

PRESENTED AT

Nuts and Bolts of LLCs, LPs and Partnerships

July 11, 2018
Austin, Texas

Choice of Entity

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Jennifer Wu represents both public and private corporate clients in the energy, life sciences, and technology industries in a variety of transactional matters, including private and public securities offerings, mergers and acquisitions, and ongoing general corporate governance. Before joining Baker Botts, Jennifer served as a law clerk to the Honorable Wallace B. Jefferson, former Chief Justice of the Supreme Court of Texas. During law school, she served as a judicial extern to the Honorable Jeffrey S. White of the United States District Court for the Northern District of California in San Francisco. In addition, Jennifer is dedicated to serving the Austin community through her active involvement with Leadership Austin and The Junior League of Austin.

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Overview

- 01** Types of Entities: An Overview
- 02** Key Considerations in Selecting an Entity Type
- 03** Securities Laws
- 04** Key Takeaways

01

TYPES OF ENTITIES: AN OVERVIEW

Menu of Options

- General partnerships
- Limited partnerships
- Limited liability companies
- Other
 - Sole proprietorships
 - Limited liability partnerships
 - Corporations

General Partnerships

- A general partnership is an unincorporated business owned and managed by two or more people, who are called "general partners"
- BEWARE! Formation of a general partnership does not require filing with the Texas Secretary of State (TX SOS)
- General partners can be held personally responsible for the liabilities and debts of the business
 - This arrangement is called "unlimited liability"
- Each general partner has "agency power" and can enter into binding agreements or deals that bind all other general partners and the partnership
 - Because such distribution of agency power can lead to disputes, it is highly recommended that general partners draft partnership agreements to set forth key provisions governing each partner's share in profit, loss, liability, etc.
- Flow-through tax treatment

Limited Partnerships

- Formation of a limited partnership requires filing a certificate of formation with the TX SOS
- Limited partnerships include at least one general partner, who bears unlimited liability, and at least one "limited partner"
- Limited partners (often known as "silent partners") are not active in the business management and cannot be held liable for more than the amount of their investment
 - This arrangement of liability is called "limited liability"
- Adding limited partners can be a valuable method of obtaining capital
- Flow-through tax treatment

Limited Liability Companies (LLCs)

- Formation of an LLC requires filing a certificate of formation with the TX SOS
- An LLC combines the limited liability protection of corporations with the tax benefits of partnerships (unless it elects to be taxed as a corporation)
- Owners of LLCs are called "members"
 - Members can be individuals, partnerships, corporations, and other legal or commercial entities
- Unlike general/limited partnerships, all members have limited liability, including those who are active participants in business management
- LLCs can choose their own management structure:
 - Management by members
 - Management by managers
 - Managers need not own any interests in the company
- Flow-through tax treatment

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