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FROM LEADERS IN CONSTRUCTION LAW

“FOR A CONTRACTOR FORMING A NEW COMPANY, WHAT ARE THE ADVANTAGES AND LEGAL RAMIFICATIONS OF A CORPORATION COMPARED WITH A SUBCHAPTER S CORPORATION OR A LIMITED LIABILITY COMPANY (LLC)?”



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Corporations and LLCs will provide personal liability protection. The primary differences among a subchapter C corporation, a subchapter S corporation and an LLC relate to taxation and operational flexibility.

An S corporation does not pay income tax. Instead, items of income and loss flow through to the shareholders. A C corporation pays income tax and the shareholders are

taxed again when the corporation distributes earnings.

With the tax benefits of an S corporation come restrictions on ownership. S corporations are limited to 100 shareholders and only U.S. individuals and certain types of trusts may be shareholders (with certain exceptions). In an S corporation, all shareholders must have the same economic rights. In a C corporation, there is no limit on the number or identity of owners or the classes of stock with different economic rights.

An LLC receives flow-through tax treatment like an S corporation. However, an LLC is not subject to the same restrictions on ownership. In an LLC, there are no limits on the number or types of owners or the classes of ownership interests. Members of an LLC can have different economic rights. LLCs also offer a more flexible management structure that is determined primarily by the members in their operating agreement.

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o help construction companies minimize the potential for legal disputes, *Construction Executive* asked leading experts for their advice on a broad array of construction and business-related issues, including liability for achieving specified LEED and green building requirements; best practices when drafting contract documents; the impact of new Environmental Protection Agency (EPA) regulations; and considerations when forming a new business entity.