

# Choosing a Restaurant Business Structure

This is an important decision for every restaurant owner and investor. Your business plan should have a clear description of the legal structure of your restaurant. Learn how to choose an organizational structure before you open! How you are taxed and what you're personally liable for are important considerations when starting a restaurant business. Protect your personal finances from lawsuits and debts! This guide will help you weigh the pros and cons of each type of business, and help you decide if you should incorporate your restaurant.

## Most restaurants are small businesses

Certainly, an independent startup restaurant is a small business. Commonly, a restaurant has one independent owner or a small group of owners (or investors). As a small business, you want to choose a legal structure for your business that gives you both protection from liabilities and tax advantages, without getting bogged down by too many unnecessary regulations and costs!

The following is a summary of the different business structure types to choose for your independent startup restaurant venture. Before making a choice, weigh your options carefully. Do not be afraid to change your mind when new information presents itself. In the beginning phases, it's not uncommon for a restaurant concept to evolve from sole proprietorship, to partnership, to limited partnership to LLC, to corporation as more people become involved.



## Sole Proprietorship

The simplest business structure. One owner who is responsible for both the assets and the liabilities of the restaurant.



**Liability** - A sole proprietorship officially has no liability protection since the proprietor, and the business is one in the same. However, you can mitigate the risk. It's important to separate your finances from that of the restaurant's operations by using different credit cards and accounts for business and personal expenses. Purchasing liability insurance and retaining a lawyer will also help you address your personal liability risk.

**Taxes** - Because you don't have an employer taking money out of your check every month, the IRS requires you to send estimated income tax payments every quarter for your personal finances. Your state may require the same practice. Additionally, you're responsible for the Self-Employment Tax, which is the full amount for Medicare and Social Security (since you don't have an employer paying the other half).

## Partnership

In a partnership, the members of the partnership split ownership of the assets and liabilities of the business. This arrangement mitigates the personal financial risk by distributing it among multiple people. Compared to a sole proprietorship, there is an additional cost associated with the paperwork to file, and there are additional accounting requirements of a Partnership - but not as much as other legal entities.

**Liability** - There are two kinds of partners, General Partners, and Limited Partners.

**General Partners** assume responsibility for debt and other liabilities for the company and run the day to day operations. Similar to a Sole Proprietor, they are personally liable. However, splitting liability among multiple partners mitigates the risk.

**Limited Partners** are investors only, and they do not have control over business operations. They are not subject to the liability risk that the General Partners are, but they are limited in how much involvement they can have in the restaurant.



**Taxes** - As an entity, a partnership does not pay taxes. Each partner pays personal income taxes on their portion of ownership in the partnership. Depending on the state you live in, and what the income tax bracket of the individual partners are, you could end up paying more in taxes. However, with the reduced accounting and compliance costs compared to a corporation, it may still be worth it.

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## Corporation (C Corp)

Corporations cost more money to set up than any of the other organizational entities on this list and have many more rules and regulations to comply with. You should definitely find an attorney and an accountant you're planning to hire if incorporating is your plan. The legal and financial rules are tricky to navigate, and professional help will keep you compliant.

**Liability** - Corporations offer the greatest amount of liability protection because they are separate legal entities. However, you no longer own the Restaurant. You own shares in the corporation that owns the restaurant. To remain in good standing, you must comply with extensive corporate formalities.

**Taxes** - Be prepared to be double-taxed on earnings! The corporation is taxed, and then the money is taxed again as personal income when you get paid. Corporate tax law can be a bit of a maze to the uninitiated, so a competent corporate tax accountant is really a requirement if you're considering incorporating your restaurant business.

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## Corporation (S Corp)

Like a C Corp, an S Corp must issue stock, pay fees and follow corporate formalities (issuing stock, having a board of directors, etc.). However, there are some differences between the two. Like a C Corp, the rules and regulations can be tough to chew through on your own, and you should consider the help of professionals familiar with the tax and legal requirements.

**Liability** - With an LLC, you and other partners are personally protected from liability beyond what money and resources you've put into the company.

**Taxes** - This is where it gets a little weird. LLCs are filed with the state like corporations are, yet the LLC structure is not recognized by the IRS for tax purposes. So you have to file as either a Partnership or a Corporation. Read more about how the IRS regards LLCs here: <https://www.irs.gov/businesses/small-businesses-self-employed/limited-liability-company-llc>

**After comparing the types of legal structures for your restaurant you probably see that a sole proprietorship, while it is easy, is risky. The LLC structure is flexible and can suit single owners or partners. An LLC it probably what a financial advisor or tax accountant will recommend for your restaurant business. Since LLCs are a popular business structure with restaurant owners, advice from those who have experience running a restaurant LLC will be easy to find.**