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### So You Want to Start a Business - Some Tips On Setting Up Your New Enterprise

*By Darryl J. Horowitz*

In good times and bad, entrepreneurs want to start new businesses. After all, every business started small and grew from there. But are there steps to take that will help ensure success? Unfortunately, there are no guaranties for success, but there are some steps you can take to minimize your risk and promote a profitable venture. This article will discuss some practical steps you can take to minimize your risk in setting up a new business.

#### Have a Plan

There is an old axiom that those who fail to plan, plan to fail. Nowhere is that more true than in starting a new business.

I have over the course of my career had many clients come to me and ask me to set up a business for them. One of my first questions is, "do you have a business plan?" Some do, but most do not.

A business plan is essential and putting it in writing is an important feature of any business plan. Your plan need not be overly complex or long. It should, however, discuss:

- What do you intend to offer for sale? Do you intend to offer services or a product?
- Who will provide the goods or services? Do you or your employees intend to personally offer the services, in which case you may need specialized

employees, or do you intend to outsource those services and manage others who perform the services?

- How do you intend to make your money? This includes an analysis of what you intend to charge for the goods or services that you intend to offer. Have you surveyed the marketplace to determine what others charge so your prices are competitive?
- Who is your competition? Even though you may be offering a somewhat unique product or service, it is important to know who your competition is. Do they offer the same or different services? Are their prices higher or lower than what you intend to offer? What percentage of business do you hope to gather from your competitor?
- How much will it cost for you to sell your goods and/or services? Do you intend to hire employees and, if so, how much will they cost? And considering your employee cost, remember that you may have to pay benefits. You may also have to pay a portion of the taxes to the IRS and state taxing authorities, which will increase your costs. Do you intend to use independent contractors? Are you certain that they are independent contractors because if they do not meet the test of an independent contractor, you may be

responsible for paying taxes for the work they perform.

- Most business advisors agree it is an important exercise to think about how your business will effectively compete. You should thus determine what makes your business different from others that are already in existence. Are you the cheapest? Fastest? Best? Most convenient? Is it quality?
- What business form will you take? As discussed below, there is a wide variety of forms of businesses, including full proprietorship, partnership, limited partnership, limited liability company, or corporation. Each have pluses or minuses you need to consider when setting up your business.
- How will you protect yourself from risk? What insurance will you need? If you provide a professional service, do you need errors and omissions insurance to cover claims of malpractice? You may need broad forms of general liability coverage for the business and also insurance to cover the key employees such as disability, business overhead expense, and life insurance.

Once a business plan is created, you can then determine other important issues for your business. There are commercially available products for the creation of business plans. Some create detailed business plans and others are more rudimentary. It is, however, helpful to use such commercial products as they will lead you to the questions that you need to answer as you establish your business.

### **Choose The Right Form for Your Business**

There is a wide variety of forms for your businesses. Each have their own pluses and minuses. The most common business forms are:

- Sole Proprietorship: A sole proprietorship exists when one person starts a business. The sole proprietor is liable for all

liabilities of the company, including liability claims and debts. It is the easiest to operate as there are relatively few formalities required. If you intend to use a fictitious business name, i.e., a name that is different from the name of the owner, a fictitious business name statement would need to be published and filed with the appropriate office.

- Partnership: Anytime two or more parties come together to operate a business and agree to share profits and losses, a partnership is created. As with sole proprietors, partners are jointly and severally liable for the debts and liabilities of a partnership.
- Limited Liability Company: Similar to a corporation as it is a separate legal entity that can sue or be sued. It is operated by its members whose liability is limited to the amount of their investment, provided the LLC is properly capitalized and established and is not operating in a manner to defraud creditors.
- Limited Liability Partnership: Similar to an LLC, but generally can be created only by professionals who cannot establish an LLC. LLP's operate similar to partnerships, but the liability of the partners is limited in a manner similar to LLC's.
- Limited Partnership: Similar to a partnership, but has two classes of partners: General partners, who manage and operate the business; and limited partners, whose role is primarily to make a passive investment in the business. The limited partners' liability is limited to their investment unless they participate in the management of the business. General partners have liability for the acts of the partnership and thus have greater exposure than the limited partners.
- Corporation: A separate legal entity that is owned by shareholders. It is managed by its board of directors (who are elected by the shareholders) who are responsible

for appointing the officers who run the day-to-day operation of the corporation. Corporations have the benefit of limited liability for the shareholders, who generally do not have liability for the debts of the corporation unless the corporation is improperly established or inadequately capitalized.

Choosing the right business entity can be important depending on whether or not you want your business to grow, whether or not you want to add new members or shareholders who will invest in your business, and similar issues. Sometimes, the best option may involve creating more than one entity, such as a limited liability company to act as the general partner of a limited partnership or shareholder of the corporation. You should therefore discuss these options with your tax and legal professionals before making a determination as to what business form to take.

### **Adequate Capitalization**

Having represented numerous businesses for nearly 30 years, I have seen many businesses succeed. Unfortunately, I have seen more businesses fail.

One of the main reasons I have observed that a business fails is that, despite a great idea, the owner has not properly considered the amount of money it will take to keep their business afloat until it becomes profitable. Preparing a business plan helps the owner evaluate how much capital is needed. A portion of the capital may be contributions by the owners, with the remainder being business loans. One caveat: When considering business loans, it is important to remember that they have to be repaid. Repayment terms therefore need to be taken into consideration when determining your capital requirements.

Most businesses plan for the best and experience the worst. Then fail. They hope to make profits immediately, only to realize that it takes several months and maybe years to do so. You should therefore plan for the worst, work as hard and smart as you can, and then persist until you succeed. That will help minimize your risk.

### **Licenses/Permits/Taxes**

For many businesses, a license is required. Many individuals already have the license, but want to set up a corporation and forget that the corporation may also need to be licensed. Therefore, it is important for you to evaluate whether or not you will need any particular license to operate your business. You may also need a business license from your local city or county. This may be a relatively minor expense, but it is often overlooked.

In addition to licenses, you need to determine if you need any special permits. Check with your local government agency to determine if permits are needed for your particular type of business.

Next, unless you are a sole proprietor, make sure you obtain a taxpayer I.D. number for your business. Your accountant or lawyer can get one for you. You can also contact the IRS and provide the simple form necessary for to obtain a taxpayer I.D. number. It is necessary as it will be used when you file your tax returns for your business. Remember also that to help you prepare the taxes, you will need to keep accurate books and records for your business. There are several computer programs available that can help you do this such as Quickbooks. Even a simple spreadsheet that allows you to keep track of your purchases, income, and expenses could be used as you start your company.

Finally, there are some pervasive securities laws at both the state and federal level. Every business is limited to some degree by these laws, which determine the disclosures required before someone can invest in your business. In many instances, corporations need the consent of the state or federal government before they can sell an interest in your business. Thus, before you attempt to take on investors, speak to a professional about what is needed.

The above are only some considerations you will need. There are many more working parts to creating a successful business. We therefore recommend that, as you go forth with your planning, you speak with an experienced

accountant and lawyer to help you minimize the risks. Doing so will help maximize your success.

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