

COMPARISON OF CERTAIN FOR PROFIT BUSINESS ENTITIES¹

ITEM	CORPORATION	BENEFIT CORPORATION	LIMITED LIABILITY COMPANY (LLC)
Purpose	Any purpose other than certain regulated businesses (e.g., banking).	To pursue a general or specific public benefit, creating a positive impact on society and the environment as a whole.	Same as corporation, although an LLC can be structured to pursue a public benefit.
Formation	<p>File certificate of incorporation (charter) with the secretary of state.</p> <p>Issue stock to evidence ownership interest; adopt bylaws to establish governance rules; appoint officers and directors.</p> <p>Find resources for Delaware here: https://corp.delaware.gov/howtoform.shtml</p> <p>Find resources for New York here: http://www.dos.ny.gov/corps/busguide.html</p> <p>Other resources: http://digitalcounselnyc.dwt.com/ See “Tips and Tools”</p>	<p>Same as corporation, but charter must include provisions specified by applicable state law (i) stating the general or specific public benefit of the business, (ii) requiring the publication of an annual “benefit report” and (iii) in some cases, requiring measurement of the benefit performance against a third party standard.</p> <p>Some states (but not New York or Delaware) <i>permit but do not require</i> the business to be conducted for a social benefit.</p> <p>Find sample charter language here: https://www.bcorporation.net/become-a-b-corp/how-to-become-a-b-corp/legal-roadmap/corporation-legal-roadmap</p> <p>Other resources: http://www.dos.ny.gov/corps/benefit_corporation_formation.html</p>	<p>File certificate of formation with the secretary of state.</p> <p>For LLC formed under New York law, publish notice of formation for 6 weeks in two newspapers.</p> <p>Enter into “operating agreement” or “LLC agreement” to establish ownership interests, appoint managers and establish governance rules.</p> <p>For Delaware: https://corp.delaware.gov/howtoform.shtml</p> <p>For New York: http://www.dos.ny.gov/corps/llcguide.html</p>

¹ Business entities are organized under the laws of a particular state. Although the general principles outlined above apply in each state, the details may vary from state to state. **This summary is for general reference only, does not constitute legal or tax advice and does not create an attorney–client relationship.**

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Doing business in a state other than state of formation	If offices, employees or assets in a state other than the state of formation, then the company may need to file for authority to do business with the secretary of state in the other state.	Same as corporation.	Same as corporation, <u>plus</u> if organized in a state other than New York, to do business in New York, must publish notice for 6 weeks in two newspapers (same as formation requirement above).
Consequence of failing to file to do business in other states	<p>Failure to file for authority to do business in another state:</p> <ul style="list-style-type: none"> • precludes the company from suing anyone in that state • may impede certain transactions (e.g., a loan, a lease) if evidence of authority to do business is required <p>Can file for authority any time and remove these impediments.</p> <p>Contracts entered into while conducting business without authorization are still legal and binding.</p>	Same as corporation.	Same as corporation.
Cost to form and maintain	<p>Cost of initial organizational filing with secretary of state is generally \$150 - \$250.</p> <p>After initial filing, many states assess annual license/franchise fees or taxes in state of organization See http://corp.delaware.gov/frtaxcalc.shtml</p>	Same as corporation.	<p>Cost of filing to organize LLC is generally the same as a corporation, but the cost of publication in New York (for LLCs organized in New York and for LLCs organized in another state that do business in New York) can be between \$2,000-\$3,000.</p> <p>After the initial filing/publication, most states assess annual license/franchise fees or taxes.</p>

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	<p>The initial cost for authority to do business in another state is generally \$150 - \$250 and a fee in a similar amount is generally due annually.</p>		<p>The initial cost for authority to do business in another state is generally \$150 - \$250 and a fee in a similar amount is generally due annually.</p>
<p>Equity (ownership interests) in the company</p>	<p>Stock or shares, which can be voting or nonvoting and can be issued in different classes:</p> <ul style="list-style-type: none"> • Common: what founders generally own • Preferred: what investors generally own <p>Preferred stock generally has special rights on liquidation, on key business decisions and in the event of an IPO.</p> <p>Charter specifies the number of authorized shares and their par value (generally nominal - \$.001) In Delaware number and par value of shares affects calculation of annual franchise tax (see above).</p>	<p>Same as corporation.</p>	<p>Membership interests, which can be voting or nonvoting and can be issued in different classes, including common and preferred.</p> <p>LLCs offer considerable flexibility in terms of different types of interests with different rights.</p> <p>Different classes of interests create more complex accounting and tax issues.</p>
<p>Equity owners</p>	<p>Stockholders or shareholders.</p>	<p>Same as corporation.</p>	<p>Members.</p>

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Employee equity	Restricted stock and incentive stock options can be granted to employees.	Same as corporation.	Can issue membership interests or “profits interests” or “phantom equity” to employees, but these arrangements can create tax and accounting complexities.
Payment of profits	Dividends.	Same as corporation.	Distributions.
Management	<p>Board of Directors oversees the management of the company.</p> <p>Officers (who are employees) handle the day to day operations and management of the company.</p>	Same as corporation.	<p>Has very flexible management structure, which can include:</p> <ul style="list-style-type: none"> • Members • Single or multiple managers • Officers • Board of managers or management committee
Governance	<p>Stockholders elect and remove directors, and directors appoint officers.</p> <p>Stockholders approve certain major transactions (sale of company, merger)</p> <p>Directors oversee the management of the company and are subject to the duty to manage the company in the best interests of the stockholders, which generally means maximizing profits for the stockholders.</p>	Same as corporation, <u>provided</u> directors must take into account the social mission of the company when making decisions <i>in addition</i> to maximizing value for stockholders.	Most state laws permit LLCs to define the members’ or managers’ duties as broadly or narrowly as desired, which can include specifying a social mission as well as business purpose.

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Taxation of business income	Profits of corporations are subject to income taxation twice: <ul style="list-style-type: none"> • Corporations pay tax on their net income (profit). • When dividends (profits) are paid to stockholders, the dividends are subject to income tax payable by the stockholders. 	Same as corporation.	LLCs are not subject to income tax. Instead, the members of the LLC pay their proportionate share of income tax on the net income (profit) of the business, and they are generally entitled to deduct from their personal income their share of losses of the LLC. Depending on the number of members and the nature of their membership interests, the tax consequences to the members can be very complex, sometimes with unexpected results.
Accounting/ Tax Reporting	Corporation files tax returns. Especially when there are outside investors, it is best practice to prepare financial statements (balance sheet, income statement) quarterly.	Same as corporation.	LLC does not file a tax return. Instead, the LLC prepares a K-1 for each member indicating that member's share of income and loss of the business. Members report their share of income and loss indicated on the K-1 on their individual income tax returns. Also best practice for the LLC to prepare periodic financial statements.
Conversion to another form of business entity	Can convert to LLC, but may trigger tax liability. Can convert to a benefit corporation by amending charter, but typically requires approval of supermajority of stockholders (at least 2/3s).		Can convert to a corporation but may trigger tax liability to members. Can amend purpose to pursue social mission, but typically requires approval of supermajority of members.

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<p>When to use this type of entity</p>	<p>A corporation is the better choice if:</p> <ul style="list-style-type: none"> • You expect to have investors, especially angel or VC investors • You plan to reinvest the earnings of the corporation in the business • You intend to give equity (stock or options) to employees 	<p>A benefit corporation is the better choice if you expect to have investors and your business has a social mission where:</p> <ul style="list-style-type: none"> • You plan to give away products or sell them for below cost • You want to sell the company to a buyer who shares your social mission and values • You want to invest a significant amount of company assets in non-revenue generating activities 	<p>An LLC is the better choice if:</p> <ul style="list-style-type: none"> • You expect to have a limited number of owners • You want substantial flexibility to manage the business • You expect to regularly distribute profits from the business to the owners