

Biotech: German Visit To NC Hopes To Strengthen Ties



**OFFICIAL VISIT:
Minister Schwanhold
of North Rhine-Westphalia**

RESEARCH TRIANGLE PARK - On May 8th, North Carolina rolled out the red carpet for an important visitor from Germany. Ernst Schwanhold, the Minister of Economic Affairs, Energy, and Transport of the German state of North Rhine Westphalia (NRW) paid a visit to the Triangle in an effort to strengthen ties between the two regions.

The visit is part of a continuing partnership signed in 1984 between NC and North Rhine Westphalia to collaborate on the scientific front, especially with biotechnology efforts.

In an interview during his visit to the NC Biotechnology Center, Minister Schwanhold said that the NRW area is already a strong industrial region, but that it is redirecting efforts towards more international development.

"I'm quite sure we'll think less nationally and more internationally," said Schwanhold.

The NRW region is similar to the Triangle in that it has a booming Biotech economy. He said that although the Germans may have had a slow start in that area, they are catching up quickly. The NRW "started with almost zero" in terms of biotech firms headquartered there. But with recent growth, NRW now has almost 200 biotech firms with "practically a new start-up every month," said Schwanhold.

Website Intelligence



TechJournal Expert Column Series

Using Visitor Data

Most website owners neglect to utilize some of the most valuable information that literally lies right beneath their fingertips: website user logs. Hopefully, your hosting service (or in-house server) is gathering valuable information about your website visitors that can help you measure various types of user information.

This user data can contain such important information such as the referring URL which led them to your site, the number of unique users visiting each page every month, what time of day your visitors are accessing your information and how long they pause on each page, any online transactions which take place, and reports on any errors, missing images or broken links that occur.

Below are two methods of utilizing your website visitor data.

Use Number One: Track your advertising You're running an ad in a local business magazine (printed or online) and want to see how it affects your website traffic.

Let's say you're giving away 50 Palm Pilots in order to gather the contact information on local professionals who may be interested in your product or service. Rather than merely listing a link to your site's home page, you may want to refer to a distinctive URL used for this ad, such as www.mycompany.com/palmpilot/.

This will allow you to view your user logs over the next few weeks to see exactly how much traffic is generated from that particular ad. Your logs will not only show how many visitors accessed that advertised page, but also what site they were on before visited your web page, and if they visited other pages in your site after signing up for the giveaway and how long they stayed.

If you happen to run the same ad in another magazine, you might use www.mycompany.com/winapalm/ or some

TechJournal Expert Column Series Entrepreneur Toolbox



Choosing An Entity: Your Options

By Rob Tyler and Chess Griffin
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When an entrepreneur decides to realize his or her dream of starting a company, one of the first questions that they typically ask their legal counsel is which type of legal entity to select for their business. In most cases, the answer to this question is a **Delaware "C" corporation**, particularly if the entrepreneur plans to raise venture capital to fund the business. This article will discuss the most common types of legal entities and explain why this conclusion is usually reached.

The most common types of legal entities through which a business can operate are **corporations** (both "C" and "S" corporations), **general partnerships**, **limited partnerships**, and **limited liability companies ("LLCs")**. The designation of a corporation as a "C" or an "S" corporation refers to the subchapter of the Internal Revenue Code under which the corporation is formed. The two most significant factors that affect the choice of entity are limitation of liability for the owners of the entity and the tax treatment of the earnings of the business at the entity level and the owner level.

The **owners of the entity**, whether they are founders, investors, or employees, **generally desire to insulate themselves from personal liability for the obligations of the entity**. All of the entities mentioned above except general partnerships provide some degree of limited liability for their owners. Under state partnership law, all of the partners of a general partnership are personally liable for the obligations of the general partnership. **Limited partnerships** provide limited liability for the limited partners, but not for the general partners. As a result, general partnerships and limited partnerships are not acceptable entities for venture-backed businesses.

ability to pass through to investors tax deductions and losses that are typically generated by early stage companies; **(b)** the ability of investors to increase their tax basis in their investment through retained earnings as the business becomes profitable; and **(c)** the distribution of earnings to investors without incurring a tax on those earnings at the entity level.

However, if a pass-through entity is generating net income on which its owners must pay taxes, the entity must be able to make **cash distributions to the owners** so that they have will have funds to pay their tax liabilities.

Notwithstanding the significant tax benefits of these pass-through entities, most **venture-backed entities** are organized as "C" corporations. The reason is that most venture funds cannot invest in pass-through entities under the **terms of their investment documents**.

Most venture funds receive a significant amount of their funding from tax-exempt organizations such as **pension funds**. Pension funds and similar organizations are exempt from taxation on dividends and capital gains that they receive, but not on pass-through income. As a result, most venture funds are **prohibited from investing in pass-through entities**.

In addition to being a pass-through entity for tax purposes, **"S" corporations** are subject to several other limitations that make them unattractive entities for venture-backed companies. Among these restrictions are that: **(a)** "S" corporations can generally have only individuals as stockholders; **(b)** "S" corporations can only have a single class of stock; and **(c)** "S" corporations can only have **75 stockholders**.

Once the decision has been made that the "C" corporation is the entity of choice for the new company, the next question is in which state to incorporate. Each state has its own **corporate code**.

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Schwanhold said the NRW region has a population as big as Australia and a \$450 billion GNP and has a "long-established industrial tradition." With 63 universities, the area also has a lot of research and educational facilities. He said that like NC, the NRW is a beautiful area to visit. The Rhine River flows through the region, where several picturesque "dreamy old towns" dot the landscape.

The relationship with NC is important to the NRW region, Schwanhold said.

"The US economy is one of our main focuses...companies have discovered this state," said Schwanhold. He said that mid-size and smaller companies in Germany need to learn about NC in order to look at it as a gateway to the rest of the US. At the same time, Schwanhold said he hopes the NRW region can offer NC biotech a good gateway into Europe, especially with NRW's central location.

Schwanhold firmly believes that biotech has taken off and will continue to grow—both in NC and in North Rhine Westfalia.

"The train has been put on the track— you can't stop it anymore," he said.

Barry Teater from the NC Biotechnology Center said that the NC-NRW partnership has already reaped benefits for the state. German companies like Bayer, Apex Bioscience, MWG Biotech, SchwarzPharma, and others are located within the RTP area.

"Germany is a major gateway to Europe," he said. "It's important for NC to have an entree into that."

only show how many visitors accessed that advertised page, but also what site they were on before visited your web page, and if they visited other pages in your site after signing up for the giveaway and how long they stayed.

If you happen to run the same ad in another magazine, you might use www.mycompany.com/winapalm/ or some other unique URL to separate the inflow of users from each ad.

Use Number Two: Are visitors finding what they're looking for? Let's say you're in the middle of a media blitz that doesn't allow for particular URLs for each ad or press release. Most visitors will be access your home page first and then from there will visit your product or service page that is the subject of all the hype.

Over the next few weeks, compare the (hopeful) increase in the traffic to your home page to that of your product page. Make sure there's a good ratio between the numbers. If they're off, you may want to consider making the link to your product page more obvious. Create an eye-catching graphic or be sure that the product is highlighted in the first paragraph on the page.

Whichever method you choose, ensure there is an easy to follow and obvious link to the product page. You can also compare the unique visitors of one of your other product pages with those of your target product. The targeted product numbers should be significantly higher.

With each new campaign, watch your user numbers carefully. They can help you focus on your campaigns and make sure they're doing what they're supposed to do, whether it's increasing sales, creating product awareness, or just gathering information.

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Limited partnerships provide limited liability for the limited partners, but not for the general partners. As a result, general partnerships and limited partnerships are not acceptable entities for venture-backed businesses.

Generally, the owners of **corporations** (both "C" and "S" corporations) and **LLC's** will not have personal liability for the obligations of the entity itself. There are certain judicially created and statutory exceptions to this general rule. For example, if the entity is not properly formed and operated and the legal formalities of the entity are not followed, a court may **pierce the corporate veil** and hold the owners liable for the obligations of the entity.

Also, the owners of the entity may have personal liability in certain cases that relate to environmental and products liability.

"C" corporations are subject to **double taxation**. The corporation itself must pay federal and state income tax on its profits. Then, after these profits are distributed as dividends to the corporation's **stockholders**, each stockholder must pay income taxes on his or her share of those dividends. Since the corporation cannot claim a deduction for the distribution of dividends, there is no way to lessen the impact of a double tax.

Generally, limited partnerships, general partnerships, "S" corporations, and LLCs are all treated as **pass-through entities** for federal and state income tax purposes. As a result, none of these entities are subject to federal or state income tax at the entity level. Under the Internal Revenue Code or the North Carolina tax laws, there is no partnership income tax, "S" corporation income tax, or LLC income tax.

Rather, the taxable income or loss of these entities is passed through to the owners. This **pass-through effect** potentially could provide numerous benefits to investors including: (a) the

only have a single class of stock; and (c) "S" corporations can only have **75 stockholders**.

Once the decision has been made that the "C" corporation is the entity of choice for the new company, the next question is in which state to incorporate. Each state has its own **corporate code**.

While several national bar organizations have developed a model corporate code that many states have adopted to some extent, there are significant differences in the corporate codes of each state.

Among the factors that should be considered in selecting the state of incorporation are: (a) the depth and predictability of the state's corporate law and court system; (b) the nature and extent of the protection that the state's corporate law affords to **officers and directors** of the corporation; (c) the flexibility and ease of use of the state's corporate code; (d) the state's incorporation fees and annual franchise taxes; and (e) the efficiency and service of the state's corporation agency.

Most corporate attorneys agree that **Delaware** comes out ahead of all the other states in an analysis of each of the foregoing factors. In addition, most corporate attorneys are very familiar with **Delaware corporate law**.

Therefore, if the investor is represented by out of state counsel, that attorney will probably already be familiar with Delaware corporate law, thus avoiding the necessity of educating the attorney on the nuances of the corporate law of another state. This can help facilitate the **closing of a financing** and save **transaction costs**.

As a result of all of these factors, the Delaware "C" corporation generally is the entity of choice for start-up companies.

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