

**FOR-PROFIT AND NON-PROFIT LEGAL ENTITY CHOICES**

The following legal entities are available in Massachusetts which may be organized to provide the legal framework in which the activities of AILG could be conducted. Each type of entity is described in summary form below including the organizational process, governance and management process, organizational filing fees, annual tax returns and state reports and the ability to satisfy certain criteria set forth in the Charge to the Incorporation Committee. The legal entity choice should be reviewed in connection with the Operational Choices set forth in separate analysis. How won intends to operate will directly impact the legal entity chosen to be organized.

**For-Profit**

1. Chapter 156D Corporation
  - a. Organized by Incorporators filing Articles of Organization with Massachusetts Secretary of State
  - b. Stock issued to each member shareholder
  - c. Bylaws adopted to define governance rules
  - d. Shareholders elect Board of Director(s) to govern Corporation
  - e. Board of Directors elect officers to operate Corporation's daily activities
  - f. Membership fees and programs fees less related expenses are taxable receipts and expenses (consider making membership fees refundable deposits)
  - g. May elect S status (if 100 or less shareholders) or remain a C corporation
  - h. Filing fees for organization are \$275 to Massachusetts Secretary of State
  - i. Annual tax returns required (3/15) with a minimum tax fee of \$456 to Massachusetts (For 355 or Form 355S) and the IRS (Form 1120 or Form 1120S)
  - j. Annual report required (3/15) to Massachusetts Secretary of State with a filing fee of \$125
  - k. No annual audit or compilation required
  - l. Corporation creates a legal structure for asset ownership, tax filings, bank accounts
  - m. Employees may be hired by corporation
  - n. No personal liability by shareholders for corporations activities
  - o. Directors may be sued for their actions on behalf of a for-profit corporation though indemnification from corporation should be provided for as well as directors insurance
  - p. Volunteers must be clearly defined as volunteer employees to fall under protection of corporation for avoidance of personal liability
  - q. Reserves could be established yet on an after tax basis
  - r. No reporting by shareholders if a C corporation, if an S corporation allocated-profit or loss would be reported by shareholders
  - s. Lobbying activities may be conducted without limitation, political expenditures also allowed without limitation though contributions would not be deductible

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2. Chapter 156C Limited Liability Company (LLC)
  - a. Organized by Member(s) filing LLC Certificate with Massachusetts Secretary of State
  - b. Membership certificates may be issued to each member or merely listed in LLC Operating Agreement
  - c. LLC Operating Agreement adopted to define governance rules
  - d. Members elect Manager(s) to govern LLC
  - e. Managers elect officers to operate LLC's daily activities
  - f. Membership fees and programs fees less related expenses are taxable receipts and expenses (consider making membership fees refundable deposits)
  - g. Filing fees for organization are \$500 to Massachusetts Secretary of State
  - h. Annual tax returns required (4/15) to Massachusetts (For 3) and the IRS (Form 1065)
  - i. Annual report required on anniversary date to Massachusetts Secretary of State with a filing fee of \$500
  - j. No annual audit or compilation required
  - k. LLC creates a legal structure for asset ownership, tax filings, bank accounts
  - l. Employees may be hired by LLC
  - m. No personal liability by members for LLC's activities
  - n. Managers may be sued for their actions on behalf of an LLC though indemnification from LLC should be provided for as well as Managers insurance.
  - o. Volunteers must be clearly defined as volunteer employees to fall under protection of LLC for avoidance of personal liability
  - p. Reserves could be established yet on an after tax basis
  - q. LLC allocated-profit or loss would be reported by Members
  - r. Lobbying activities may be conducted without limitation, political expenditures also allowed without limitation though contributions would not be deductible
  
3. Trusts and Massachusetts Business Trust (MBT)

Not considered appropriate due to substantial exposure of Trustees to liability as well as governance (probate) rules and statutory law applicable to MBT.

**Non-Profit**

If organized with the intent to file for exemption under Internal Revenue Code Sections 501 (C) (3) (charitable, educational), 50 (C) (6) (business league) or 501 (C) (7) (social club) the typical organization for a non-profit in Massachusetts would be:

Chapter 180 Corporations (Member)

- a. Organized by Incorporators filing Articles of Organization with Massachusetts Secretary of State

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**Non-Profit**

- b. No stock or member certificates are issued, may have different classes of members
- c. Articles of Organization adopted to define governance rules
- d. Members elect Board of Directors to govern Corporation
- e. Board of Directors elect officers to operate Corporation's daily activities
- f. Membership fees and programs fees less related expenses are non taxable receipts and expenses
- g. Filing fees for organization are \$35 to Massachusetts Secretary of State
- h. No annual tax return is required in Massachusetts unless also organized as Public Charity (Section 501 (C) (3)) or soliciting public funds, if so, Form PC is required. IRS (Form 990) requires an annual filing (5/15)
- i. Annual report required (3/15) to Massachusetts Secretary of State with a filing fee of \$15
- j. No annual audit or compilation required unless a Public Charity or entity engages in public fund raising, if so must submit a Form PC to the Massachusetts Secretary of State and reviewed financial statements if over \$100,000 in gross receipts and not in excess of \$500,000. If over \$500,000 in gross receipts, audited financial statements must be filed with Form PC. Fees for filing range between \$35 and \$250 depending on level of gross receipts. As one can see, the ongoing costs of operating as a Public Charity can be substantial
- k. Corporation creates a legal structure for asset ownership, tax filings, bank accounts
- l. Employees may be hired by corporation
- m. No personal liability by members for corporations activities
- n. Directors and officers may NOT be sued for their actions on behalf of a non-profit corporation if they serve without compensation except for gross negligence, intentional act to harm, operating a vehicle used for charitable purposes, etc.
- o. Volunteers must be clearly defined as volunteer employees to fall under protection of corporation for avoidance of personal liability
- p. Reserves could be established on a pre tax basis depending on type of Federal exemption requested
- q. No reporting by members
- r. Lobbying and political activities may be limited or prohibited depending on the type of Federal exemption requested (see Organizational and Operational Choices)