders are then taxed in a manner similar to a partnership; that is, the income, deductions and credits of the corporation are passed through to shareholders and are taxed to shareholders at their individual tax rates.

Ownership in a corporation is transferred by sale of stock. A change in ownership does not affect the existence of the corporate entity. Technically, shares of stock in a corporation are freely transferable. As a practical matter, however, the market may be limited for shares of stock in a small corporation that is not publicly traded. In addition, shareholders in a new venture often will want to prevent unrestricted transfer of shares and thus may provide in the articles of incorporation or bylaws for transfer restrictions or buy-sell and redemption agreements, further limiting transferability.

Since a corporation is a separate legal entity, the death, disability or withdrawal of an owner has no legal effect on the business entity's existence. As a practical matter, however, many small businesses depend heavily on the efforts of one or two individuals, and the death or disability of one of those key individuals can seriously impair the economic viability of the business. For this reason, a small business corporation, like a partnership, often will obtain life insurance on key shareholder-employees. The articles of incorporation may provide for share purchase agreements or other restrictions on the transferability of stock in order to retain control of the firm by the remaining key individuals.

C Corporation

A C corporation reports its income, deductions and credits, and computes its tax, on Form 1120 or Form 1120-A. Supporting forms and schedules may be required. If the corporation issues dividends, it must annually send its shareholders Form 1099-DIV, stating the number of dividends paid. A copy also is filed with the IRS. The shareholder reports dividends received from the corporation on his or her individual Form 1040.

The C corporation's taxable income and tax are determined prior to distribution of profits to shareholders. Profits which are distributed to shareholders in the form of dividends are then taxable to the shareholders at their individual income tax rate. Thus, these dividends are subject to double taxation, once on the corporation's income tax return and once on the individual shareholder's income tax return. In addition, the dividends are taxed to the shareholders as ordinary income; capital gains, charitable contributions and other income and deduction items do not retain their character when passed to shareholders in the form of dividends. Similarly, individual shareholders do not share a corporation's losses for tax purposes.

The C corporations offer some opportunity for tax planning in that dividends may be accumulated by the corporation rather than paid to shareholders, thus postponing double taxation. However, IRS regulations limit the amount of accumulated earnings that may be retained by the corporation. An accumulated earnings tax may be imposed on excessive accumulated earnings. Because all income of the sole proprietorship, partnership, and S corporation is taxable to the owners whether or not it is distributed, these entities are not subject to accumulated earnings tax. Salaries are deductible by the corporation and thus are not included in the corporation's taxable income. However, the IRS may treat as dividends excessive salaries that appear designed to avoid double taxation.

S Corporation

An S corporation files Form 1120S and supporting forms and schedules, including Schedules K and K-1. The S corporation generally is not separately taxed. Individual shareholders report their share of the S corporation's income, deductions and credits on their individual Form 1040, using information contained on the Schedule K-1.

The S corporation is a conduit through which the firm's income and deductions flow to the shareholder. Income items and deductions generally retain their character when passed through to shareholders, although special reporting rules apply and the opportunity to fully claim a share of the S corporation's losses may be limited. Unlike a partnership, allocations to S corporation shareholders must be in proportion to their shareholdings. Thus, this form of organization may offer less attractive tax planning opportunities.

A shareholder's pro rata share of S corporation income and deductions is combined with income and losses from other sources and reported on the shareholder's individual income tax return. The total taxable income is taxed at individual income tax rates applicable to shareholder's tax bracket.

One or more individuals may form a South Dakota corporation by filing articles of incorporation with the Office of the Secretary of State. South Dakota law does not require a resident incorporator or director, but every corporation must maintain a resident registered agent. The filing fee is $150 to form a South Dakota Corporation, $750 for Application for Certificate of Authority. An annual report with a $50 filing fee is due each year on the anniversary date of incorporation.

The forms for Articles of Incorporation and application for Certificate of Authority may be obtained from the Office of the Secretary of State, Corporate Division, Capitol Building, Suite 204, Pierre, SD. Phone: (605) 773-4845

Limited Liability Company (LLC)

The Limited Liability Company is a form of business organization that is designed to combine the tax treatment of a partnership with the limited liability characteristics of a corporation. An LLC may have one or more members which may choose to be taxed as partnerships or corporations. Business income and losses of the LLC that choose to be taxed as a partnership or as a sole proprietorship may be passed through to the owners of the business. An LLC that chooses to be taxed as a partnership or as a sole proprietorship is not taxed at the entity level, eliminating the double taxation of profits that occurs with a C corporation. Income is then taxed at the owner's individual tax rate. Like a corporation, liability for business debts and obligations generally rests with the entity rather than with individual owners. An LLC is not subject to many of the restrictions that apply to S corporations. Unlike a limited partnership, all members of an LLC may participate in the active management of the company without risking loss of limited personal liability.

An LLC can be expected to be like a corporation in complexity and cost to organize. As with a corporation, the procedures and criteria for forming an LLC are specified by statute. There is very little case law to guide organizational and operational decisions although the LLC law is modeled on the business corporation law. For this reason, owners of an LLC may need to consult often with their professional advisors, increasing their costs.

Liability of the owners generally is the same as for shareholders of a corporation; that is, absent fraud, personal wrongdoing or disregard of the entity, they generally are not held personally liable for the debts and obligations of the business. They therefore risk loss only up to the amount of their investment. As is the case for corporations, owners of small, closely held, or newly organized LLC's may be required to give personal guarantees of repayment to secure financing or credit.

Like a corporation, an LLC has centralized management. By statute, a limited liability company is managed by or under the direction of a board of governors, comprised of one or more individuals. In addition, the LLC must have one or more individuals exercising the functions of chief manager and treasurer.

Additional managers and agents may be appointed by the board. The LLC act also authorizes members of the LLC to make management decisions under certain circumstances. As with a corporation, many of the rules governing the management of the LLC are specified in the articles of organization, bylaws or the LLC statute.

Membership rights in an LLC consist of financial rights and governance rights. Financial rights are the rights to share in the profits, losses and distributions of the LLC. Governance rights are the rights to vote and to manage the business. Unless the articles of organization or operating agreement provide otherwise, a member may assign or transfer financial rights. Such a transfer gives the transferee all the rights to profits and distributions that the transferor had. The transfer does not create membership rights in the transferee, nor can the transfer allow the transferee to directly or indirectly exercise governance rights. Governance rights can only be transferred if all members give their written consent. The articles of organization may provide for less-than-unanimous consent.

For LLCs, the termination of membership of a particular member is an event of dissolution only to the extent specified in the articles of organization or in a member control agreement, or if the membership of the last member terminates and no new members are admitted within 180 days of that termination. Otherwise, the termination of a member's interest does not affect the existence of the LLC.

One or more individuals may form a South Dakota LLC by filing articles of organization with the Office of the Secretary of State. An annual report with a filing fee is due each year on the anniversary date of organization. The forms for Articles of Incorporation and application for Certificate of Authority may be obtained from the Office of the Secretary of State.

Nonprofit Corporation

A nonprofit corporation is created to help people achieve a common purpose. It is an organizing structure useful to small and large-scale activities, involving only a few people or many hundreds or people. It provides a useful and inexpensive structure for the enterprise of groups of all sizes, from community campaigns or events to perpetual and diverse activities by hundreds and thousands of people. A nonprofit corporation may be formed in South Dakota for any lawful purpose, but not for financial profit. It does not require large sums of money and it can be prepared initially by following a few simple rules:

- It may not have shareholders or pay dividends.
- It may compensate members, officers, and trustees (in reasonable amounts) for services rendered.

Special Note: Nonprofit incorporation status does not guarantee that your organization will be granted tax-exempt status, nor does it ensure that your contributors can deduct their gifts from reported personal income. Nonprofit incorporation is generally a prerequisite to applying to the Internal Revenue Service for preferential tax status, under IRS Code section 501(c) (3). To apply for exempt status, contact the IRS for the necessary application forms.

Three or more individuals may form a South Dakota nonprofit corporation by filing articles of incorporation with the Office of the Secretary of State. An annual report with a filing fee is due each year on the anniversary date of incorporation. The forms for Articles of Incorporation may be obtained from the Office of the Secretary of State.

Cooperative

A cooperative is a form of business organization in which the business is owned and controlled by those who use its services, rather than to generate profit for investors. A cooperative may be organized as a legal entity or it may be an unincorporated association. Some of the more common purposes for which cooperatives are formed are:

- To supply members with agricultural production components such as fuels, fertilizers, feed, and chemicals
- To provide members with an organizational structure for jointly handling and marketing their products
- To provide service to members, like housing, electricity, telephone, insurance, and health care

Cooperatives have several features that distinguish them from for-profit business corporations. These include control of the cooperative by user-owners, services provided at cost and limited return on equity capital. An annual report with a filing fee is due each year on the anniversary of incorporation. For more information, contact the Office of the Secretary of State.

Business Planning

Prepare a Written Business Plan

Contact the Small Business Development Center for a business plan formation guide or visit their website at: http://sdbusinesshelp.com/resource-category/business-planning-guide/

Contact:
Kelly Weaver – Regional Director
Small Business Development Center
416 Production St N
Aberdeen, SD 57401
Phone: (605) 626-2565
kelly@growsd.org
http://sdbusinesshelp.com

Why should anyone go to the trouble of creating a written business plan? There are several reasons:

- The process of putting a business plan together, including the thought put in before beginning to write it, forces one to take an objective, critical, unemotional look at the business project in its entirety.
- A business plan is an operating tool, which, if properly used, will help manage the business and work effectively toward its success.
- Lenders require one. A completed business plan communicates ideas to others and provides the basis for a financial proposal.

The importance of planning cannot be overemphasized. Taking an objective look at the business plan will identify areas of weakness and strength, pinpoint needs that might otherwise be overlooked, spot opportunities early. One can then begin planning on how best to achieve a business goal.

Your business plan is a working document, use it. Don't put it in the bottom drawer of a desk and forget it. Going into business is rough-over half of all new businesses fail within the first 10 years. A major reason for failure is the lack of planning. The best way to enhance chances of success is to plan and follow through on that plan. Your business plan provides benchmarks and milestones for you to use as measures of your success. A business plan will help avoid going into a business venture that is doomed to failure. If the proposed venture is marginal, the business plan will show why and may help avoid paying the high tuition of learning about business failure. It is far cheaper not to begin an ill-fated business than to learn by experience what a business plan would have taught at the cost of several concentrated work hours.

The business plan also provides the information needed by others to evaluate a venture, especially if seeking outside financing. A thorough business plan will quickly become a complete financing proposal that will meet the requirements of most lenders.

Framework

Business planning does not offer solutions to business problems. Rather, business planning is the framework in which to structure concepts and information about a project. A well-written business plan will determine the feasibility of a project and lay out the action necessary to complete it.

Several adjectives can be used to describe the business planning process: logical, rational, and regimented. A business plan organizes, directs, coordinates, controls, and facilitates the development of a project from its inception to its completion. No matter how the process of the plan is described, basic business planning is a systematic methodology for reducing risk and enhancing success for any type of business operation.

There is no exact formula for putting a business plan together. There are, however, several “specific” topics that should be covered:

- Executive Summary: This is an overview of the business plan. Even though it will be at the beginning of the plan, write it after the rest of the plan is completed. It brings together the significant points and should convey excitement.

- General Description: Explain the type of company. If this is an existing business, give its history. If it is a new start-up business, note some of the qualifications to start this business. Why is this business needed and what is its chance for success?
- Products and Services: Describe the product and/or service. What are its unique features? Why will customers come to this business?
- Marketing: Identify your target market. There should be specific target markets that will need your products or services and be willing to pay for them. These have similar characteristics that can be identified and used in your marketing efforts. Outline your marketing strategy – a competitive edge – to draw customers to you rather than your competition. List your primary competitors and provide an honest appraisal of their strengths and weaknesses and how you will compete successfully against them.
- Management: Identify the people who will be active in this business. Describe their skills and experiences.
- Legal: Describe the type of legal organization; sole proprietorship, partnership, "S" corporation, limited liability company, corporation. Are patents or trademarks involved?
- Finances: State the business' financial requirements and how these funds will come from project revenues, costs, and profits. Your efforts in developing the financial statements will help you understand the cash flow of your business, your break-even point and the sensitivity of your business to fluctuations in business levels.
- Operations: Explain any systems or processes that will be used. What facilities will be used? What supplies will be needed and where can they be obtained? Who will provide the labor and how will it be accessed? What are the hours of operation of the business?

Identify Ways to Finance Your Business

When starting a business or expanding an existing business, the owner needs money to pay rent and utilities; acquire inventory, equipment, and fixtures; pay employees' salaries; make payments for vehicles; market/advertise products and services; pay taxes and needed insurance; and most importantly, pay his or her own salary.

There are several options available for obtaining money to start a new business or expand an existing one. Most businesses begin with the owner's own capital or loans from friends and family. Some are successful in obtaining bank financing or using a government sponsored loan program. Regardless of the path you choose, it is wise to take time out to put together a credible business plan.

Equity Financing

Equity means ownership. Equity financing means that you give an ownership share of your business to your investor. Your new "partner" expects to share in the profits of your business.

Equity financing differs from debt financing in two ways:

1. Lenders expect to get their money back plus interest. The amount of your obligation is fixed. There is a repayment schedule and that's it. Once a lender is paid off the relationship is over.
2. Equity investors don't expect to get their money back in the same way as lenders do. They expect to get a stream of income out of the profits of the company. There is no payment schedule and the stream of income can vary over time. This is a riskier situation for the investor, so the hope is for an even higher return than a lender would get. Of course, investors are interested in more than the stream of income. They would like to be able to sell their share in the business if they would like. That is the return of capital; like a lender being paid back the principal amount of a loan, but the amount is not fixed. Instead, it depends on what a buyer would pay for the ownership share.

There are two common types of equity financing:

Angel Investing

An angel investor is a person or group who invests their own money in a business venture, providing capital for start-up or expansion. These individuals are looking for a higher rate of return than would be given by more traditional investments (typically 25% or more).

Venture Capital

A venture capital fund is used for very narrow or niche equity financing. It is professionally managed money that seeks to make a high rate of return for its investors by taking high risks in investing in early-stage businesses.

These businesses must demonstrate the possibility of extremely rapid growth (i.e. $50 million a year in sales after 5-7 years). Venture capital is equity money (money for stock) that is repaid by capital gains, through the sale of stock. Venture capital investors are typically short to intermediate-term investors (1-7 years) who generally invest over $1 million in a company.

Usually, an angel investor is looking for a personal opportunity as well as an investment. Often such an investor has business experience as well as money and will want to play some sort of role in managing the company.

Because he or she is interested in adding value to the company, it's important for any business person thinking of accepting investment from an angel investor to be very clear about what the angel investor is bringing to the deal besides money, and to develop an understanding of what the angel investor would be like to work with. Contact the Enterprise Institute to learn more or get started working with an angel investor.

Contact
Enterprise Institute
(605) 697-5015
info@sdei.org
www.sdei.org

Debt Financing

Short-term financing/credit sources are usually grouped into two basic categories: unsecured and secured.

Unsecured credit is obtained without the borrower's pledge of specific assets to serve as collateral. Examples include:

- Personal credit cards, savings, stocks and bonds, and/or cash value of life insurance policies. Funds borrowed from family members and/or friends.
- A short-term, unsecured transaction loan is a direct, single payment financing one and six months, but may extend up to a year.
- A company's line of credit is a commitment from a bank to its regular credit worthy business customers to provide a stated maximum amount of short-term financing for a specified time period. The credit line is often granted with a compensating balance requirement, and the floating or variable-rate method of interest payment is used.
- Trade credit is credit extended by one firm to another in conjunction with the sale of goods or services that are used in the normal course of business. For the purchasing firm, using trade credit is the equivalent of a consumer charge account at a department store – good are purchased but payment can be delayed to the extent of the specified credit terms.
- Accruals are services that are provided for a business on a continuing basis but are not paid for at the time the services are rendered. For example, employees provide services to the business each day they work, however, they are not paid until some specified future payroll date.

Secured short-term credit for new/existing businesses, businesses with a marginal credit rating, or businesses that have exhausted unsecured collateral may offer a financing opportunity that would otherwise not exist. The primary sources of secured short-term financing for business borrowers are:

- Commercial banks
- Commercial finance companies
- Factoring accounts receivables
- U.S. Small Business Administration (SBA) "guaranteed" loan obtained through a private lending institution. (The SBA rarely make a "direct" loan to an individual or company.)

Lawyers, Accountants, and Insurance

Attorney

You should work with an attorney to help meet many of the legal requirements facing you and your business, including:

- Your choice of business type
- Employee relations
- Partnership agreements
- Obtaining licenses
- Reviewing and negotiating contracts
- Reviewing various laws and regulations
- Antitrust, product liability and environmental concerns
- Protection of your idea or product (Patent Attorney)

Accountant

Your accountant should be a practical business advisor who can set up a total financial-control system for your business and render sound business advice. At the outset, your accountant should work with you to establish accounting and reporting systems, cash projections, financing strategies and tax planning. In addition, as the company matures, the following services can be provided:

- Strategic planning
- Cash-management advice
- Merger, acquisition, and appraisal assistance
- Compensation strategies
- Cost-reduction planning
- Management information system

Insurance Coverage

Most businesses require insurance in one form or another. Some forms, such as workers' compensation, may be required by law. Others, such as liability insurance, may not be required but should be purchased by most businesses. Shop around to find the insurer who offers the best combination of coverage, service, and price. Trade associations often offer special rates and policies to their members.

You should consider the following types of insurance:

- Workers' compensation
- Automobile insurance (mandatory)
- Liability insurance to protect the business from claims of bodily injury, property damage, and malpractice
- Fire insurance
- Business interruption insurance to compensate for revenue lost during a temporary halt of business caused by fire, theft, or illness
- Crime coverage for reimbursement of robbery, burglary, and vandalism losses
- Group life insurance (for employer and employees)
- Disability insurance (for employer and employees)
- Key-person insurance to compensate the business for the death or disability of a key partner or manager
- Fidelity bonds to insure against employee theft
- Product liability insurance

Licensing and Registering Your Business

South Dakota state government recognizes that registration, licensing, and reporting requirements can place a burden on a business owner who has limited time and resources to spend away from his or her new business. Therefore, we have compiled a listing of various agencies to contact that may assist you in this process.

Failure to license a business according to requirements can result in penalties being imposed by a department. The penalty will vary according to department regulations.

Included in this section is a listing of the licenses for the following agencies:

South Dakota Animal Industry Board
(605) 773-3321

Department of Agriculture
(605) 773-3594

Department of Environment and Natural Resources
(605) 773-5559

Department of Game, Fish and Parks
(605) 223-7660

Department of Health
(605) 773-3361

Department of Labor & Regulation
(605) 626-2340

Department of Public Safety
(605) 773-3178

Department of Revenue
(605) 626-2218

Department of Social Services
(605) 626-2381

Department of Transportation
(605) 773-3265

In addition to basic licensing guidelines, various departments have additional requirements that new businesses need to follow. Local cities and agencies also may have certain licensing requirements that you may need to inquire about.

Federal Identification Number

If your business is a partnership or corporation (with or without employees), or a sole proprietorship with employees, one of the first things you must do is obtain a federal identification number for federal purposes. To obtain a federal identification number, you must file Form SS-4, Application for Employer Identification Number, with the Internal Revenue Service.