

Permissible Business	Generally no limitations.	Generally no limitations. ¹	Generally no limitations.	Generally no limitations.	Generally no limitations.
Complexity of Operating Agreement	Generally Simple to Complex.	Generally Simple to Complex.	Simple to Complex. ²	Simple to Complex.	Simple to Complex.
Participation in Management Without Additional Liability.	No restrictions.	No restrictions.	No restrictions. Can use LLP status.	Limited partners may generally participate in management to the extent permitted by Partnership Agreement and not relied upon by creditors. Can use LLP status.	No restrictions. ³
Available for Syndication/Private offerings.	Yes.	Generally no due to 75 shareholder limit.	No due to unlimited liability. Yes perhaps if use LLP status.	Yes.	Probably, although LLCs, being relatively new, have not been widely used in syndications.
Potential Future Public Offering.	Not an obstacle, and permits reinvestment of earnings in business.	May present a concern with some underwriters.	Will present a problem with most underwriters.	Can present a concern for some underwriters	Probably not. Limited acceptance by underwriters.
Legal Title to Property	Corporate name.	Corporate name.	Partnership or partner name. ⁴	Partnership or partner name.	LLC or member name.

¹Financial institutions which use the reserve method for bad debts, insurance companies and DISCs cannot elect S corporation treatment. IRC §1361(b)(2). Some businesses, such as banks, must be incorporated. See §581. Also, some states may not allow certain professional services to be performed through a corporation or an LLC.

²Often the language required to be in the agreement so that allocations among partners will have substantial economic effect under §704(b) will cause the agreement to be complex, especially if special allocations exist.

³Participation in the management of an LLC may cause the member to become liable for self-employment taxes. See Prop. Reg. §1.1402(a)-18.

⁴The partner or partners may retain the property and allow the partnership to use the property. Reg. §1.721-1(a), but not advisable for state law liability considerations.

Consideration	C Corporation	S Corporation	General Partnership	Limited Partnership	Limited Liability Company
Fiduciary Duties	Directors owe duties to entity and indirectly to shareholders; in closely held entity, shareholders owe duties to each other.	Same as C Corporation.	Partners owe fiduciary duties to each other and to the Partnership.	Same as General Partnership.	Generally, each manager and managing member owes a duty of loyalty and a duty of care to limited liability company and Florida along with some other states extend to the other members. See F.S. §608.4225(1).
Amount of Dividend	At the discretion of board of directors (subject to constraints of preferred stock). F.S. St. § 607.06041.	At the discretion of board of directors (preferred stock cannot exist without losing S status).	By partnership agreement. F.S. §620.138	At the discretion of general partner (unless otherwise specified in partnership agreement). F.S. § 620.138	At the discretion of those with management power, or as provided in constitutive document.
Election Required ⁵	No	Yes. Form 2553 must be filed by the 15 th of the 3 rd month of the year of formation. ⁶	No. ⁷	Same as General Partnership.	Same as General Partnership.

⁵On December 17, 1996, the IRS issued the “check-the-box” regulations. These regulations allow unincorporated entities to make an election to be classified for federal tax purposes either as (1) a partnership (where there are two or more members), or a sole proprietorship or division (where there is only one member), or (2) as an association taxable as a corporation. For domestic entities, the default classification is a partnership (or sole proprietorship or division) unless the members specifically make an election to be classified as an association taxable as a corporation. For foreign entities, the default classification depends on whether the members have limited liability. A foreign entity will be classified as an association if all members have limited liability. A foreign entity will be classified as a partnership if it has two or more members and at least one member does not have limited liability (or a branch if the sole member does not have limited liability). Most states have not yet formally announced their position on the federal check-the-box regulations effective January 1, 1997.

⁶The shareholders of an S corporation must file an S corporation election. Qualifying subchapter S trust elections must be filed by the income beneficiaries of qualifying subchapter S trusts, and electing small business trust elections must be filled by the trustees of electing small business trusts. S corporation shareholders are restricted to certain types and numbers of individuals and entities. Thus, S corporation status can be terminated by acts of the shareholders.

Consideration	C Corporation	S Corporation	General Partnership	Limited Partnership	Limited Liability Company
Classification for Federal Income Tax Purposes ⁸	Taxed as corporation under Subchapter C.	Taxed as corporation under Subchapter S.	Taxed under Subchapter K.	Taxed under Subchapter K.	Taxed as partnership under Subchapter K, unless corporate status elected. ⁹
State Recognition of Federal Classification or Election	Yes	Generally, Yes. ¹⁰	Yes	Yes	Generally ¹¹
Availability of Tax-Free Corporate Reorganization Provisions	Yes	Yes	No	No	No

taxed as a partnership under federal law unless the owners elect otherwise pursuant to the check-the-box rules.

²¹ For purposes of this outline and unless specifically provided to the contrary, LLCs will be treated as partnerships for federal income tax purposes; thus, corporate status was not elected.

²² Care must be taken that partnerships and LLCs are taxed as partnerships under the rules of subchapter K. Regulations have been issued which allow certain noncorporate entities to be taxed as partnerships by making the so-called “check-the-box” election on the partnership tax return. Certain default rules (in absence of the election) also apply under which multiple-member domestic partnerships and LLCs are automatically taxed as partnerships, provided that they make no contrary election. Also, under these default rules, single-member LLCs are automatically taxed as sole proprietorships or branches of non-entity owners, unless they elect to be taxed as corporations.

¹⁰ Although most states with income taxes recognize the Federal S election, some states do not.

¹¹ For LLC’s with tax years ending after July 1, 1998, Florida no longer imposes a 5.5% corporate income tax on LLC’s.

Conversion to LLC	Gain can occur at corporation and shareholder level.	Gain can occur to the corporation which is passed through to the shareholder.	Generally can be converted without tax consequences.	Generally tax-free, but gain can occur from shifting of liabilities under §752.	Not applicable.
Subject to Specific Anti-Abuse Rules	No	No	Yes ¹²	Yes	Yes

Consideration	C Corporation	S Corporation	General Partnership	Limited Partnership	Limited Liability Company
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Entity or Aggregate Theory Applied for Tax Purposes	Entity	Entity	Both	Both	Both
Ownership in Profits without Equity Ownership	Phantom stock, stock appreciation rights, etc.	Can have phantom stock, etc. but care must be exercised to avoid second class of stock.	Same as Limited Liability Company	Same as Limited Liability Company	Can have a phantom equity or profits interest. See Rev. Proc. 93-27.
Ownership of Subsidiary Corporations	No restrictions. Can consolidate an 80% or more owned corporation.	Effective 1/1/97, can own up to 100% of another corporation but cannot consolidate. Can elect to treat a 100% owned S corporation as a division rather than a separate corporation.	Same as Limited Liability Company	Same as Limited Liability Company	No restrictions.

¹²Reg. §1.701-2 contains a specific anti-abuse rule for partnerships and other entities classified as partnerships. In general, if a partnership is formed or availed of in connection with a transaction “a” principal purpose of which is to reduce substantially the present value of the partners’ aggregate federal tax liability in a manner that is inconsistent with the intent of Subchapter K (the partnership provision of the Code), the IRS can recast the transaction.

Consideration	C Corporation	S Corporation	General Partnership	Limited Partnership	Limited Liability Company
Election to Step-Up (or Down) Basis of Underlying Assets in Connection with Purchase or Inheritance of Interest in Entity	Not available.	Not available. ¹³	Same as Limited Liability Company	Same as Limited Liability Company	Available, if election under IRC §754 is made by the entity.
Effect of Liabilities on Owners	Not included in basis.	Included in basis only if debt is directly to the shareholder. ¹⁴	Included in basis.	Generally limited partners only include nonrecourse debt in basis, unless personally guaranty recourse debt.	Generally, all members can include company debt in basis, unless debt guaranteed by member.
Double Tax	Tax at corporate and shareholder level when earnings distributed.	Generally no. ¹⁵	Same as Limited Liability Company	Same as Limited Liability Company	No, pass-thru entity.

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Really a characterization of loss and deferral issue, since higher outside basis will trigger capital loss upon liquidation.

¹⁴ Although one court (Selfe, 86-1 USTC ¶9115, 11th Cir. 1985) permitted a shareholder to include in basis her guarantee of corporate debt to a bank, most, if not all, courts have held that a guarantee did not result in basis. See Leavitt, 89-1 USTC ¶9332 (4th Cir. 1989).

¹⁵ For an S corporation that converted from a C corporation, a tax is imposed on any built-in gain, if the property is disposed of within 10 years. IRC §1374. A tax is also imposed if an S corporation has C corporation earnings and profits and passive investment income exceeds 25% of gross receipts.