

# BUSINESS ORGANIZATION STRUCTURE

## Business Organization

One of the first decisions a new business owner faces is choosing a structure for the business. Businesses range in size and complexity, from a self-employed plumber to a large corporation, and can be organized in a variety of ways.

The principal types of business organizations are Sole Proprietorships, Partnerships, Corporations, and Limited Liability Companies. Each structure has certain advantages and disadvantages. Factors such as taxes, type of business, insurance needs, number of owners, and financial needs will determine how the business should be organized. Choosing the appropriate organizational structure for your business is one of the most important decisions to make, and may require advice from an attorney, an accountant, or another knowledgeable business advisor.

The following is a brief description of registration requirements on each type of business organization, as well as the variations of each structure. Again, it is advisable to have your legal counsel and/or accountant explain the advantages and disadvantages of each type of business organization before determining your business structure. In this chapter, you will find brief descriptions of each business structure.

## Sole Proprietorship

**Registration:** None

**Fee:** None

The Sole Proprietorship is the most common form of business structure. A Sole Proprietorship is a business controlled and owned by one individual, and is limited to the life of its owner; when the owner dies, the business ends. The owner receives the profits and takes the losses from the business. This individual alone is responsible for the debts and obligations of the business. Income and expenses of the business are reported on the proprietor's individual income tax return, and profits are taxed at the proprietor's individual income tax rate.

Kansas has no state requirements to register or file the business name of a Sole Proprietorship. A self-employed person, who does not expect to have employees, is not required to apply for a *Federal Employer's Identification Number* through the IRS. *Form 1040 (Schedule C)* must be filed with the federal government and a *Kansas Tax Return* with the Kansas Department of Revenue, on or before the 15th day of the fourth month following the close of the taxable year.

Note: Sole Proprietors and Partnerships are required to make estimated income tax payments if their estimated Kansas income tax, after all credits, is \$200 or more. Non-residents should consider only income from Kansas sources for meeting these conditions.

### Advantages

1. Few formalities and low organizational costs;
2. Decision making is made by the owner;
3. Ability to do business in almost any state without elaborate formalities;
4. Fewer reporting requirements to government agencies;
5. Avoidance of corporate "double tax";
6. Business losses may be taken as a personal income tax deduction to offset income from other sources;
7. All profits taxed as income to owner at the owner's personal income tax rate; and
8. Registration of a trade name is available to prevent confusion resulting from deceptively similar business names.

### Disadvantages

1. Compared to Corporations and Partnerships, Sole Proprietorships cannot take advantage of certain fringe benefits afforded by the *Internal Revenue Code*;
2. Business terminates upon death of owner;
3. Investment capital limited to that of owner;
4. Loans based on credit worthiness of owner; and
5. Owner's assets subject to business liabilities. Thus, if a company truck is involved in an accident, the owner's personal assets (i.e., bank accounts, cars, etc.) may be attached to compensate the injured party.

### **Tax Implications**

1. Profits are taxed as personal income on IRS *Form 1040, Schedule C*; and
2. For information on Social Security tax, refer to IRS *Publication 533, and use Form 1040, Schedule SE.*

### **Other Helpful Publications**

- For estimated tax payments, refer to IRS *Publication 505*; and
- To receive a *New Business Tax Kit*, contact the IRS at 1-800-829-3676.

## **General Partnership**

**Registration:** Secretary of State – Optional, not required.

**Fee:** \$35.00

A General Partnership is a business owned by two or more persons (even a husband and wife), who carry on the business as a partnership. Partnerships have specific attributes, which are defined by *Kansas Statutes*. All partners share equally in the right and responsibility to manage the business. Each partner is responsible for all debts and obligations of the business. The distribution of profits and losses, allocation of management responsibilities, and other issues affecting the Partnership are usually defined in a written Partnership agreement.

For income tax purposes, a General Partnership functions as a conduit, and not as a separate taxable entity. No tax is imposed on the Partnership itself (K.S.A. 79-32,129 et. seq.). Those carrying on business as partners are liable for tax based on their percentage of ownership, and must file a *Kansas Individual Income Tax Return (Form K-40)* (K.S.A. 79-3220). Each individual partner is subject to the same reporting requirements and tax rates as the Sole Proprietor or individual. The Partnership must file a *Kansas Partnership Return (Form K-65)* each year to enable the State to determine who should be paying taxes relative to the Partnership.

Unemployment taxes need not be paid on the partners or for services rendered by individuals who are the children under 18 years of age, the spouse, or the parents of any partners.

General Partnerships may file different statements with the Secretary of State's office. The filings are optional and not mandatory. The filing fee for partnership authority is \$35 and the filing of any amendments to the *General Partnership Agreement* (such as the addition of a partner) is \$35. Partnerships are required to apply for a *Federal Employer's Identification Number*, whether they have employees or not.

### **Advantages**

1. Easy to organize and few initial costs;
2. Draws financial resources and business abilities of all partners;
3. Quasi-entity status—may own assets; contract in partnership name; may sue and be sued in partnership name; and may file separate bankruptcy;
4. Liability is shared by all partners;
5. Partners may take business losses as a personal income tax deduction; and
6. May register a trademark or servicemark to help prevent confusion resulting from deceptively similar business names.

### **Disadvantages**

1. Each partner is personally liable for all the obligations of the business, not just his or her share. Thus, if a company truck is involved in an accident, each partner's personal assets may be attached to help compensate the injured party;
2. Each partner has the power to act on behalf of the business. This requires that partners be chosen with care;
3. No continuity of life—if any partner dies or becomes incompetent, the Partnership must dissolve and be reformed;
4. All partners must pay tax on their share of Partnership profits, although profits may be retained in the business; and
5. A Partnership has more opportunity than a Sole Proprietorship, but less than a Corporation, to take advantage of certain fringe benefits afforded by the *Internal Revenue Code*.

### **Tax Implications**

1. Each partner receives a *Schedule K-1 (Form 1120S)*, which shows proportional profits to be declared on partner's 1040;
2. The Partnership files a return using IRS *Form 1065*;
3. Estimated tax payments may be subject to quarterly tax payments; refer to IRS *Publication 505*; and
4. Partners may be subject to self-employment withholding; refer to IRS *Publication 533*.

### Other Helpful Publications

For more information, refer to IRS *Publication 541* on Partnerships.

## Limited Partnership (LP)

**Registration:** Secretary of State

**Fee:** \$165.00 Paper filing (Domestic/Foreign) or \$160.00 E-filing online (Domestic only)

In a Limited Partnership, each partner is liable for debts only up to the amount of his or her investment in the company. Under *Kansas Statutes* (K.S.A. 56-1a151), a Limited Partnership must be formed in writing between one or more general partners and one or more limited partners. In addition, limited partners have no voice in the management of the partnership. Limited Partnerships are ideal for property or raising capital.

Each Limited Partnership must have and maintain a registered office that may or may not be the place of business. Additionally, a Kansas resident agent must be appointed, which may either be an individual, a domestic Corporation, or Limited Partnership.

In a Limited Partnership, each partner is responsible for filing a *Kansas Individual Income Tax Return (Form K-40)*, the same requirement as a General Partnership. A *Kansas Partnership Return (Form K-65)* must also be filed. A *Limited Partnership Certificate* must be filed with the Secretary of State, and the Limited Partnership may be required to register the Limited Partnership's interest in securities with the Office of the Securities Commissioner.

### Advantages

1. Investors have liability limited to their respective investments in the partnership;
2. The Limited Partnership is a separate entity and may sue and be sued, own property, protect its limited partners from unlimited liability, raise capital by selling interests in the partnership, borrow money, and exist independently of its partners' mortality;
3. The Limited Partnership does not have to be dissolved and reformed every time a general partner or limited partner dies;
4. Ability to borrow money, develop general partner savings, raise funds from operations, plus sell limited partner interests to generate capital;
5. Managed by the general partner and not subject to investor interference; and
6. Partners pay the tax because profits and losses pass through the entity to the partners.

### Disadvantages

1. A Limited Partnership requires advanced accounting procedures;
2. Does not live in perpetuity, but lives for a stipulated period—usually for the life of the assets it owns;
3. Limited partners have little voice in management once the investment is made in the partnership;
4. If more than 20 partners are involved or if sales commissions are given for interests, the Limited Partnership may need to register its securities before they are sold;
5. Interests may not be freely traded; therefore, a limited partner must hold the investment indefinitely; and
6. A *Certificate of Limited Partnership* must be filed with the Secretary of State. Annual financial reporting must be made to limited partners and *Annual Reports* must be made to the Secretary of State. Franchise Tax must be also paid and all monies received and disbursed must be accounted for.

### Tax Implications

1. The Partnership files an IRS *Form 1065*, but individual partners pay taxes on their share of profits shown on *Schedule K-1 (Form 1120S)* via *Form 1040*;
2. The Partnership must obtain a *Federal Employer Tax Identification Number (FEIN, Form SS-4)*; and
3. Partners may be subject to self-employment withholding; refer to IRS *Publication 533*.

### Other Helpful Publications

For an explanation of taxation and forms, refer to IRS *Publication 541*.

## Limited Liability Partnership (LLP)

**Registration:** Secretary of State

**Fee:** \$165.00 Paper filing (Domestic/Foreign) or \$160.00 E-filing online (Domestic only)

A Limited Liability Partnership (LLP) is a partnership in which a partner's personal assets are shielded from claims for negligence, malpractice, or other wrongful acts committed by other partners or the employees those partners directly supervise. A LLP does not shield partners against the partner's own acts, omissions, or other partnership obligations.

In a LLP, no registered office is required, and no resident agent must be appointed. However, the address of the principal office or partnership agent must be listed. A LLP is required to apply for a *Federal Employer Tax Identification Number, IRS Form SS-4*.

#### Advantages

1. Investors have liability limited to their respective investments in the partnership;
2. The LLP is a separate entity and may sue and be sued, own property, protect its partners from unlimited liability, raise capital by selling interest in the partnership, borrow money, and exist independently of its partners' mortality; and
3. The LLP does not have to be dissolved and reformed every time a partner dies.

#### Disadvantages

1. A LLP requires advanced accounting; and
2. The LLP does not live in perpetuity, but lives for a stipulated period, usually for the life of the assets it owns.

## Corporation

**Registration:** Secretary of State

**Fee:** \$90.00 Paper filing (Domestic & Professional)/\$115.00 Paper filing (Foreign) or \$84.00 E-filing online (Domestic only)

The most complex business structure is the Corporation. A Corporation is a separate legal entity that is comprised of three groups of people: shareholders, directors, and officers. The shareholders elect a board of directors that has responsibility for management and control of the Corporation. Because the Corporation is a separate legal entity, the Corporation generally is responsible for the debts and obligations of the business. In most cases, shareholders are insulated from claims against the Corporation. The Corporation, as a separate legal entity, is also a separate taxable entity.

The Corporation may be taxed under Subchapter C of the *Internal Revenue Code* (a "**C**" Corporation) or Subchapter S (an "**S**" Corporation). Kansas law provides for comparable treatment. A "**C**" Corporation reports its income and expenses on a *Corporation Income Tax Return* and is taxed on its profits at Corporation income tax rates. Profits are taxed before dividends are paid. Dividends are taxed to shareholders, who report them as income, resulting in "double taxation" of profits, which are paid as dividends. If the Corporation meets the statutory requirements for "**S**" Corporation status, the shareholders may elect to be taxed as an "**S**" Corporation. The "**S**" Corporation is taxed in the same manner as a Partnership (i.e., the "**S**" Corporation files an information return to report its income and expenses, but it generally is not separately taxed). Income and expenses of the "**S**" Corporation flow through to the shareholders in proportion to their shareholdings, and profits are taxed to the shareholders at their individual income tax rate. To elect to be an "**S**" Corporation, a Corporation must file *Form 2553* with the IRS.

A "**domestic**" Corporation is one incorporated within the boundaries of Kansas. A "**domestic**" Corporation must file *Articles of Incorporation* with the Secretary of State. This application requires a \$90.00 filing fee, or \$84.00 E-filing online.

A "**foreign**" Corporation is a business incorporated in another country, state, or jurisdiction other than Kansas. In order to conduct business in Kansas, a "**foreign**" Corporation must file a *Certificate for Authority to Engage in Business in Kansas*. This application carries a \$115.00 filing fee. A business is required to apply for *Authority to Engage in Business in Kansas/Foreign Corporation Application*, if it is a place of business opening an office or distribution point, or delivering wares to resident agents in Kansas for sale, delivery, and/or distribution (K.S.A. 17-7303).

The "**professional**" Corporation is comprised of a single professional, or group of professionals, who file both *Articles of Incorporation* and a certificate from their specific professional regulatory board with the Secretary of State. Shareholders of a professional Corporation are limited to members of that specific profession.

It is advisable to have your legal counsel and/or accountant explain the advantages and disadvantages of each type of business structure.

### Advantages

1. No shareholder, officer, or director may be held liable for debts of the Corporation unless corporate law was breached;
2. Interests in the business may be readily sold by the transfer and sale of shares;
3. The ready transferability of shares in the Corporation facilitates estate planning;
4. If desired, the Corporation may be taxed as a Subchapter S under the *Internal Revenue Code*;
5. Shares of the company may be sold to investors in order to obtain capital financing;
6. Corporations, to a much greater extent than Sole Proprietorships and Partnerships, may take advantage of pension plans, medical payment plans, group life and accident plans, and other fringe benefits available under the *Internal Revenue Code*;
7. The corporate structure provides for a great deal of flexibility with respect to tax planning. For instance, income between the Corporation and its shareholders may be adjusted, within reasonable limits, to obtain the most favorable tax treatment for each individual; and
8. The entity exists forever, so long as corporate regulations are met. There is no need to cease operations if an owner or manager dies.

### Disadvantages

1. Cost of organization, legal fees, and state filing fees can be expensive depending on the complexity and size of the business;
2. Control is vested in a board of directors, elected by shareholders rather than the individual owners. Thus, a shareholder who owns less than 50 percent of the stock may have no effective voice in how the business is run;
3. The possibility of double taxation exists. Income from the business is taxed at the corporate level and again when the individual shareholders receive profits in the form of dividends;
4. The Corporation must qualify in each state in which it chooses to do business; and
5. Unlike Sole Proprietorships and Partnerships, individual shareholders may not deduct Corporation losses unless the Corporation has elected to be taxed as a Subchapter S Corporation.

### Tax Implications

1. All forms of Corporations are required to file for a *Federal Employer Identification Tax Number, Form SS-4*;
2. Corporations must file an IRS *Form 1120*, which reports earnings and taxes profit; and
3. Corporations may be subject to quarterly estimated tax payments; refer to IRS *Publication 505*.

### Other Helpful Publications

For more information on corporate taxes, request IRS *Publication 542*.

### Tax Consideration

There are two ways to tax a Corporation: as a **C Corporation** or as a **Subchapter S Corporation**. In an S Corporation, salaries of officers are deductible expenses, and therefore reduce the amount of income subject to corporate income tax. But they are also subject to individual income tax. If salaries become too high, the IRS may treat a portion as a dividend from the Corporation. In a C Corporation, dividends are not deductible by the Corporation, resulting in double taxation, because the same money is taxed as a part of the corporate profit, and as income to the individual.

In order to qualify under the *Internal Revenue Code* as a Subchapter S Corporation, the Corporation must file *Form 2553* with the IRS and meet the following requirements:

1. Have at least one and no more than 75 shareholders (husband and wife can count as one shareholder);
2. Have no shareholders who are non-resident aliens;
3. Have only one class of stock;
4. Have no more than 80 percent of its gross receipts from outside the U.S.; and
5. Have no more than 20 percent of the Corporation's gross receipts from royalties, rents, dividends, interest, annuities, and gains on sale or exchange of stock or securities.

**Note:** Every Corporation must make a declaration of its estimated income tax for the taxable year, if its Kansas income tax liability can reasonably be expected to exceed \$500 (K.S.A. 79-32,101). Any Corporation that began business in Kansas during this period is not required to file a declaration for this period, and no underpayment of estimated tax penalty will be imposed. Subchapter S Corporations must file a *Kansas Small Business Corporation Form (Form 120S)*

and report income on individual income tax forms. Corporations doing business in Kansas, or deriving income from Kansas sources, must file a *Kansas Corporate Income Tax Return, Form K-120*. The corporate tax rate is four percent of Kansas taxable income, with an additional tax of 3.35 percent on income over \$50,000 (K.S.A. 79-32,110).

## Limited Liability Company (LLC)

**Registration:** Secretary of State

**Fee:** \$165.00 Paper filing (Domestic/Foreign or Professional) or \$160.00 E-Filing online (Domestic only)

A Limited Liability Company (LLC) is a business entity that combines the limited liability of a Corporation with the flexible management options of a General Partnership. Each member of a LLC enjoys liability limited to that of the investment in the business and pays taxes in proportion to ownership; thus avoiding the corporate malady of double taxation. Every LLC formed in Kansas must have the words "limited company," or their abbreviation "LC," "L.C.," "LLC," or "L.L.C." included at the end of the company name.

A LLC must maintain a resident agent and file annual reports. Members of a LLC may be involved in the management of the business without incurring personal liability. If properly structured, a LLC may receive pass-through income tax treatment similar to a Partnership. *Articles of Organization* and other filings must be filed with the Secretary of State. A foreign LLC must file an application for *Certificate for Authority to Engage in Business in Kansas/Foreign Limited Liability Company Application* with the Secretary of State.

The professional Limited Liability Company is comprised of a single professional, or group of professionals, who file both *Articles of Organization* and a certificate from their specific professional regulatory board with the Secretary of State's office. The certificate must state that each member is duly licensed and that the company name has been approved. No special wording denoting that they are different from a regular, non-professional LLC is required.

### Advantages

1. Liability of members limited to amount invested;
2. Very flexible management options;
3. May be taxed as Partnership; and
4. A LLC can be perpetual.

### Disadvantages

1. Articles of Organization must state a date upon which the company will dissolve;
2. LLCs are complicated to form legally and require substantial accounting work; and
3. Limited transfer of interest—an investment is illiquid since all members must vote to transfer a member's interest.

### Tax Implications

1. A LLC must obtain a *Federal Employer Tax Identification Number*;
2. Although the business structure resembles a Corporation, LLCs can be taxed as though they were a Partnership. The IRS has the ultimate say on taxation, but new Treasury regulations allow the LLC to indicate how it is to be taxed when filing; and
3. In a LLC, each member must report income on *Individual Income Tax Forms* and file a *Kansas Partnership Return (Form K-65)*.

## Business Trust

**Registration:** Secretary of State

**Fee:** \$65.00

The business trust has filing requirements similar to those required of Corporations. Specific questions about establishing a Kansas Business Trust should be directed to the Corporations Division within the Kansas Secretary of State's office.

## Franchise

**Registration:** None

**Fee:** None

There are no registration requirements at the state level for the establishment of a Franchise. However, some cities have occupational licensing for business establishments. Businesses are categorized according to the North American Industry Classification System (NAICS). There are no distinctions made between a business that has a national Franchise agreement and one that is independently owned.

## Nonprofit Corporation

**Registration:** Secretary of State & Internal Revenue Service

**Fee:** \$20

There are three main characteristics that distinguish a nonprofit organization from a business enterprise, they are:

1. Significant amounts of revenues are received from providers or entities that do not expect to receive either repayment or economic benefits relative to the amounts provided;
2. There is no defined ownership that can be sold, redeemed, or transferred; nor is there entitlement to a share of the assets if the organization is liquidated; and
3. The purpose in the operation is not to produce a profit.

There are more than 25 categories of tax-exempt organizations classified under *Section 501(c)(3)*, and *Section 501(a)* of the *Internal Revenue Code*, as well as additional types of entities under other sections of the code. Some of the major classifications include: civic leagues, religious organizations, chambers of commerce, recreation clubs, social clubs, labor organizations, libraries, museums, and voluntary health and welfare organizations.

An organization that wants to be a nonprofit entity must apply for tax-exempt status from the IRS and pay a user fee. Tax exemption is a privilege granted by Congress through the IRS. In return, nonprofit organizations are subject to a range of IRS requirements that differ from those for business enterprises. Among those is the requirement that a nonprofit organization's activities (income and expenses) be substantially related to its exempt purpose. A nonprofit organization must limit all partisan political activity, as well as limit lobbying activities. In addition, none of the nonprofit organization's assets can ensure benefit to any private individual.

Most nonprofit organizations are required to file an annual tax return, *Form 990*. If more than \$1,000 of income is received, that was not related to the exempt purpose, *Form 990T* must be completed and taxes on those receipts paid.

The best course of action to take before starting activities is to seek competent professional help prior to assuming you are a nonprofit organization. For more information contact the IRS at 1-800-829-1040 or at [www.irs.gov/formspubs/lists](http://www.irs.gov/formspubs/lists). Or to order IRS *Publication 557-Tax Exempt Status for Your Organization*, contact the IRS at 1-800-829-3676.

# THE BUSINESS PLAN

A carefully prepared business plan can be a valuable management tool for any business, whether it is an existing company or a start-up company. The business plan is a written road map for the businessperson to determine where the company is, where it wants to be, and how it plans to get there. The development of a business plan allows the businessperson to think through all aspects of the business venture, lays the groundwork for an operational plan to track the progress of the company, and provides the basis for potential lenders and investors to review the business for securing the necessary business financing.

The information outlined below provides basic guidelines for the preparation of a business plan. The guidelines are very general and should be adapted to meet the specific circumstances of the business.

## **Executive Summary**

The executive summary is often considered to be the most important component of the business plan. For the firm seeking financing, the summary should convince the lender or venture capitalist that it is a worthwhile investment. The summary should briefly cover at least the following:

- Name of the business;
- Business location;
- Discussion of the product market and competition;
- Expertise of the management team;
- Summary of financial projections;
- Amount of financial assistance requested (if applicable);
- Form of and purpose for the financial assistance (if applicable);
- Purpose for undertaking the project (if financial assistance is sought); and
- Business goals.

## **Business Description**

This section provides background information on the company and usually includes a general description of the business, including:

- The product or service;
- Historical development of the business;
- Name, date, and place (state) of formation;
- Legal structure (Sole Proprietorship, Partnership, Corporation, etc.);
- Significant changes in ownership, structure, new products or lines, acquisitions with corresponding dates;
- Subsidiaries and degree of ownership, including minority interests; and
- Principals and the roles they played in the formation of the company.

## **Products or Services**

Describe the present or planned product or service lines, including:

- Relative importance of each product or service including sales projections;
- Product evaluation (use, quality, performance);
- Comparison to competitors' products or services, and competitive advantages over other producers; and
- Demand for product or service and factors affecting demand other than price.

## **Project Financing**

If financing is sought for a specific project, it must include the following:

- A complete list of all items required to begin the business, undertake the expansion, buy or sell the business, and associated costs;
- A written explanation of all operating costs; and
- The owner's financial requirements, including taxes.

**Management**

- Organizational chart with key individuals (include supervisory personnel with special value to the organization);
- Responsibilities of key individuals;
- Personal resumes (describing skills and experience as they relate to activities of the business);
- Present salaries (include other compensation such as stock options and bonuses);
- Additional number of employees at year end, total payroll expenses for each of the previous five years (if applicable) broken down by wages, benefits;
- Methods of compensation;
- Departmental/divisional breakdown of workforce; and
- Planned staff additions.

**Ownership**

- Names, addresses, and business affiliations of principal holders of subject's common stock, and other types of equity securities (include details on holdings);
- Degree to which principal holders are involved in management;
- Principal non-management holders;
- Names of board of directors, areas of expertise, and role of the board when business is operational; and
- Amount of stock currently authorized and issued.

**Marketing Strategy/Market Analysis**

- Current situation of industry;
- Industry outlook;
- Principal markets (commercial/industrial, consumer, government, and international);
- Current industry size and anticipated growth in the next ten years (explain sources of projections);
- Major characteristics of the industry; and
- Effects of major social, economic, technological, or regulatory trends on the industry.

**Description of Major Customers**

- Names, locations, products, or services sold to each;
- Percentage of annual sales volume for each customer over previous five years (if applicable); and
- Duration and condition of contracts in place.

**Description of Market**

- Principal market participants and their performance;
- Target market;
- Customer requirements and ways for filling those requirements; and
- Buying habits of customers and impact on customers using the product or service.

**Description of Competition**

Describe the companies with which the business competes and how the business compares with these companies. This section is a more detailed narrative than that contained in the description of the product or service above.

**Description of Prospective Customers**

Incorporate reaction to the firm and any of its products or services that have been seen or tested, including:

- Description of firm's marketing activities;
- Overall marketing strategy;
- Pricing policy;
- Methods of selling, distributing, and servicing the product; and
- Geographic penetration, field/product support, advertising, public relations, promotion, and priorities among these activities.

**Description of Selling Activities**

Include the method for identifying prospective customers and the method you will use to contact the relevant decision makers. Describe your sales effort by defining sales channels and terms, number of salespersons, number of sales contacts, anticipated time, initial order size, estimated sales, and market share.

## **Technology**

Describe technical status of the product (idea stage, development stage, prototype) and the relevant activities, milestones, and other steps necessary to bring the product into production including:

- Present patent or copyright position, (if applicable), include how much is patented and how much can be patented (how comprehensive and effective the patents or copyrights will be). Include a list of patents, copyrights, licenses, or statements of proprietary interest in the product or product line;
- Describe new technologies that may become practical in the next five years that may affect the product;
- Describe new products (derived from initial products) the firm plans to develop to meet changing needs;
- Describe regulatory or approval requirements and status, and discuss any other technical and legal considerations that may be relevant to the technological development of the product;
- Describe research and development efforts both current and future; and
- Describe production/operating plan.

Explain how the firm will perform production and/or delivery of service. Describe in terms of:

- Physical facilities: owned or leased, size and location, expansion capabilities, and types and quantities of equipment needed (include a facilities plan and description of planned capital improvements, and timetable for those improvements);
- Suppliers: name and location, length of lead time required, usual terms of purchase, contracts (amounts, duration, and conditions), and subcontractors;
- Labor supply (current and planned): number of employees, unionization, stability (seasonal or cyclical), and fringe benefits;
- Technologies/skills required to develop and manufacture products; and
- Cost breakdown for materials, labor, and manufacturing overhead for each product, plus cost versus volume curves for each product or service.

## **Manufacturing Process**

- Describe production or operating advantages of the firm; discuss whether they are expected to continue;
- Specify standard product costs at different volume levels; and
- Present a schedule of work for the next one to two years.

## **Financial Information**

- Auditor: name, address;
- Legal counsel: name, address;
- Banker: name, location, and contact officer;
- Controls: cost system used and budgets used;
- Describe cash requirements, now and over next five years, as well as how these funds will be used;
- Amount to be raised from both debt and equity;
- Plans to "go public"—relate this to future value and liquidity of investments;
- Financial statements and projections for next five years;
- Profit and loss or income statements, by month until break even, and then by quarter;
- Balance sheets as of the end of each year;
- Cash budgets and cash flow projections;
- Capital budgets for equipment and other capital acquisitions; and
- Manufacturing/shipping plan.

If financing is sought, most lenders and venture capitalists will require:

- A funding request indicating the desired financing, capitalization, use of funds, and future financing;
- Financial statements for the past three years, if applicable;
- Current financial statements;
- Monthly cash flow financial projection, including the proposed financing for two years; and
- Projected balance sheets, income statement, and statement of changes in financial position for two years, including the proposed financing.

# RECORDS

Every business, no matter the size, must keep written records of all business transactions. Proper records are required for the banker, the IRS, other taxing authorities, and the owner/operator of the business. There is no prescribed way to keep books or records. The IRS allows you to choose any system suited to the purpose and nature of the business.

Proper accounting records need not require “books.” What is really required is an orderly system for moving, handling, and maintaining records that are generated with each business transaction. A record keeping system should be maintained on a daily basis for best results. The record keeping system should be simple enough for the owner/manager to maintain. If necessary, contact an accountant or bookkeeper to research other options. The system you choose should be designed to generate the information that is periodically required by taxing and other regulatory authorities.

**The selected system should provide for:**

1. A daily or otherwise periodic summary of cash receipts or sales;
2. A disbursement and/or expense journal;
3. A business checkbook;
4. Employee compensation record (including withholding, Social Security, and other payroll related taxes);
5. A general ledger (for Partnerships and Corporations) in which the receipts, disbursements, and other transactions of the business are properly classified and summarized; and
6. An asset register (including depreciation when applicable).

Important records should be stored for at least four years and be readily accessible for easy reference. Standardized accounting forms for many kinds of businesses are available from most office supply stores. If you have trouble finding forms that suit your needs, consult an accountant for advice on a system to best serve your specific business.

**Other Useful Publications:**

- *IRS Publication 583 – Starting a Business and Keeping Records*; and
- *IRS Publication 535 – Business Expenses*.

# PROFESSIONAL RELATIONSHIPS

## Selecting an Accountant

Sound accounting practices mean more profits. The system selected need not be elaborate. In fact, the business that is mired in too many records is almost as bad as the business that has next to none. In most cases, the simpler a financial record keeping system is, the better. A solid accounting system should:

1. Maintain a record of all transactions of the business;
2. Reflect (in a manner understandable by management) periodic operating results and financial conditions;
3. Protect the assets of the business from errors, fraud, and carelessness; and
4. Provide a basis for business planning by showing the results of past decisions and furnishing the facts needed for future decisions.

If an accountant is hired, make sure he/she understands your industry and can explain the system proposed for installation. Fancy computer printouts or accrual-basis accounting are helpful management tools, but a new business may be too small for this level of sophistication. Some businesses find that a more desirable and less costly alternative is to maintain detailed written records, and utilize an accountant to help convert such records into meaningful financial reports.

Choose an accountant with whom a candid relationship can be established. Choose one who seems interested in making a contribution toward the success of your business, not one who merely complies with requests or assists in tax preparation.

For a listing of accountants, check your local telephone directory or contact the Kansas Board of Accountancy.

### **Kansas Board of Accountancy**

900 S.W. Jackson Street, Suite 556  
Topeka, KS 66612-1239  
Phone: (785) 296-2162  
Fax: (785) 291-3501  
e-mail: via submission form on web site  
web site: [www.ksboa.org](http://www.ksboa.org)

## Selecting an Attorney

If possible, select an attorney experienced in the business industry. Be sure to ask about applicable fees in the initial interview and ask if they are familiar with businesses similar to yours. Generally, fees are based on a fixed hourly rate. For more information on attorney services, contact the Kansas Bar Association.

### **Kansas Bar Association**

1200 S.W. Harrison Street  
Topeka, KS 66612-1806  
Phone: (785) 234-5696  
Fax: (785) 234-3813  
web site: [www.ksbar.org](http://www.ksbar.org)

## Selecting a Banker

The location of a bank should not necessarily dictate the choice of a banker. Select a banker who understands the business and its goals. The relationship between a business owner and a banker usually lasts for a number of years, so select one who will be there through the difficult, as well as the good times. Selecting a banker may also impact the means of financing the business. Interest rates, collateral, and length of time for financing a project may vary from bank to bank.

## **Alternative Sources of Financing**

If a bank is not utilized, the following institutions may be used as alternative sources of financing:

1. Commercial finance companies (these companies usually charge higher interest rates and generally loan money when there are accounts receivable, inventory, or equipment to serve as collateral);
2. Leasing companies (can be used if purchasing equipment is not affordable);
3. Private investors;
4. Credit unions;
5. Consumer finance companies;
6. Industrial Revenue Bonds (IRBs) – Re-Development Corporations;
7. Insurance companies (mortgages);
8. Mortgage bankers (mortgages); or
9. Small Business Investment Companies.

## **Selecting Insurance**

To determine your business insurance needs, you should begin with an analysis of your property and your risk. Your property includes the building in which you operate your business, along with the equipment used to run the business. Your risk can include the financial responsibility you have for the people and property within the business. Some businesses are not required by law to carry insurance, but you may want to purchase coverage to protect you, your property, and your assets.

If you run a home-based business, one of the most important things you should do is let your insurance agent know you are working from your home. Be sure you clearly describe your business operation so that your agent can help you determine the right kind of coverage to properly protect not only your home, but also your business property.

Other insurance considerations include life and health insurance for employees, performance or dishonesty bond coverage, general liability insurance, commercial automobile coverage, and business income or interruption insurance. A professional insurance agent or risk manager can assist the business in acquiring the necessary insurance coverage.

Choosing an insurance agent or risk manager is no different from selecting an attorney, accountant, or any number of specialists. Check with business associates, friends, or search your local yellow pages for possibilities.

The Kansas Insurance Department oversees several insurance plans for consumers who are qualified, but unable to purchase insurance through the ordinary market. Types of coverage provided include automobile, fire, property, workers' compensation, medical malpractice liability, and third-party liability for owners and operators of underground storage tanks. Questions or complaints about insurance companies, agents, claims, or insurance products can be directed to the Kansas Insurance Department.

# REGISTERING YOUR BUSINESS

## The Business Name

The name used by a business can become a valuable asset. Great care should be taken in selecting and protecting a suitable business name. You should not begin using a business name until you are certain that it is available for use. It is helpful to check telephone, business or trade directories, and other sources for business names that are confusingly similar. Ultimately, a business should rely upon the advice of its legal counsel before adopting a business name.

## Assumed Name and Trade Name

An assumed name is one used by an enterprise in its daily business transactions and is sometimes called a fictitious name. Kansas does not have a fictitious name or trade name act, and has no means in which to register them. A “d/b/a” may be used in Kansas without registering.

## Corporate Name

A business that incorporates in Kansas must select a corporate name that is distinguishable, upon the records of the Secretary of State’s office, from the names already on file. The name must be different from the names of active domestic or foreign Corporations, Limited Partnerships, and Limited Liability Companies. A business may (although not required) reserve a name for corporate use by filing a name *Reservation Application* with the Secretary of State’s office. The name reservation is effective for 120 days from the date of filing and has a \$35.00 filing fee or \$27.00 online at the *KSBusinessCenter* ([www.accesskansas.org](http://www.accesskansas.org)). All domestic and foreign business entities are treated similarly.

## Trademarks and Servicemarks

**Registration:** Secretary of State

**Fee:** \$40.00/registers trademark for five years

Any person who adopts and uses a trademark in Kansas may file with the Kansas Secretary of State. There is no statutory requirement to register a trademark or servicemark. A trademark may be a word, symbol, design, combination word and design, a slogan, or even a distinctive sound that identifies and distinguishes the goods or services of one party from those of another. If it is used to identify a service, it can be called a servicemark. In general, throughout this section, the term trademark will be used to refer to both trademarks and servicemarks.

Normally, a trademark for goods is the word or design that appears on the product or on its packaging, while a servicemark is usually the word or design that is used in advertising to identify the owner’s services. A trademark is different from a copyright or a patent. A copyright gives protection for an artistic or literary work, and a patent gives protection for an invention.

The applicant may be an individual, firm, partnership, corporation, association, union, or other organization. For the definition of when a trademark or servicemark is deemed to be used, see K.S.A. 81-208. The trademark or servicemark must, under Kansas law, be used before it can be registered. Filing a trademark or service mark does not grant any substantive rights. The right to a mark is determined by the common law. Registration of the mark with the Kansas Secretary of State provides public notice of the mark’s use.