
Legal
Governance and Partnering
Structures in U.S.

Recent High Profile Italian Deals in the U.S.

- Fiat SpA (2009)
 - Acquisition of 20% of Chrysler LLC
 - Management Control
 - Purchased Out of Bankruptcy

- Finmeccanica SpA
 - Italian aerospace and defense company
 - Acquired New Jersey-based DRS Technologies (2008), a provider of military and government products and services
 - \$5.2 Billion
- DRS Technologies
 - Acquired Soneticom, Inc. (2009), a Florida company specializing in geolocation systems and products

- CRIF
 - Italian business that manages credit reporting and business information systems
 - 2 U.S. acquisitions in 2009
- Esseco Group
 - Italian Manufacturer of sulphur-based chemicals
 - U.S. Headquarters in Parsippany
 - Acquired Brotherton Specialty Products, a subsidiary of NJ-based Church & Dwight in 2008

- Enel
 - Italian power company
 - Acquired AMP Resources LLC from AMP Capital Partners (2007), geothermal development company
 - \$90 Million plus performance-based payments
- IFIL Group (2007)
 - Agnelli (Fiat) family
 - Acquisition of majority ownership of Cushman & Wakefield Real Estate Co.
 - \$625 Million

Current and Recent Representation

- Represent U.S. subsidiary of Italian company in its U.S. distribution of engines
- Represent Italian company in acquisition of manufacturing subsidiary from U.S. automaker
- Represent Italian company in acquisition of iron foundry
- Represent Italian investors investing in U.S. Diagnostic products company
- Represent Italian investors seeking to acquire NYC real estate holdings

Governing Law

- U.S. has no national (federal) company law
- U.S. business entities may be formed under jurisdiction of any state
- New Jersey has well-developed corporate laws
- Delaware

Choosing a Form of Ownership

- There is no one “best” form of ownership
- The best form of ownership depends on a business’s particular situation

Factors Affecting the Choice

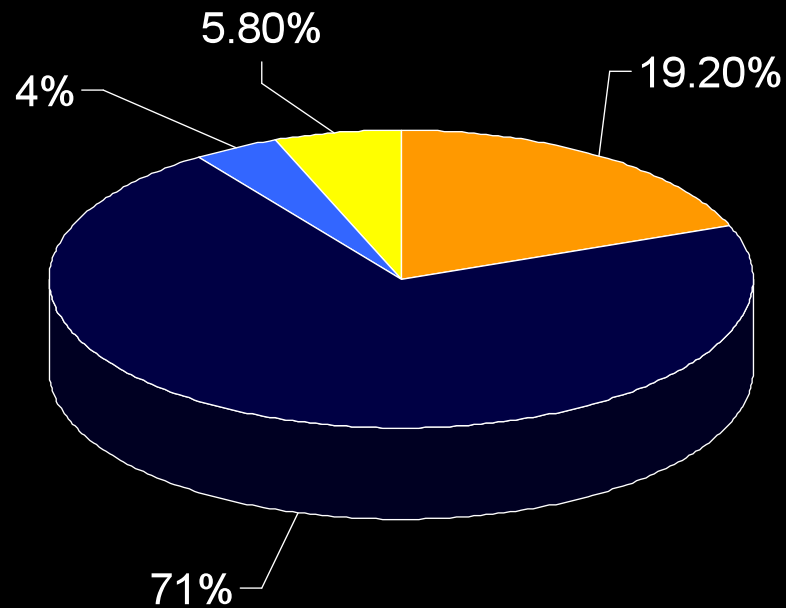
- Tax considerations
- Liability exposure
- Start-up and future capital requirements
- Control
- Managerial ability
- Business goals
- Management succession plans
- Cost of formation

Major Forms of Ownership

- Sole Proprietorship
- Partnership
 - General
 - Limited
- Corporation
- S Corporation
- Limited Liability Company
- Joint Venture

Forms of Business Ownership

Percentage of Businesses



Corporations Sole Proprietorship Partnership LLC

Advantages of the Sole Proprietorship

- Simple to create/least costly to form
- Less business formalities
- Owner in direct control
- Income included and expenses deducted from proprietor's tax return (Pass-Through)
- All profits to proprietor
- No special legal restrictions
- Easy to discontinue

Disadvantages of the Sole Proprietorship

- Unlimited personal liability
- Limited skills and capabilities
- Feelings of isolation
- Limited access to capital
- Lack of continuity

Liability Features of the Basic Forms of Ownership

Sole Proprietorship

Claims of Sole Proprietor's Creditors

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graph TD; A[Claims of Sole Proprietor's Creditors] --> B[Sole Proprietor's Personal Assets];
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The diagram consists of two rectangular boxes with yellow borders. The top box contains the text 'Claims of Sole Proprietor's Creditors'. Three yellow arrows point downwards from the bottom edge of this box to the top edge of the bottom box, which contains the text 'Sole Proprietor's Personal Assets'. This visualizes that the claims of creditors are satisfied from the proprietor's personal assets.

Sole Proprietor's Personal Assets

Partnership

- An association of two or more people who co-own a business for the purpose of making a profit
- Always wise to create a partnership agreement
- Best partnerships are built on trust

Advantages of the Partnership

- Easy to establish/Low start-up costs
- Complementary skills of partners
- Pass-through tax treatment
- Larger pool of capital
- Little government regulation
- Broader management
- Note: Ability to attract limited partners

Types of Partners

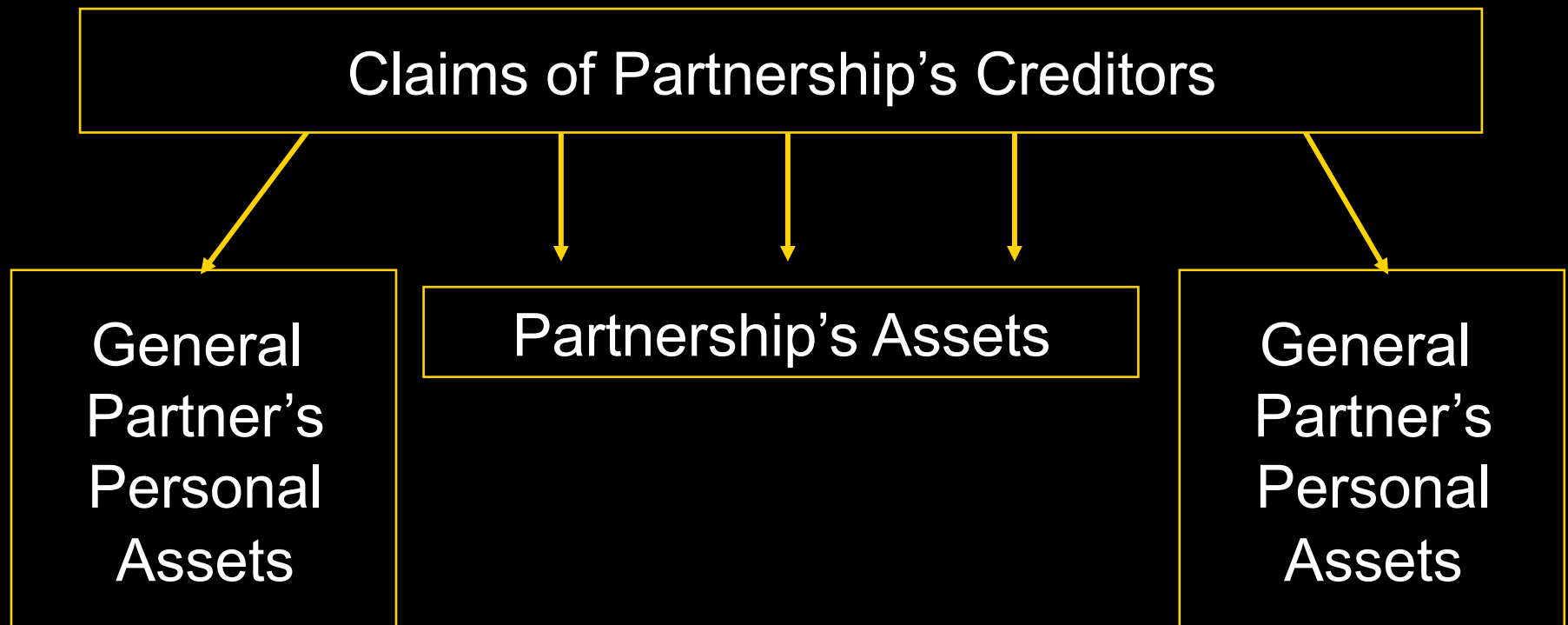
- General partners
 - Take an active role in managing a business
 - Have unlimited liability for the partnership's debts
 - Every partnership must have at least one general partner
- Limited partners
 - Cannot participate in the day-to-day management of a company
 - Have limited liability for the partnership's debts

Disadvantages of the Partnership

- Unlimited liability of at least one partner
- Divided authority
- Difficulty in raising additional capital
- Hard to find suitable partners
- Lack of continuity
- Partners bound by law of agency

Liability Features of the Basic Forms of Ownership

Partnership



Limited Partnership

- A partnership composed of at least one general partner and one or more limited partners
- General partner in this partnership is treated exactly as in a general partnership
- Limited partner has limited liability and is treated as in investor in the business

Corporations

- Certificate of incorporation
 - Registered office and agent
 - Incorporator
 - Duration if not perpetual
 - Effective date if not filing date
 - Filed with state
 - Name, Purpose, Aggregate number of shares
 - Designation of classes of shares and relative rights, preferences and limitations, if applicable

Corporations

- By-Laws
 - Meetings of Shareholders/Directors – voting, proxies, consents
 - Directors and officers – powers, election, vacancies
 - Issuance of shares
 - Dividends
 - Amendments

Corporations

- Governance
 - Board of Directors
 - Adopt corporate policy
 - Appoint officers
 - Declare dividends
 - Officers
 - Implement policy
 - Manage day-to-day
 - Shareholders
 - Elect board of directors
 - Approve mergers and extraordinary sales of assets

Corporations

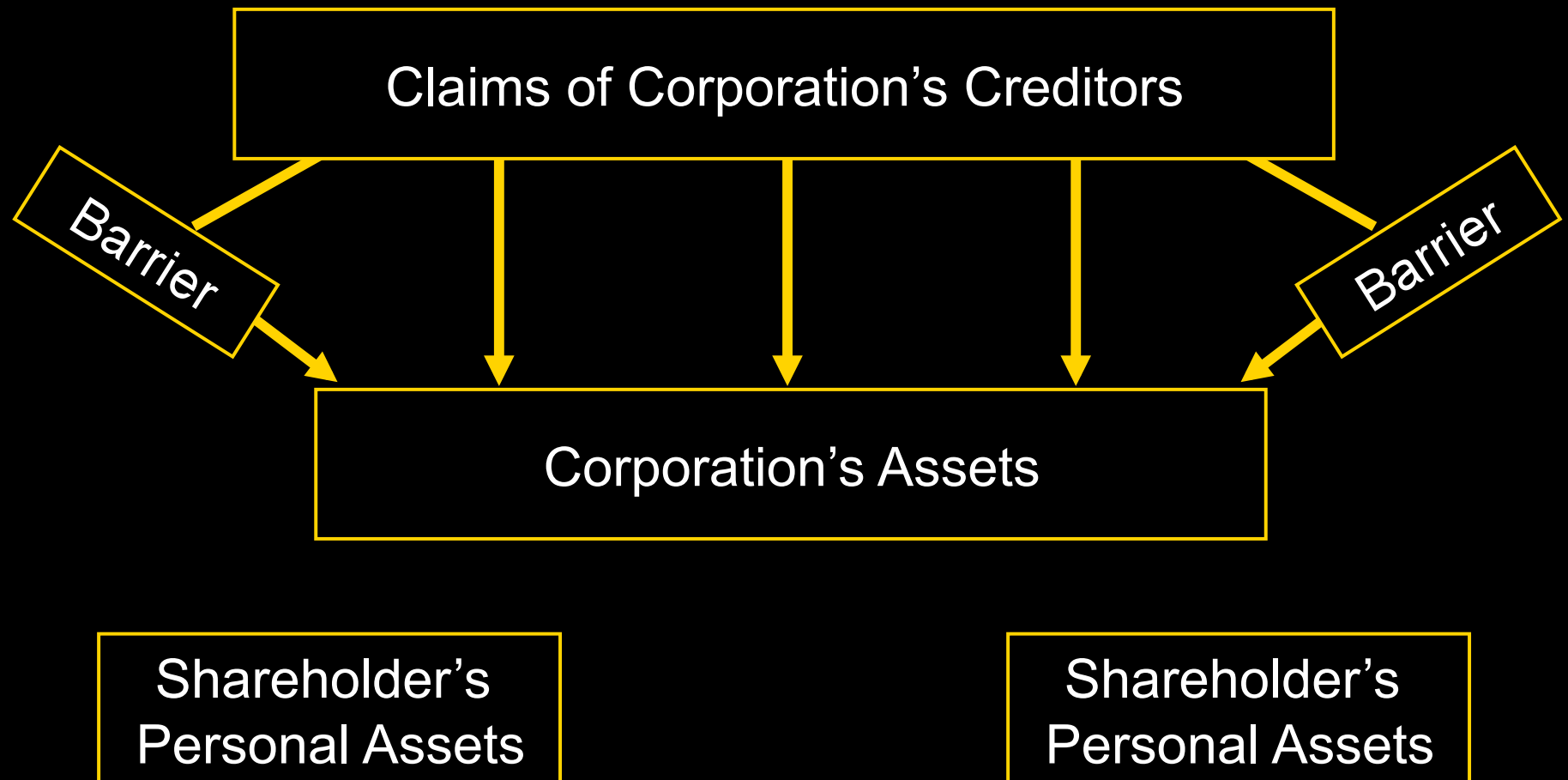
- Shares and Shareholders
 - All shares have no par value unless specified in Certificate of Incorporation
 - No paid-in capital requirements
 - Shares may be divided into one or more series
 - Shares may have preferential dividend rights or voting rights
 - No fee based on number of authorized shares

Advantages of the Corporation

- Limited liability of stockholders
- Ability to attract capital
- Transferable ownership
- Specialized management
- Continuity of existence
- Can be public company

Liability Features of the Basic Forms of Ownership

Corporation



Disadvantages of the Corporation

- Cost and time of incorporating
- Double taxation
- Legal requirements and regulatory “red tape”
- Substantial corporate formalities
- Potential loss of control by founder(s)

S Corporation

- No different from any other corporation from a legal perspective
- For tax purposes, however, an S corporation is taxed like a partnership, passing all of its profits (or losses) through to individual shareholders
- Maximum 100 shareholders
- Only one class of stock allowed
- Note: No foreign shareholders

Limited Liability Company (LLC)

- Used regularly instead of Corporation
- Offers informality of partnership while providing limited liability
- Member may be individual, corporation, LLC, whether domestic or foreign

Advantages of Limited Liability Company

- Limited liability
- Pass-through tax treatment (like partnership)
- Ownership is transferable
- Management by Members or Managers or Officers/Board of Directors
- Limited duration except if otherwise specified

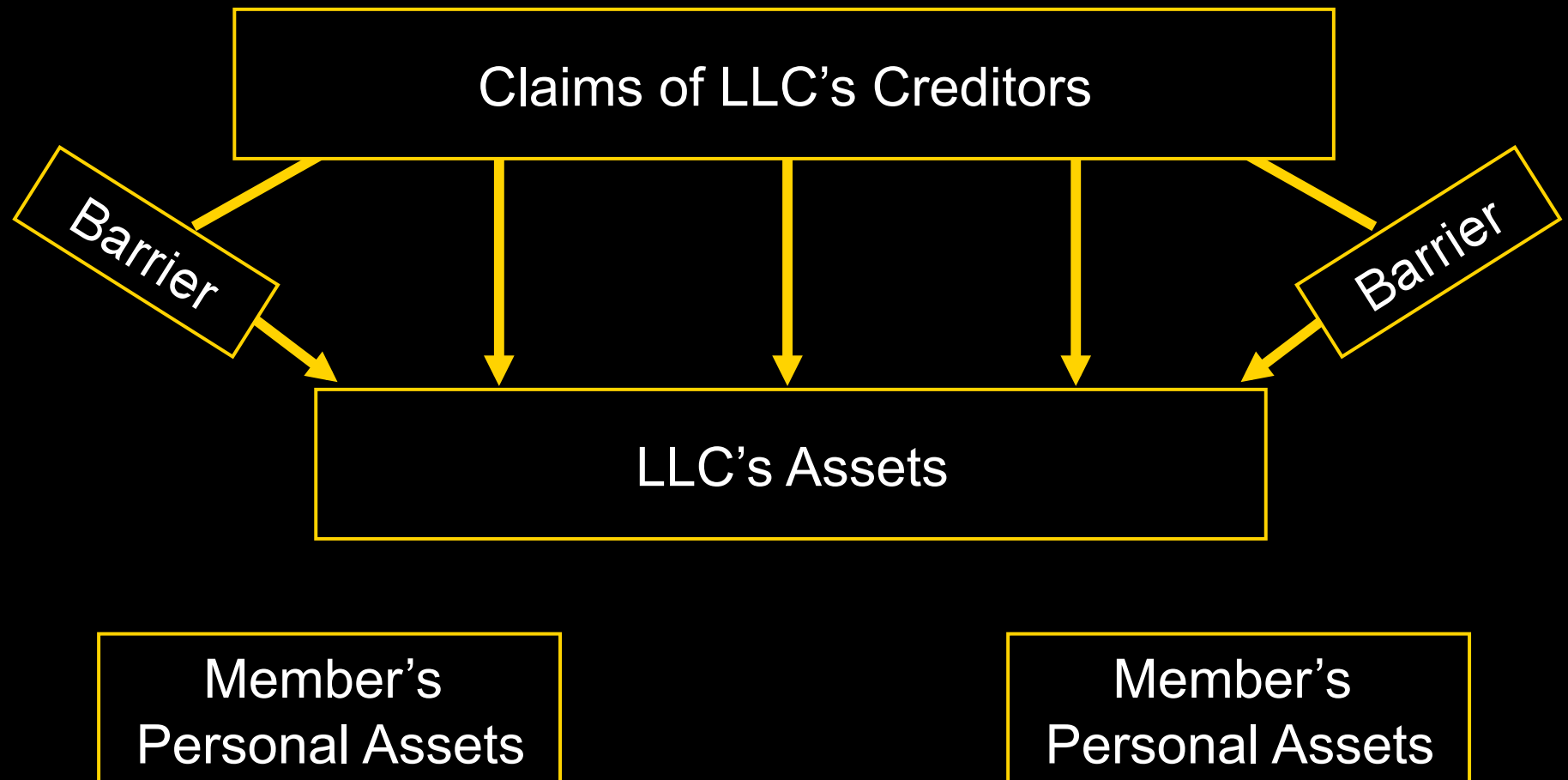
Disadvantages of Limited Liability Company

- Most expensive to organize
- More corporate formalities to organize/operate
- Highly regulated
- Cannot be publicly traded company

LLC Formation

- **Certificate of Formation**
 - Name and Address of LLC
 - Registered Office Address
 - Registered Agent for Service
 - Duration of Existence
- **Operating Agreement – Major Provisions**
 - Management
 - Voting
 - Contributions and Distributions
 - Admission of New Members and Assignment of Membership Rights
 - Dissolution
- **In New Jersey, single-member LLC is permitted**

Liability Features of the Basic Forms of Ownership



Membership Interests and Capital

- Member's interest does not need to equal value of contribution
- Right to participate in profits and losses, distributions and equity of company may differ

Branch Office

- Part of foreign or alien corporation
- Generally, not separate legal entity in U.S.
- Generally, not subject to federal regulation or registration
- However, State qualification required if “doing business” in state
- No limit on liability, generally subjects foreign company to risk of lawsuits and U.S. taxes
- Can structure to limit liability through LLC

Joint Ventures

- Ongoing cooperative relationship between businesses
- Specified period of time
- Specific project
- Few parties, often only 2
- Separate legal entity or not
- LLC typical format due to flexibility in regard to financial, tax and management issues

Joint Ventures

- Key Issues
 - Capitalization, including how future capital needs will be handled
 - Deadlock
 - Approval Rights

Sales Representatives

- Generally, Sales Representatives solicit orders for goods/services and receive commission from manufacturer
- Lack Ownership Interest
- Few U.S. legal limitations
- Principal may generally impose territorial, price and other restrictions
- Foreign corporation liability

Distributors

- Typically buy a manufacturer's product for resale
- Earn profit by mark-up charged
- Bears economic risk of sales transaction
- U.S. antitrust laws impose territorial, price and other restrictions

Franchising

- Method of distributing and marketing goods and services to customers under a marketing plan or system involving protectable IP
- Highly regulated, both federal and state level
- Substantial disclosure requirements
- Also, specific industries have separate regulations (*i.e.*, auto)
- In New Jersey, need “good cause” to terminate or not renew
 - Good faith business reason generally insufficient
 - Failure to comply with franchise agreement, bankruptcy, voluntary abandonment, impairment of franchisor’s goodwill, etc.

Conclusion

- U.S. company laws are technical, yet transparent
- U.S. company laws vary greatly from Italian company laws
- U.S. company laws vary from state-to-state
- A good business lawyer will:
 - Obtain better contract terms for your company
 - Limit your company's business risks
- Involve your business lawyer early in the process

THANK YOU