



## Choosing a type of enterprise

- [Types of enterprise in outline – important differences](#)
- [Aspects that are decisive when choosing a type of enterprise](#)
- [More information](#)

If you are going to work for yourself, you will also choose a type of enterprise. This is also referred to as a legal form. You register this with the Dutch Chamber of Commerce (*Kamer van Koophandel*, KVK). The Commercial Register of the KVK is the key register in which all companies, legal entities and other organisations that participate in economic transactions are registered. You choose a type of enterprise that is in line with what you are going to do. Pay attention to the following aspects: liability and reducing financial risks, power to dispose of capital, form of cooperation, taxes and social security.

### Types of enterprise in outline – important differences

<b>Type of enterprise</b>	<b>Liability</b>	<b>Tax on profits</b>	<b>Comments</b>
<b>Sole proprietorship</b>	The owner is liable with private capital for the debts of the enterprise.	Income tax	Several people can work in the sole proprietorship, but there is only one owner. Many self-employed persons have a sole proprietorship.
<b>General partnership (vennootschap onder firma, vof)*</b>	Each partner with his/her private capital is liable for the debts of the vof.	Each partner pays income tax on his/her own portion of the profits.	A vof has two or more partners, each of whom contributes money, goods and/or labour.
<b>Partnership*</b>	Each partner with his/her private capital is liable for the debts of the partnership, not for the debts of the separate partners.	Each partner pays income tax on his/her own portion of the profits.	Members in a partnership mostly work individually.
<b>Foundation</b>	The foundation itself is liable for debts; the board members are not.	Corporation tax	A foundation does not have any members. The board is 'the boss'.
<b>Association</b>	An association (with full legal capacity) is liable for debts; the board members are not.	Corporation tax	An association has a board, but the members' meeting has the highest power.
<b>Private limited company (besloten vennootschap, bv)</b>	The bv is liable for debts; not the owner or the shareholders.	Corporation tax	Shareholders decide. The director is employed as employee of the bv, but may also be the sole shareholder at the same time.

\* There is a legislative change in the pipeline, as a result of which the differences between the vof and the partnership will disappear. It is not yet known when this will be implemented.



## Aspects that are decisive when choosing a type of enterprise

### Liability and risk reduction

You reduce the risk of financial liability if you make a legal separation between the assets (money and property) of the enterprise and those of the people involved. In this way, you avoid the possibility of parties involved being held liable with their private capital. In order to prevent that, it is wise to incorporate the activities into a legal entity, such as a bv, foundation or association.

*Suppose: two people want to set up a production company. One of them has his/her own house, while the other lives in a rented home. In that case, the business partners run an unequal risk if they would be held personally liable.*

You can also limit or rule out private liability with an insurance policy or general terms and conditions. You can take out business liability insurance for damage that you may cause with your activities. The insurance can also cover damage caused by activities of people who you make use of: volunteers, employees, interns/trainees. With general terms and conditions, you can stipulate that you are not liable, or have limited liability, for damage that is caused within the context of your activities. For example, up to a certain amount (e.g. your fee), or up to the amount that the insurance company will pay out.

Damage caused by intent or reckless behaviour on your part can never, of course, be insured or excluded with general terms and conditions.

In order to limit liability, you can also combine these methods: you establish a legal entity, you take out insurance for the legal entity, and you ensure that the legal entity has general terms and conditions to limit liability.

### Capital

A second aspect when determining the most suitable type of enterprise is the contribution and ownership of capital. If you opt for a legal entity, the accrued capital will be the property of that legal entity. You cannot just withdraw that privately. The assets (money, property) are NOT therefore yours personally. That applies both to any profits that you may make and to the assets that remain when winding up the legal entity.

If the capital is not separated, you will also face the benefits and burdens: the losses are yours, the profits too. If the capital is separated, the financial benefits and burdens will not be yours directly. You are protected against those risks; but you will also not benefit directly from the profits.

If external financing is necessary, the bank will sometimes stipulate as requirements that the people involved also contribute money themselves, because by doing so they demonstrate that they have confidence in the enterprise. In banking terms, this is referred to as contributing risk-bearing capital. This often goes hand in hand with the choice of a type of enterprise, by which the parties involved can also be held liable privately. Or the bank will only lend money on the condition that the parties involved are also privately liable up to a certain amount.

Subsidies are mostly granted in order to cover a deficit, and not to make profit possible or to increase that. In order to guarantee this, most funds only give (project) subsidies to foundations. A foundation has no profit motive and in this way the subsidies are not only managed by the party concerned, but there is supervision from a board. This does not apply to personal travel grants or stipends.

### Cooperation

If you set up an enterprise with several people, you agree how you will arrange the mutual cooperation. You can, for example, specify in detailed articles of association or in a contract how cooperation should take place, how the decision-making procedures work and how the allocation



of duties is organised. You should also agree straight away what the procedure will be in the event of a conflict and in the event of termination of the cooperation.

You will also arrange the relationship of authority among yourselves and the decision-making procedures in the cooperation agreements. In the case of a foundation, for example, the members of a theatre group can all enter employment. The mutual relationship between the employees can be equal in that case, but the board of the foundation has formal authority, within the legal rules of course, to dismiss one or more employees. You can also all agree to invoice the foundation from your own company, your sole proprietorship for example.

Within the type of enterprise of a foundation, there is a relationship of authority between the board and the employees. Do not lay down any cooperation agreements in too much detail: experience shows that the best form of cooperation and decision-making is only revealed by working/cooperating in practice.

### **Tax and social security**

The choice of a type of enterprise also has consequences for taxes and social security. Natural persons fall under income tax for their profits and can claim certain tax benefits, such as the tax allowance for self-employed persons. Legal entities fall under corporation tax. Which type of enterprise is most attractive fiscally depends, among other things, on the level of profit.

As far as national insurance schemes are concerned, it matters whether you are a self-employed person, an employee or a director and major shareholder (which you are if you own at least 5% of the shares):

- As a self-employed person, you are not insured against income loss by the clients in the event of illness, incapacity for work or lack of assignments. You can insure yourself against this. You also arrange pension accrual yourself.
- An employer must take out compulsory employee insurance schemes for its employees.
- A director and major shareholder is mostly on the payroll and is often considered to be an employee. However, if a director and major shareholder has so many shares (possibly together with his/her family) that he/she cannot be dismissed from his board position, the director and major shareholder must arrange his/her national insurance schemes himself/herself.

### **More information**

Please visit [BeroepKunstenaar.nl](https://BeroepKunstenaar.nl) for further information about types of enterprise, rights and contracts, and income and tax.