



Issues Relating To Organizational Forms And Taxation

U.S.A. - UTAH

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- 1. Identify the forms of organization available in your jurisdiction and discuss the advantages and disadvantages of each (eg., corporation, limited liability company, partnership, limited partnership, co-operative, etc.), describing which type of legal entity is mostly used or is of special interest, namely by foreign investors.**

Corporation, professional corporation (PC), nonprofit corporation, corporation sole, limited liability company (LLC), professional limited liability company (PLLC), low-profit limited liability company (L3C), limited partnership (LP), limited liability partnership (LLP), sole proprietorship, general partnership. There is also a unique entity known as an industrial bank.

LLCs and corporations are the most common investment vehicles. PCs, PLLCs and LLPs are commonly used by practicing professionals. Nonprofit corporations are commonly used to qualify for tax exempt status.

- 2. Are there attributes of the form that you consider unique to your jurisdiction?**

Many organizations, especially large and multinational corporations, have formed industrial banks in Utah.

The corporation sole form is sometimes used by religious and charitable organizations.

Like many (but not all) states, Utah allows the formation of single-member LLCs.

3. Describe the management and governance structure for each organizational form.

Typical of other jurisdictions.

4. Is there a residency requirement for management or owners? In particular, are there restrictions or prohibitions on foreign investors to perform, or have interests in, specific activities?

No residency requirement.

5. Describe the extent to which management and owners are exposed to liability.

Generally, liability is limited to capital investment as long as entity formalities are observed.

6. Ownership interest: (i) how is it represented? (ii) is it transferable?; and (iii) is there a minimum number of owners?

Typical documentation requirements apply. Corporations use share certificates, LLC membership and partnership interests are documented in an operating or partnership agreement.

7. Is there a minimum capitalization?

No, but at least nominal capitalization is recommended.

8. Is there a security that can be issued to the public?

Both corporations and LLCs may issue securities to the public in accordance with state and federal laws.

9. Can the form incur debt, or grant security for debt?

Yes.

10. What is the duration of the form? Can it be renewed?

Corporations and partnerships are perpetual until dissolved. LLCs are limited to 99 years but can be renewed.

11. Describe the process, customary time period and approximate cost of establishing the form.

Formation of registered entities (i.e., other than general partnership or sole proprietorship) is accomplished by filing with the Division of Corporations and Commercial Code (Utah Department of Commerce). Filing fees are typically under \$100.

Time required to prepare articles, bylaws, operating agreements, etc. is typical of what would be required in any other jurisdiction.

12. Are there requirements for the government (central or local) to be part of a project or investment vehicle or receive part of the profits arising therefrom (apart from taxes)?

No government participation is required. Typical provisions regarding business registration, business licensing, etc. apply.

13. For what taxes is the form liable?

Utah imposes corporate and personal income tax (based on federal income tax), sales/use tax, property tax, typical withholding taxes (again based on federal withholding requirements), and various excise taxes.

14. What is the tax treatment of payments to foreign owners?

Income derived through a Utah entity is generally treated as Utah-sourced income, regardless of the residency of the owners.

15. Is there a tax treatment which would impact foreign owners differently than owners resident in the jurisdiction?

Depending on the state, a foreign owner whose state of residence also imposes income tax may incur some double taxation in the event the state of residency does not provide a credit for foreign taxes paid sufficient to fully offset taxes paid in Utah.