



# *Session 41*

*Employment law 2*

*Employers*

## Judicial personality of employers

Employers, i.e. business organizations, can be divided into two main types, depending on whether they have a judicial personality, they can acquire rights or assume obligations and can take legal action or be sued, or not:

- Physical entities that do not have a judicial personality and thus there is coincidence with a physical person: sole proprietorship, simple company, collective company.
- Moral persons that acquire a judicial personality through the law: corporations, company limited by shares, partnerships, co-operatives, for-profit associations and foundations.

## *Judicial personality of employers (cont.)*

Criteria for deciding on the legal form to give to a business organization:

- Capital: the expenses of foundation; the compulsory minimum capital according to the legal shape; the intensity of capital of the current commercial activity; the needs of capital supposed for the next 3-5 years.
- Risk / responsibility: as a general rule, the more the risk of the company or the financial contribution is big, the more it is advised to opt for the limited company.
- Independence: it is a question of determining if the entrepreneur wishes to work only or with partners and if he prefers to integrate pure investors or partners who participate in his activity.

## *Judicial personality of employers (cont.)*

Criteria for deciding on the legal form to give to a business organization:

- Taxes: According to the shape of the company, incomes and assets of the company and the owner are either separately imposed (moral persons) or together (physical persons).
- Social Security: welfare is compulsory, optional or even non-existent, according to the legal shape.

## *Judicial personality of employers (cont.)*

Types in CH

Main source: [civil code](#) (non-commercial entities art 60 ff), [code of obligations](#) (moral persons art 552 ff)

Comparative:

[https://www.startbiz.ch/kmucms/content/infoCenter/doc/Rechtsformen\\_f.pdf](https://www.startbiz.ch/kmucms/content/infoCenter/doc/Rechtsformen_f.pdf)

Types in Canada

Main source for Quebec: [civil code](#) (section 298 ff)

Brief:

<http://www2.gouv.qc.ca/entreprises/portail/quebec/creer?g=creer&sg=&t=s&e=3733407055>

## *Judicial personality of employers (cont.)*

Types in Canada

Main sources for Ontario: [Business Corporations Act](#), [Business Names Act](#),  
[Partnerships Act](#), [Limited Partnerships Act](#),

Brief: <http://www.canadabusiness.ca/eng/page/2853/>

## *Sole proprietorship*

Sole proprietorship is a business owned and operated by one individual, operated under one's name or under another name chosen together with one's name.

Management: by the owner as a physical person

## Sole proprietorship (cont.)

Advantages include:

- Setting up and administering the business is easy and inexpensive.
- Registering the business may not be compulsory (e.g. CH up to 100'000 annual turnover).
- Paying VAT may not be compulsory (e.g. CH up to 100'000 annual turnover).
- Business income is declared on the personal income tax form.



## Sole proprietorship (cont.)

Drawbacks include:

- As the business is considered to be an extension of one self all responsibilities for the business are to be assumed, inclusive of the debts and liabilities (unlimited liability employer).
- If a sole proprietor is registered as such with the Registry, it may not mean that one is considered as such: one has to be acknowledged as such by the administration (taxes, social security).

With respect to the latter, consider:

CDN: <http://www.canadabusiness.ab.ca/index.php/legal/335-contractor-or-employee-guidelines-for-alberta>;

CH: <http://www.bsv.admin.ch/kmu/ratgeber/00496/00557/index.html?lang=fr>

# Corporation

Corporation is a company under a firm-name whose capital is fixed in advance and divided into shares and whose debts are payable only out of the company's assets.

Management: shared among

- AGM - shareholders
- Board of Directors
- Fiduciary
- CEO

## Corporation (cont.)

Advantages of incorporating :

- Limited liability: unlike the sole proprietorship, where the business owner assumes all the liability of the company, in a corporation an individual shareholder's liability is limited to the amount one has invested in the company.
- Going concern: unlike a sole proprietorship, a corporation has an unlimited life span; the corporation will continue to exist even if the shareholders die or leave the business, or if the ownership of the business changes.
- Capitalization: corporations also can raise money, which may make it easier for your business to grow and develop through the sale of shares to raise equity capital in addition to debt capital – public offer of shares/publicly traded companies.

## Corporation (cont.)

Advantages of incorporating :

- Potential tax deferral: deferring paying some tax until a later time, thus realize tax savings.
- Income splitting: pay dividends to their shareholders from the company's earnings by redistributing income from family members in higher tax brackets to family members with lower incomes that are taxed at a lower rate.
- Increased business: corporations have a greater financial capacity to drive business compared to unincorporated businesses.
- Taxes: can account taxes as expenses – whereas sole trades cannot

## Corporation (cont.)

The main disadvantages of incorporating include;

- Tax return: filing two tax returns each year, one for the personal income, and one for the corporation, increasing accounting fees.
- Increased paperwork: there is a lot more paperwork involved in maintaining a corporation than a sole proprietorship or partnership.
- No personal tax credits: being incorporated may actually be a tax disadvantage for your business as corporations are not eligible for personal tax credits.
- Less tax flexibility: a corporation does not have the same flexibility in handling business losses as a sole proprietorship or a partnership.

## Corporation (cont.)

The main disadvantages of incorporating include:

- Liability: limited liability may be undercut by personal guarantees and credit agreements.
- Registration: corporations are more expensive to set up than sole proprietorships (e.g. in CH 3'000.- against 240.-, respectively).

# Partnership

It is a legal relationship between persons for a profit-motivated business.

The most common types include:

- The general partnership: it is formed by registration; no minimum amount of capital is required; it has a legal standing; the partners are jointly and severally liable for the partnership's liabilities to the extent that these liabilities are not covered by the assets of the partnership.
- The limited partnership: an arrangement where a person can contribute to a business without being involved in the affairs of the partnership; the liability to the firm or its creditors is limited to the amount invested in the firm.

## Partnership (cont.)

Advantages include:

- The working relationship between the partners based on complementary talent.
- Sharing the decision making.
- No minimum amount of capital is required.

Drawbacks include:

- The partners are jointly and severally liable for the partnership's liabilities



## *For-profit association and foundation*

The association is designed for organizations that pursue non-profit objectives and engage in beneficial, scientific, cultural, political or social activities. However, many of the more important associations are formed to pursue economic goals, for instance, professional organizations and trade unions. Associations may, for the better attainment of their goals, carry on an industrial or commercial activity. Associations acquire the status of a separate legal entity as soon as the articles of association are drawn up.

## *For-profit association and foundation (cont.)*

A foundation is a fund endowed for a defined purpose. The assets set aside for that purpose become autonomous and acquire the status of a legal entity. The legal form of a foundation is frequently used for company pension plans. The foundation is not a corporate entity constituted by members, but a fund with a specific object, that is established in a publicly authenticated deed or in the form of a will. After registration, the foundation is established and has the status of a legal entity.