Legal Structure

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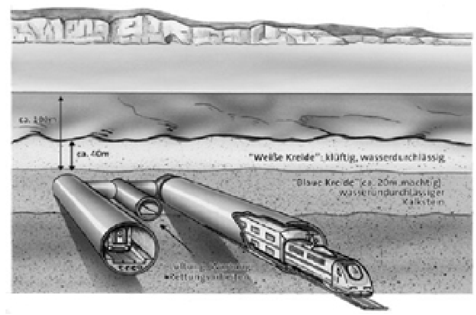
Joint Venturing -The Need

- Larger and complex projects
- A team of contractors will combine their resources to bid and execute the work
- An example of this is the Hoover Dam, which was built in 1930s by six largest contractors in the U.S.

Chapter-Opener (p. 78)



Joint Venturing -The Need

- There are many reasons why firms and companies will decide to legally combine for a specific period of time to pursue a given project.
- A given project may be ***so large*** that financial resources of a number of companies are required to bond the project.

Joint Venturing -The Approach

- A joint venture is a business relationship undertaken by two or more companies to form a legal entity for the purpose of performing a specific work item, or a project.
- A team of firms or companies may be involved in the design and construction of a project or only the construction phase of the project.

Joint Venturing -The Approach

- The joint venture must be legally established in a rigorous fashion so that the contract required is biding.
- The difference between joint ventures, proprietorships, partnerships, and corporation:
  - The exist for a fixed period of time defined by the duration of the project being undertaken.

Joint Venturing -The Approach

- The partners in a joint venture must each bring important contributions or capabilities to the undertaken.
- Each firm in the consortium brings special abilities which may include technical expertise, financial resources, or special knowledge.

Types of Organization

- When organizing a company, two organizational questions are of interest:
  - One relates to ***the legal organization*** of the company.
  - The second focuses on the ***management organization***.
  - Legal aspects establishes how the firm will be taxed, the distribution of liability in the event the firm fails, the state, city, and government.

Types of Organization

– Management structure establishes areas and levels of responsibility in accomplishing the goals of the company and is the road map that determines how members of the firm communicate with one another on questions of common interest.

Legal Structure

- When someone decides to establish a company, one of the first questions to be resolved is which type of legal structure will be used.
- The nature of business usually points to a logical or obvious legal structure.
- In situation where a single person owns and operates a business activity, the company is referred to as a ***proprietorship***.
- There is no limit on the number of employees working in this type of a company.

Legal Structure

- On the other hand, if a young engineer with management experience and a job superintendent with field experience decide to start his own company, this firm is referred to as ***partnership***.
- This partnership is not limited to 2 persons and may consist of any number of partners.

Legal Structure

- The division of the ownership is decided by the initial contribution to the formation of the company on the part of each partner.
- Usually, the division of ownership is based on the monetary or capital assets contributed by each partner.

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Legal Structure

- In some business activity the risk of failure or exposure to damage claims may be such that a corporate structure is deemed better.
- This form of ownership recognizes the company itself as a legal entity and makes only those assets that belong to the firm attachable for settlement of claims in the event of bankruptcy or damage claims.

Legal Structure

- This in turn allows principals or stockholders in a corporation to protect their personal and private assets from being called in to settle debts or claims arising out of the firm's operation or insolvency.
- Two types of corporation are encounterd:
  - Corporation in which a small number of persons hold all of the stock in the firm are referred to a *closely held* corporation

Legal Structure

- This type offers risk protection and also allows a small group of principals to control company policies and function.

- A ***public*** corporation allows its stock to be bought and sold freely.
  - The actual ownership of the stock varies daily ass the stock is traded by brokers, in the case of large corporations, on the stock market.

Legal Structure

- The figure in the next slid gives a graphical indication of the forms of legal ownership utilized by a set of building construction companies located throughout the southeastern U.S.
- In this example, the companies have been grouped according to the volume of work done using fixed-priced contracts versus that using negotiated contracts.

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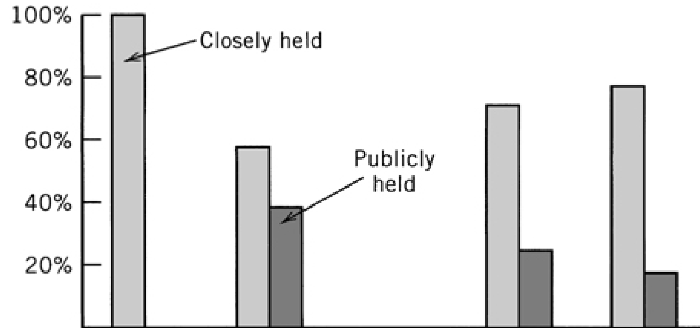

Public	0	40%	—	27%	20%
Close	100%	60%	—	73%	80%
Category	A	B	C	D	All

Portion of firms publicly/closely held

Figure 5.1 (p. 80)
Forms of legal ownership in the construction industry (study by T. Gibb, Georgia Institute of Technology, 1975).

Legal Structure

- The groups were defined as follows:
  - **Group A.** Contractors doing 25% or less of their volume in negotiated contract format.
  - **Group B.** Contractors doing between 25% and 50% negotiated work.
  - **Group C.** Contractors doing between 50% and 75% negotiated work.
  - **Group D.** Contractors doing more than 75% of their work in negotiated contract format

Figure 5.2 (p. 86)
Typical stock certificate.

Table 5.1 Considerations in Choosing Legal Structure

	Proprietorship	Partnership	Corporation
Tax	Tax on personal income; tax on earnings whether or not they are withdrawn	Tax on personal salary and earnings	Lower taxes in some cases.[a] Dividends are not deductible; double taxing. Taxes on dividends, that is, money actually received
Costs and procedures in starting	No special legal procedure; apply for licenses; register with IRS	General: Easy—oral agreement Limited: More difficult—must closely adhere to state law	More complex and expensive. Meeting must be held
Size of risk	Personal liability	Personal liabilities: Extent of personal fortune. Limited: each partner is protected; loss of limited partner cannot exceed initial investment	Limited to assets of corporation
Continuity of the concern	No continuity on death of proprietor	Dissolution: No continuity on death of partner. Surviving partners can buy share if in agreement.	Perpetual (charter can expire)
Adaptability of administration	Simplicity of organization; direct control	Decisions and policies implemented by oral agreement	Directors—good if involved. Policy decisions predefined by by-laws
Influences of applicable laws	Laws are well defined; no limit on doing business in various states	Laws are also well defined; a license may be required	Foreign corporation status; requires legal counsel on permanent basis
Attraction of additional capital	Limited potential for capital expansion Borrowing; line of credit; personal fortune investment	Better; more capital; limited partner concept	Issue securities; collateral provided by corporate assets; issue stock

[a] See Fudd Associates, Inc., example in text.

Figure 5.1 (p. 87)
Considerations in Choosing Legal Structure