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ESTATE PLANNING WORKSHOP**

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CHOICE OF ENTITY MATRIX

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This matrix compares entity characteristics using two charts. The first chart compares the state law characteristics of a limited partnership, limited liability company and corporation. The second chart compares the federal income characteristics of a partnership and an S corporation.

STATE LAW ENTITY CHARACTERISTICS

| Characteristic | Limited Partnership (LP) | Limited Liability Company (LLC) | Corporation |
|--------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------|-----------------------------------------------------------------------------------|
| A. General Concepts | | | |
| 1. Governing Law | Texas Limited Partnership Law (TLPL) ¹ | Texas Limited Liability Company Law (TLLCL) ² | Texas For-Profit Corporation Law (TFPCL) ³ |
| 2. Definition | An LP is a partnership – that is, an association of two or more persons to carry on a business for profit as owners – that is governed by TLPL and that has one or more general partners and one or more limited partners. ⁴ | An LLC is a Texas limited liability company subject to TLLCL. ⁵ | A corporation is a domestic for-profit corporation subject to TFPCL. ⁶ |
| 3. Owners | General partners and limited partners ⁷ | Members ⁸ | Shareholders ⁹ |
| 4. Governing Authority ¹⁰ | General partners ¹¹ | Members or managers ¹² | Directors ¹³ |

¹ Tex. Bus. Org. Code § 1.008(g).

² Tex. Bus. Org. Code § 1.008(e).

³ Tex. Bus. Org. Code § 1.008(c).

⁴ Tex. Bus. Org. Code §§ 1.002(50), 152.051(b), 152.052.

⁵ Tex. Bus. Org. Code § 101.001(3).

⁶ Tex. Bus. Org. Code § 21.002(5).

⁷ Tex. Bus. Org. Code § 1.002(33), (49).

⁸ Tex. Bus. Org. Code §§ 1.002(53)(A), 101.101, 101.102.

⁹ Tex. Bus. Org. Code § 1.002(81).

¹⁰ Governing authority means a person or group of persons who are entitled to manage and direct the affairs of an entity under the Texas Business Organizations Code (TBOC) and the governing documents of the entity, except that if the governing documents of the entity or TBOC divide the authority to manage and direct the affairs of the entity among different persons or groups of persons according to different matters, “governing authority” means the person or group of persons entitled to manage and direct the affairs of the entity with respect to a matter under the governing documents of the entity or TBOC. Tex. Bus. Org. Code § 1.002(35)(A).

¹¹ Tex. Bus. Org. Code § 1.002(35)(A)(ii).

¹² Tex. Bus. Org. Code § 1.002(35)(A)(iii), (iv).

¹³ Tex. Bus. Org. Code § 1.002(35)(A)(i). An officer is not part of the governing authority. See Tex. Bus. Org. Code § 1.002(35)(B).

| Characteristic | Limited Partnership (LP) | Limited Liability Company (LLC) | Corporation |
|----------------------------------------------|----------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------|
| 5. Persons with Authority to Bind the Entity | General partners and officers ¹⁴ | Members, managers and officers with actual or apparent authority ¹⁵ | Directors and officers ¹⁶ |
| 6. Governing Documents | Certificate of formation and partnership agreement ¹⁷ | Certificate of formation and company agreement ¹⁸ | Certificate of formation, bylaws, and shareholders' agreement, if desired ¹⁹ |
| 7. Number of Owners | At least one general partner and one limited partner ²⁰ | No limitation | No limitation |
| B. Formation | | | |
| 1. Filing Entity ²¹ | Yes | | |
| 2. Filing Fees | \$750 for the certificate of formation ²² | \$300 for the certificate of formation ²³ | \$300 for the certificate of formation ²⁴ |
| 3. Other Organizational Costs | Preparation of partnership agreement and maintenance of books and records and supplemental information ²⁵ | Preparation of company agreement and maintenance of books and records and supplemental information ²⁶ | Preparation of bylaws, maintenance of books and records, and organizational minutes ²⁷ |

¹⁴ Tex. Bus. Org. Code §§ 3.103, 151.004, 152.203, 153.152.

¹⁵ Tex. Bus. Org. Code §§ 3.103, 101.254.

¹⁶ Tex. Bus. Org. Code §§ 3.103, 21.401.

¹⁷ Tex. Bus. Org. Code §§ 1.002(36)(A), 151.001(5), 152.002.

¹⁸ Tex. Bus. Org. Code §§ 1.002(36)(A), 101.052.

¹⁹ Tex. Bus. Org. Code §§ 1.002(36)(A), 21.057, 21.101.

²⁰ Tex. Bus. Org. Code § 1.002(50).

²¹ Tex. Bus. Org. Code §§ 1.002(22), 3.001 *et seq.*

²² Tex. Bus. Org. Code § 4.155.

²³ Tex. Bus. Org. Code §§ 4.152(1), 4.154.

²⁴ Tex. Bus. Org. Code § 4.152(1).

²⁵ Tex. Bus. Org. Code §§ 3.151, 153.551.

²⁶ Tex. Bus. Org. Code §§ 3.151, 101.501.

²⁷ Tex. Bus. Org. Code §§ 3.151, 21.059.

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