

**CHOICE OF ENTITY (COE) CHART  
for Businesses Domiciled in MA**

	<b>Sole Proprietor (MA)</b>	<b>General Partnership (MA)</b>	<b>Limited Partnership (MA)</b>	<b>LLC (MA)</b>	<b>LLC (DE)</b>	<b>C Corp (MA)</b>	<b>C Corp (DE)</b>	<b>S Corp</b>	<b>Non-Profit Corp (MA)</b>
<b>Applicable Statutes</b>	<a href="#">MGL c 110, §§5 &amp; 6</a> DBA or “fictitious name” law	<a href="#">MGL c 108A</a> Uniform Partnership Act	<a href="#">MGL c 109</a> MA Uniform Limited Partnership Act	<a href="#">MGL c 156C</a> MA Limited Liability Company Act	<a href="#">6 Del Code c 18</a> DE Limited Liability Company Act	<a href="#">MGL c 156D</a> MA Business Corporation Act <a href="#">MGL c 156A</a> Professional Corp	<a href="#">8 Del Code c 1</a> DE General Corporation Law	<a href="#">26 USC §1361 et seq.</a> Internal Revenue Code, Subchapter S	<a href="#">MGL c 180</a> Corporations for Charitable and Certain Other Purposes
<b>Limited Liability of Owners</b>	no	no	only for LPs	yes	yes	yes	yes	yes	yes
<b>Number of Owners</b>	one individual	unlimited partners	unlimited partners	unlimited members	unlimited members	unlimited stockholders	unlimited stockholders	maximum of 100 stockholders	none
<b>Management of the Business</b>	owner	partners	general partners	members managers (opt.) officers (opt.)	members managers (opt.) officers (opt.)	stockholders directors officers	stockholders directors officers	stockholders directors officers	members (opt.) directors officers
<b>Forms of Equity</b>	owner’s name	partnership interest	partnership interest	member interests (shares or units)	member interests (shares or units)	common stock preferred stock (voting and non-voting stock)	common stock preferred stock (voting and non-voting stock)	common stock only (voting and non-voting stock)	none
<b>Formation Documents</b>	DBA filing	No SOS filing  Partnership Agreement  If no agreement is executed, default provisions of statute will apply	LP Certificate  LP Agreement  If no agreement is executed, default provisions of statute will apply	Certificate of Organization  Operating Agreement  If no agreement is executed, default provisions of statute will apply	Certificate of Organization  Operating Agreement  If no agreement is executed, default provisions of statute will apply	Articles of Organization  Bylaws Board votes Stock	Certificate of Incorporation  Bylaws Board votes Stock	Same as C Corp  Sub S Election (IRS Form 2553)	Articles of Organization  Bylaws Board votes  registration with Divn of Public Charities
<b>Filing Fees (state of formation)</b>	\$10-50 DBA filing fee	\$10-50 DBA filing fee	\$200 filing fee	\$500 filing fee \$500 annual report	\$140 filing fee \$250 annual franchise tax \$200-\$350/yr for DE Agent	\$275 filing fee (minimum) \$125 annual report	\$139 filing fee (minimum) Annual Franchise Tax (depends on capitalization or net worth) \$200-\$350/yr for DE Agent	Same as C Corp  no filing fee for Sub S election	\$35 filing fee \$15 annual report \$35-250 Form PC
<b>Minimum Taxes</b>	none	None	none	none	none	▪\$456 annual excise tax	▪\$456 annual excise tax	▪\$456 annual excise tax	none

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<b>Foreign Co. Registration and Filing Fees</b>	none if operating only in MA	none if operating only in MA	none if operating only in MA	none if operating only in MA	\$50 good standing cert from DE \$500 filing fee \$500 Annual Report fee	none if operating only in MA	\$50 good standing cert from DE \$400 filing fee \$125 Annual Report fee	Same as C Corp	none if operating only in MA
<b>Suitability for Investors</b>	n/a	very low due to liability exposure ▪requires distribution of Form K-1	low because less familiar to average person ▪requires distribution of Form K-1	good, but less familiar to average person ▪requires distribution of Form K-1	good, but less familiar to average person ▪requires distribution of Form K-1	high	high	good, but limited to individuals who qualify under Sub S rules  VC firms cannot invest in S Corps  requires distribution of Form K-1	no investors
<b>Tax Treatment</b>	single level of tax	pass-through (no entity level tax), <u>except</u> some states impose an entity level tax ▪may file election to be taxed as corp	pass-through (no entity level tax), <u>except</u> some states impose an entity level tax ▪may file election to be taxed as corp	pass-through (no entity level tax), <u>except</u> some states impose an entity level tax ▪may file election to be taxed as corp	pass-through (no entity level tax), <u>except</u> some states impose an entity level tax ▪may file election to be taxed as corp	double-tax (income subject to tax at both entity and stockholder levels)	double-tax (income subject to tax at both entity and stockholder levels)	Pass-through (no entity level tax), <u>except</u> some states impose an entity level tax ▪built-in gains and passive net income are taxed at entity level	tax-exempt if organized for charitable purposes and 501(c)(3) application approved by IRS
<b>Tax Year</b>	▪12/31	▪same as partners, usually 12/31 for individuals	▪fiscal year permitted	▪fiscal year permitted	▪usually 12/31	▪fiscal year permitted			
<b>Tax-Deferred Equity Incentives</b>	n/a (no equity)	profit interests no ISOs or NQOs  (tax treatment of issuing entity is uncertain)	profit interests no ISOs or NQOs  (tax treatment of issuing entity is uncertain)	profit interests no ISOs or NQOs  (tax treatment of issuing entity is uncertain)	profit interests no ISOs or NQOs  (tax treatment of issuing entity is uncertain)	ISOs	ISOs	ISOs  (be careful not to create 2 <sup>nd</sup> class of stock)	no

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<b>Limitations and Drawbacks</b>	<p>only one owner no limited liability</p> <ul style="list-style-type: none"> <li>may affect credibility</li> <li>risk of tax audit may be greater for SP than corporate entity for high net income</li> </ul>	<p>no limited liability for partners</p> <p>partners are agents of each other, not just investors</p> <p>participation in management unless restricted by agreement</p> <p>GP must file list of partners with its annual tax return; non-residents must consent to federal and/or state tax jurisdiction; LLC must withhold allocable share of taxes for non-consenting members no ISOs</p>	<p>no limited liability for GPs</p> <p>limited partners may not participate in management without exposure to liability beyond investment;</p> <p>Corporate GP permitted</p> <p>equity incentives more complex</p> <p>LP must file list of partners with its annual tax return; non-residents must consent to federal and/or state tax jurisdiction; LLC must withhold allocable share of taxes for non-consenting members no ISOs</p>	<p>relatively new form of entity with limited case law to use as precedent no tax-qualified stock options</p> <p>LLC must file list of members with its annual tax return; non-residents must consent to federal and/or state tax jurisdiction</p> <p>LLC must withhold allocable share of taxes for non-consenting members</p> <p>Local property taxes problem for businesses with inventory</p>	<p>relatively new form of entity with limited case law to use as precedent no tax-qualified stock options</p> <p>LLC must file list of members with its annual tax return; non-residents must consent to federal and/or state tax jurisdiction</p> <p>LLC must withhold allocable share of taxes for non-consenting members</p> <p>Local property taxes problem for businesses with inventory</p>	<p>double tax</p> <p>entity losses not deductible</p> <p>must observe corporate formalities</p>	<p>double tax</p> <p>entity losses not deductible</p> <p>must observe corporate formalities</p>	<p>max of 100 stockholders</p> <p>may not own 80% or more of subsidiary corp (C or S)</p> <p>stockholders limited to individuals, legal residents, and certain trusts and tax-exempt organizations (no entities or non-resident aliens)</p> <p>only one class of stock permitted (other than voting differences) no tax basis for entity debt (problem for RE investors) not good for RE because can't depreciate deductions on investments leveraged with debt</p> <p>entity level "sting" tax in MA on gross receipts over \$6M</p>	<p>no ownership interest</p> <p>founders do not receive gain on sale or liquidation of business</p>
<b>Legal and Admin Costs</b>	<ul style="list-style-type: none"> <li>lowest</li> </ul>	<p>Formation low</p> <ul style="list-style-type: none"> <li>amendments and equity incentives more costly</li> </ul>	<p>Formation low to moderate</p> <ul style="list-style-type: none"> <li>variation and amendments and equity incentives more costly</li> </ul>	<p>Formation low to moderate</p> <ul style="list-style-type: none"> <li>amendments and equity incentives more costly</li> </ul>	<p>Formation low to moderate</p> <ul style="list-style-type: none"> <li>amendments and equity incentives more costly</li> </ul>	<p>Formation more costly</p> <ul style="list-style-type: none"> <li>amendments and equity incentives relatively low</li> </ul>	<p>Formation more costly</p> <ul style="list-style-type: none"> <li>amendments and equity incentives relatively low</li> </ul>	<ul style="list-style-type: none"> <li>Same as with C Corporation</li> </ul>	<p>Formation more costly due to registration as charitable organization and §501(c)(3) application</p>

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<b>Tax Filings</b>	Form 1040, Schedule C  MA Form 1	Form 1065 Form K-1  MA Form 3 Form 8832 - election to be taxed as a corporation Form 2553 for Sub S election	Form 1065 Form K-1  MA Form 3 Form 8832 - election to be taxed as a corporation Form 2553 for Sub S election	Form 1065 Form K-1 for multiple members  MA Form 3 Form 1040 - Schedule C for single member individual Form 8832 - election to be taxed as a corporation	Form 1065 Form K-1 for multiple members  MA Form 3 Form 1040 - Schedule C for single member individual Form 8832 - election to be taxed as a corporation	Form 1120	Form 1120	Form 1120S Form K-1  Form 2553, election to qualify as Sub S must be filed on or before 15 <sup>th</sup> day of the third month of tax year	Form 990-T  Form 1023, application for tax-exemption under IRC §501(c)(3)  Form 1024, application for tax-exemption under IRC §501(c)(4)
<b>Deductions for Fringe Benefits of Owners</b>	no deductions for fringe benefits paid to working-owner	no deductions for fringe benefits paid to working partners (limitation of 2%?)	no deductions for fringe benefits paid to working partners	no deductions for fringe benefits paid to employee-members	no deductions for fringe benefits paid to employee-members	deductions for fringe benefits available	deductions for fringe benefits available	limited deductions for fringe benefits paid to employee-stockholders	no owners, but deductions for fringe benefits are available for <u>all</u> employees
<b>Distributions to Employee Owners</b>	not necessary	distributions can be directed to guaranteed payments for services or equity, in proportions that may vary from owner to owner and from year to year (within reason)  no mandatory distributions for tax liabilities unless stated in partnership agreement	distributions can be directed to guaranteed payments for services or equity, in proportions that may vary from owner to owner and from year to year (within reason)  no mandatory distributions for tax liabilities unless stated in partnership agreement	distributions can be directed to guaranteed payments for services or equity, in proportions that may vary from owner to owner and from year to year (within reason)  no mandatory distributions for tax liabilities unless stated in operating agreement	distributions can be directed to guaranteed payments for services or equity, in proportions that may vary from owner to owner and from year to year (within reason)  no mandatory distributions for tax liabilities unless stated in operating agreement	advantages to maximizing <u>salaries</u> to employee-owners in order to minimize taxable income (taxed at both stockholder and entity level); but IRS requires that salaries be “reasonable”  stockholders not subject to tax on profits or gain of entity	advantages to maximizing <u>salaries</u> to employee-owners in order to minimize taxable income (taxed at both stockholder and entity level); but IRS requires that salaries be “reasonable”  stockholders not subject to tax on profits or gain of entity	advantages to maximizing <u>distributions</u> to owners and reducing salaries (payroll taxes) of employee-owners; but <u>all</u> owners entitled to distributions; IRS requires that salaries must be “reasonable”  no mandatory distributions for tax liabilities unless stated in charter or stockholders agreement	none

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<b>Ability to Reduce Self-Employment or FICA Taxes by Distribution to Employee Owners</b>	no	partners are subject to self-employment taxes on services	partners are subject to self-employment taxes on services; limited partners are not	partners are subject to self-employment taxes on services; applicability of SE to LLCs are uncertain but would generally apply to members actively participating in the business	partners are subject to self-employment taxes on services; applicability of SE to LLCs are uncertain but would generally apply to members actively participating in the business	yes, but distributions are subject to double tax	yes, but distributions are subject to double tax	yes, but IRS requires that salaries must be "reasonable"	n/a
<b>Distributions to Investors</b>	n/a	distributions of previously taxed income and contributed equity are not taxable	distributions of previously taxed income and contributed equity are not taxable	special allocations are permitted distributions of previously taxed income and contributed equity are not taxable	special allocations are permitted distributions of previously taxed income and contributed equity are not taxable	special allocations by means of preferred stock distributions attributable to current or accumulated earnings or profits are taxable as dividends	special allocations by means of preferred stock distributions attributable to current or accumulated earnings or profits are taxable as dividends	single class of stock limits special allocations distributions of previously taxed income and contributed equity are not taxable	none
<b>Distributions of Appreciated Assets to Investors or Owners</b>	n/a	appreciated assets can be generally distributed to investors and owners without recognizing gains	appreciated assets can be generally distributed to investors and owners without recognizing gains	appreciated assets can be generally distributed to investors and owners without recognizing gains	appreciated assets can be generally distributed to investors and owners without recognizing gains	taxable gains may be recognized at both the individual and entity levels	taxable gains may be recognized at both the individual and entity levels	distributed assets will generally trigger one level of taxable gain (less severe than C corporations)	none
<b>Gain on Redemption Taxed at Ordinary Rate</b>	n/a	yes; to the extent of unrealized receivables, substantially appreciated inventory, and certain other "hot assets"	yes; to the extent of unrealized receivables, substantially appreciated inventory, and certain other "hot assets"	yes; to the extent of unrealized receivables, substantially appreciated inventory, and certain other "hot assets"	yes; to the extent of unrealized receivables, substantially appreciated inventory, and certain other "hot assets"	no	no	no	can be treated as a dividend under certain circumstances

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<b>Basis Adjustments when transferring ownership interests</b>	no	favorable adjustments in the basis in its assets when ownership interests are sold	favorable adjustments in the basis in its assets when ownership interests are sold	favorable adjustments in the basis in its assets when ownership interests are sold	favorable adjustments in the basis in its assets when ownership interests are sold	no adjustment in the basis of assets when there is a transfer of ownership	no adjustment in the basis of assets when there is a transfer of ownership	no adjustment in the basis of assets when there is a transfer of ownership	n/a
<b>Tax on Retention of Earnings</b>	business income taxed at owner's marginal tax rate	business income taxed at member's marginal tax rate	business income taxed at member's marginal tax rate	business income taxed at member's marginal tax rate	business income taxed at member's marginal tax rate	marginal corporate tax rate may be lower for corporation than individual on first \$75K of income; but subject to second level of tax upon distribution	marginal corporate tax rate may be lower for corporation than individual on first \$75K of income; but subject to second level of tax upon distribution	business income taxed at stockholder's marginal tax rate	limited by tax-exempt qualifications; but UBTI subject to tax at regular rates
<b>Losses</b>	pass-through  allocation permitted ▪deductible basis increased by entity liabilities  use of losses are subject to limitation under the passive activity and at risk rules	pass-through  allocation permitted ▪deductible basis increased by entity liabilities  partners use of losses are subject to limitation under the basis, passive activity, and at risk rules	pass-through  allocation permitted ▪deductible basis increased by entity liabilities  partners use of losses are subject to limitation under the basis, passive activity, and at risk rules	pass-through  allocation permitted ▪deductible basis increased by entity liabilities  partners use of losses are subject to limitation under the basis, passive activity, and at risk rules	pass-through  allocation permitted ▪deductible basis increased by entity liabilities  partners use of losses are subject to limitation under the basis, passive activity, and at risk rules	no pass-through; but NOL carry-forward available	no pass-through; but NOL carry-forward available	pass-through, but can't be specially allocated  ▪losses limited to adjusted basis of stock and any debt owed to stockholder  stockholders do not receive basis for company debt (personal borrowing is alternative)	no pass-through
<b>Special Allocations</b> (makes it easier to transfer control of family-owned businesses and structure passive investments)	not necessary	very flexible allocation of profits and losses	no special allocations; profits, losses or distributions to its stockholders, must pass through pro rata	no special allocations; profits, losses or distributions to its stockholders, must pass through pro rata	no special allocations; profits, losses or distributions to its stockholders, must pass through pro rata	n/a			

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<b>Conversion subject to tax</b>	no (but there are exceptions) •may be subject to tax if debt exceeds basis	no (but there are exceptions)	no (but there are exceptions)	no for LLC to S Corp (but there are exceptions) no for LLC to C Corp (but there are exceptions)	no for LLC to S Corp (but there are exceptions) no for LLC to C Corp (but there are exceptions)	yes for C Corp to S Corp (no tax until later sale of company assets if within 10 yrs of conversion) yes for C Corp to LLC (immediate tax)	yes for C Corp to S Corp (no tax until later sale of company assets if within 10 yrs of conversion) yes for C Corp to LLC (immediate tax)	no for S Corp to C Corp yes for S Corp to LLC	n/a
<b>Cash method of accounting</b>	allowed	allowed	allowed	allowed if 65% or more of LLC is owned by managers and LLC not owned by particular types of C corporations	allowed if 65% or more of LLC is owned by managers and LLC not owned by particular types of C corporations	less than \$5 million/year allowed	less than \$5 million/year allowed	allowed	allowed
<b>Local Property Taxes</b>	non-corporate entity is subject to personal property tax (e.g., inventory or machinery)	non-corporate entity is subject to personal property tax (e.g., inventory or machinery)	non-corporate entity is subject to personal property tax (e.g., inventory or machinery)	non-corporate entity is subject to personal property tax (e.g., inventory or machinery)	non-corporate entity is subject to personal property tax (e.g., inventory or machinery)	No	no	no	No
<b>State Excise Tax</b>	no	no	no	no	no	yes (MA)	yes (MA)	S Corp with more than \$6 million in annual revenues subject to pay Massachusetts additional excise tax	No

The selection of business entity depends on many factors. Often, the best choice may be a hybrid of two or more of the different forms of entity. Such a "multiple entity model" combines, for example, the LLC and C corporation. The above table is intended to provide a checklist of the characteristics of each business form. This information is not comprehensive. It is strongly suggested that consultation with legal and financial professionals be sought to identify the best fit for each situation. The content of this article is provided for informational purposes only. It is not legal advice and should not be construed as such. Do not act upon this information without seeking professional advice or rely on this article or use the content as a substitute for consultation with professional advisors.

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ABOUT THE ORIGINAL AUTHOR: Roger Glovsky is an entrepreneurial attorney who founded [Indigo Venture LLC](#), a law firm which provides business legal services for traditional and high-tech companies. Services include incorporation and LLC formation, financing, sales and distribution agreements, software and technology licensing, and e-commerce agreements. Mr. Glovsky has over twenty years of legal experience, working as outside general counsel at two major Boston law firms and as in-house counsel for three software development companies. He is the founder and organizer of [LEXpertise.com](#), an online resource providing access to lawyers, information and tools. Roger Glovsky can be reached at his Lexington office at 781-676-1900 or [roger@indigoventure.com](mailto:roger@indigoventure.com).

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SPECIAL THANKS for comments and feedback from:

John Koenig of Indigo Venture Law Offices  
Marjorie Sant, Legal Solutions Counsel to IVLO  
Christopher Farnsworth, Legal Solutions Counsel to IVLO  
Robert M. Finkel of Morse, Barnes-Brown & Pendleton, P.C.  
Colin Coleman of Coleman & Gagnon, P.C.  
Kevin Long of Long & Bott, P.C.  
Frank Maniscalco of Advocate Mercantile, LLC

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