

Good when setting up
a business, owners
must take into
account the following:
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[Business](#), [Company](#)



BUSINESS LAW

Abstract

When it comes to setting up a business, it is important to gain a thorough understanding of what needs to be done in order to guarantee the success of the endeavor. Primarily, business owners must be able to identify the business structure that is more appropriate for the company that they intend to put up, including information on the type of workers that they should hire and what are the implications of hiring employees versus independent contractors. It should also include understanding issues that could arise as businesses interact with the public, other corporations, and the national government. Business owners must also have a clear understanding of the role of business law and its place in the legal system to allow all other companies an equal opportunity to succeed. It would also help to understand facts about the European Union and its place in the world market. Knowing this information will help business owners come up with a sound decision as to the type of business venture that is apt for their needs and rules of business if they intend to expand their business overseas.

Nowadays, putting up a business is a better option than finding employment in someone else's company. There are many business options and ideas that people can choose from, which could be the start of something big and better for the individual. However, it is important to note that not all who go into business succeed. This can be attributed to the person's, or group or persons', lack of understanding pertaining to the type of business to structure to follow. If one wants to capitalize on the potentials of a business, understanding the business and choosing the appropriate business structure

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can help guarantee financial and operational success.

Selecting the appropriate business entity is the first step in putting up a business. This will determine how the person or the corporation will be taxed, what its legal standing is, and how else can the business grow in the future. There are two known classes of business structures, which are incorporated and unincorporated. Incorporated businesses are corporations, which mean the business is treated separately from the business owner, and thus, have natural rights. On the other hand, an unincorporated business is one and the same as the business owner. It is sometimes also referred to as sole proprietorship. What distinguishes one from the other is how owners run the daily business and activities.

Liability Protection

For single proprietorship or unincorporated business set up, liabilities incurred by the company affects the owner and vice-versa. There is no distinction between the owner and the business that is why they affect one another (Hopson & Hopson, 2014, p. 43). Thus, when business owners of private companies incur losses or liabilities, they are personally legally responsible for lawsuits against their businesses. For incorporated businesses, the owners have protection over their personal assets. This means when the owners incur losses or liabilities while running the business, the owners' personal properties are not affected. This also applies to lawsuits filed against the company. If the company loses a lawsuit, only the corporation or company takes the responsibility of recompensing the debt (Davoren, n. d.).

Taxes

In general, corporations are allotted lower tax rates than single proprietorships. They can also put off payment of taxes at a later date and if found to qualify as a small business unit, then tax deductions will even be smaller. Additionally, tax filing for incorporated businesses is done separately from personal tax declaration, which further establishes the separation between the business and the owner. On the other hand, unincorporated businesses are capable of claiming personal tax credits, which is not available for incorporated businesses. When it comes to losses incurred by the business, owners can file for lower tax exemptions because they can declare low personal incomes as well. The downside for incorporators is that they are taxed twice, one for the business and another one for personal tax declarations, unlike unincorporated businesses, which are taxed only once (Hopson & Hopson, 2014, p. 44).

Business Life Span

Incorporated businesses have limited life span. When one of the incorporators decides to leave the company, the result is the dissolution of the corporation itself, although the other members may opt to vote to continue the operations of the corporation or start a new LLC again. This is not a problem for unincorporated businesses because considering that it is a sole proprietorship, closing the company will not affect other investors (Clardy, 2002).

Transferability of Interest

Transferring business interests is difficult if one is an owner of an unincorporated business. This is because there is no one to transfer ownership to other than the owner himself because the owner is an extension of the business itself. However, incorporated businesses are legally independent, which makes it easier to transfer business interests within other incorporators and still not affect the operations of the business (Cromwell, n. d.).

Considering the above situation, a group of three friends will benefit more if they will establish the company as a limited liability company, or incorporated business, for the following reasons:

Protection of personal assets. Limited liability companies are treated separately from the owners, thus, companies can own property or incur liabilities without affecting the owner's personal properties.

Access to capital funds. Funds will not be a huge issue since there are several incorporators and they all have shares of stocks in the company. They will all shell out the same amount of money or depending on the amount of stocks they put in. This way, it will be easier for the company to grow and develop.

Gain anonymity. Individuals who want to put up a business without disclosing their identities may opt to form a corporation instead of single proprietorship.

Establishment of credibility. When a business name ends with “ Inc.” or “ Corp.”, the public's trust level on the company increases unlike in other companies that do not have the same in their names. It connotes

permanence and credibility, which lacks in other company's image.

Understanding the difference between an employee and an independent contractor is vital because both terms are sometimes thought out to mean the same thing when in fact, they are different. In employment law, being able to determine or differentiate one from the other spells the difference as to which laws protect and govern the worker in question. Employers who hire people to work for them carry the legal consequence of having to answer the law in case the worker commits a criminal offense. This is called liability. However, this liability only applies to workers who are directly hired by the company or through a third-party source and are considered as employees, not independent contractors. In general, employer and employee relationships exist when the employer controls or directs the work of an individual in order to accomplish the company's objectives. While this is the norm, it is not necessarily practiced in all companies. As long as the employer has an established right to do so, it is already enough (Felg, 2009).

Following are some of the points that distinguish one from the other:

Directives

When it comes to instructions set by the company, an employee is required to fulfill and conform to directions given by Management when carrying out his or her tasks. This includes identifying when, where, and how to carry out the instructions. Regardless if the instructions are given as written tasks or orally, the employee has no choice but to comply to his or her employer.

On the other hand, independent contractors are allowed their own style or method in accomplishing the tasks at hand. He or she is expected to

complete the task or service for which the contractor was hired with minimal instructions.

Training

Employees are typically trained by someone in higher position or more experienced than the employee. This means the company expects the employer to follow the methods that the company adheres to in terms of completion of tasks, output, and standards and processes.

In contrast, independent contractors receive minimum to no training from anyone in the company considering that the contractor was hired for the expertise he or she offers to the company. Thus, the contractor is able to work by himself at all times (Hall).

Services Rendered Personally

Employees are carefully screened and chosen especially when it comes to carrying out specific tasks. This means the employers are particular about what methods and techniques are being followed in accomplishing the tasks.

For independent contractors, because they are already being hired for a position due to their expertise, employers are no longer particular about who performs the tasks as long as the tasks are being accomplished.

Continuing Relationship

Because of the nature of the association between employer and employees, employees enjoy a continuing relationship with the company without fear of losing the job after a specific period or completion of the task. As long as

tasks are performed regularly, it already establishes that there is an on-going employer-employee relationship between the two (Hall).

This aspect is completely absent in an employer-independent contractor affiliation because there is a clear understanding from the start that once the project is completed, the service also ends, thus, there is no more need for the contractor.

Defined Hours of Work

For employees, there is a clear definition of the number of hours required to be completed daily, weekly, or monthly. Because of this clear definition of the working hours, it further establishes the control an employer has over employees (Hall).

Independent contractors are hired for a specific task and thus, when the job or service is completed, then the work relationship also ends. Because of this, employers do not really consider how much time the contractor expends in completing the task as long as the task is finished. However, it is the contractor's prerogative if he or she wants to follow the same schedule as the employees (Felg, 2009).

Fulltime Work

Employees are expected to work fulltime for the company, which means employees cannot accept outside and gainful work while still employed in the company. All the employees working hours, break times, and leaves should be for the company only.

This is a benefit that sets the independent contractor apart from employees.

Independent contractors are allowed to work for as many companies he or

she wants even if the worker is still working for another company.

Contractors are free to work for whomever and whenever they want (Felg, 2009).

If the worker is required to complete reports, whether oral or written reports, then it shows a certain degree of control over the way the job is expected to be completed. Therefore, it shows a certain degree of control, which makes the worker an employee of the company.

Independent contractors may submit reports as required and as stated in the contract, but the contractor does not have to accomplish a detailed report like that of an employee's. Instead, the contractor may present the report in the broadest sense or terms.

Understanding the difference between the two is important because it determines what the responsibilities of an employer are towards the worker in terms of declaration of taxes. For employees, employers are responsible for withholding various taxes from the employee, unlike in independent contractors who complete their own tax declarations and filing (Wood, 2012).

The Monist and Dualist Legal Systems

Monist and dualist legal systems are ways that describe theories in relation to national and international law. International law espouses that a state can allow and incorporate international law into the domestic system. The monist legal system believes that international law is part of a state's inner legal system, while the dualist legal system believes international law is apart and different from a state's internal legal system. To have an impact on the state level, the dualist legal system must first be translated into national

legislation before it will have any effect on the state (Dubay, 2014).

In states that adhere to the monist legal system, national judges, including the citizens are free to use and invoke international laws as if it were part of the national laws. In some instances, judges may even override the national laws in favor of international laws because some states consider international laws more powerful than the national laws, which translate to national laws being nullified in the face of international laws. Because of this, even those who are being prosecuted using national laws can invoke international laws to be applied to them if there is a corresponding international law that can override the decision (Brindusa, n. d., p. 3). Mainly, the purpose of the monist legal system is the promotion of peace.

On the other hand, states that follow the dualist legal system believe that in order for international law to have any effect on the national laws, the former must first be translated into a national law. Otherwise, international laws will be considered null and void, thus, the state's legal system and the citizenry cannot invoke international laws during trials (Brindusa, n. d., p. 2).

The importance of these two belief systems are apparent in cases pertaining to war crimes and genocide cases, which have long been considered as criminal offences under Dutch law. This means that people who have been accused of similar crimes can be detained and tried in the Netherlands even before the ICC Statute being enforced. In the United States, application of international laws have been enforced such as in the decisions in the " *Medellin v. Texas*, 552 U. S. 491 (2008) involving the domestic enforceability of the Vienna Convention of Consular Affairs, and in the Guantanamo Bay

detainee cases involving the domestic application of the Geneva Conventions” (Dubay, 2014).

Difference between EU Regulations and Directives

The European Union (EU) is considered the biggest “ multi-nation trading bloc [composed of various] independent European states whose governments form an economic and political partnership” (United States Mission to the European Union, n. d.). The EU is composed of 28 member states, including Austria, Croatia, Denmark, Finland, Greece, Hungary, Italy, Netherlands, Portugal, Spain, Sweden, and the United Kingdom, among others. Only those that have unanimously been approved by all member states may be admitted in the union.

Directives and regulations are laws that the EU can pass for member states to implement immediately. An EU directive is an order, which aims to standardize policies, responsibilities, objectives, and delegate authorities across the member states to ensure that all members have the same guidelines when it comes to dealing with one another in terms of the single market approach. The EU points out objectives that each member state must achieve and accomplish, which the member state’s national government must implement based on an agreed time period. The manner on how to achieve the objective lies in the hands of the member state.

On the other hand, a European Union regulation is a law or a rule that all member states should follow. The national government does not have to take action on regulations or ensure that regulations are part of the national law. It is not an optional rule that allows the national government a freehand

on how to implement the regulation. Rather, it is a law that everyone must follow like a law. Most often, it is expected that its implementation is immediate and simultaneous as the rest of all the other member states. It may be passed by the European Commission or as a joint effort between the European Union Council and the European Parliament and does not need to be transposed into a law before it is carried out (United States Mission to the European Union, n. d.).

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