

LEGAL PLANNING FOR BUSINESS STARTUPS – LAY A STRONG FOUNDATION

When starting a business, it is important to lay a strong foundation and have a clear vision for the future. A crucial first step is analyzing the legal issues involved with creating and operating the new business. There are many legal issues to consider. It is tempting to hurry past these issues, especially with self-help services available on the internet to form your business and send you on your way. However, consulting with an attorney at the beginning can save a lot of pain, and money, later.

The first question is what type of legal entity to use. There are many types to choose from, such as a Limited Liability Company, Limited Partnership, C Corporation, and S Corporation. Knowing the differences between them will help you choose the best foundation for your business. There are important tax issues, asset protection issues and financing issues to consider.

Where a business has multiple owners, it is especially vital to have a written agreement in place, *in advance of the commencement of operations*, specifying the rules of ownership and operation of the business. This is often referred to as a Shareholders' Agreement, Partnership Agreement or Operating Agreement, depending on what type of entity it applies to. There are many important questions and circumstances that the owners not only should, but in many instances, must consider, and they can be addressed in the owners' agreement. We can help you identify these questions and resolve potential areas of conflict before your business even begins. Several examples are:

- How are decisions made within the business?
- How are profit distributions made to the owners?
- What happens if an owner dies or becomes disabled?
- What happens if an owner experiences severe financial problems?
- If an owner is bought out, how is the purchase price established? Is it paid in a lump sum or over time?
- If an owner leaves, can that person compete with the business?
- Can owners be forced to contribute more capital to the business?

Most entities provide their owners with a liability shield that protects the owners from personal responsibility for the business' debts. However, a creditor of the business can cut through this protective shield if the business is not operated correctly. This is known as "piercing the corporate veil." We can help you avoid common pitfalls and advise you how to run your business in a way that will maintain the liability shield.

There is more to starting a business than filing a couple forms. Successful businesses are created through planning – not just planning to maximize profits, but also to navigate the legal wilderness. We are all too often brought costly issues and problems by corporate clients to solve, which in many instances could have been avoided or minimized, had they consulted with us while their business was being formed. If you are considering starting a business, please contact our Business Department so you can lay a strong foundation.

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