

STARTING A NEW BUSINESS

Prepared by W. David Arnold, Esq. and Michael R. Olsaver, Esq.

This outline highlights the steps entrepreneurs should follow when they are ready to begin the process of commercializing their idea or technology. Although it is not intended as a substitute for a thorough discussion with the appropriate professionals, such as attorneys, accountants, and bankers, it will give the new company owner a road map for company formation and launch.

Perhaps the most important initial activity, other than coming up with a great idea, technology, or product, is to develop and write out a business plan. The steps described below assume that the entrepreneur has written a business plan that has been vetted and discussed with one or more business experts who agree that the plan will lead to a viable new company. No one should start a new business or take any of the steps listed below until after a comprehensive business plan is prepared.

1. *Initial Organizing*

The first step is to decide on the type of legal organization that will work best for the company. The attached chart provides basic information on the different choices and the advantages and disadvantages of each. The most typical organizational structure for new companies today is a limited liability company because it is so flexible.

The owner will want to discuss the selection of the type of legal entity with an attorney, and the next step in the initial organizing process is to select and retain professionals to counsel and assist the new business. At the beginning, a lawyer and accountant will be important partners for the owner to rely on for advice and assistance. The retention of these professionals need not be expansive or expensive at the beginning, but it is important to establish a working relationship so that the owner will feel comfortable calling on the professionals as the company grows and has additional needs.

Once the type of legal entity is selected, the owner and the company's counsel will decide what organic company documents are required. For example, if the company is a limited liability company, it will be formally established by registering with the appropriate state agency. If there will be more than one owner, or in some cases even for just one owner, the company attorney may recommend development of an operating agreement to define the rights and responsibilities of the owners and set out in writing certain key aspects of operating the company, such as how decisions will be made, how an owner can sell his or her ownership interests, and how new owners can be admitted. Similarly, for a corporation the owners may decide to enter into a shareholder agreement. Even though at the beginning of the enterprise the owners often are friends and cannot

imagine that disputes might develop in the operation of the company, and therefore may question the need for formal organizational documents, experience teaches that attitudes often change over time and that the best time to establish the ground rules is at the beginning when everyone is getting along. Experience also teaches that well thought out and prepared organizational documents prevent disputes from occurring.

Once the legal entity is chosen and established, by registering with the appropriate state official or otherwise, the company should immediately obtain a tax identification number. This can easily be accomplished on the website for the Internal Revenue Service, <http://www.irs.gov>. The TIN will be required to open a bank account, which should be the next step. No matter what legal structure is chosen, the entity must have its own bank account and books and records, separate from the owner's personal accounts and records and from any other company with which the owner is involved. Even if the owner starts with a simple Quick Books accounting system, it is important to establish unique accounts, books, and records for the company from the beginning. Once the company has a few employees, it may decide to open a second bank account just for payroll.

Depending on how the new entity will be capitalized, the owner may also want to establish a relationship with a banker/lender. Typically this will be with the bank at which the company opened its accounts. If the company is to be financed by investors, the owner may want to work with an expert in the field of finding investors and raising money for startups. These experts can be found at business incubation centers, governmental or quasi-governmental business assistance agencies (such as the Regional Growth Partnership in Toledo), or a tech transfer group affiliated with a university.

Whatever approach works best for the individual owner and company, it is critical to think through and plan for capitalization of the new enterprise. Too many new companies founder because of under-capitalization, and too many entrepreneurs try to avoid the hard decisions concerning capitalization by starting a business with cash advances from their credit cards. That never works. The owner must determine how much money will be needed to reach break even, how long that will take, how the owner will live until that point is reached, and where the money will come from. These decisions need to be thought through and spelled out in the business plan, and then implemented as part of the new company roll out process.

2. *Next Level*

Once the initial organizing steps are complete and the new company is established, it will be time to begin fully implementing the business plan. The owner will have to decide on, among many other things, the timing and extent of hiring staff, how to establish the best vendor relationships, and the structure and scope of the sales efforts. These decisions and efforts will likely drive the need for development of key company documents, such as:

- Purchase orders

- Quotation forms
- Sales documents
- Warranties
- Employee rules and guidelines
- Consulting agreements
- Invoices
- Standard terms and conditions for sales and for purchases
- Manufacturing or assembly protocols.

Each new company will be unique in its needs for such documents, but all companies will want to think through the process of standardizing forms, public documents (such as warranties), and internal operational guidelines. The goal is to operate a professional and business like company that is as efficient and profitable as possible.

Should you have any questions or concerns about starting a business, business planning or other issues in general, please feel free to contact us.

W. David Arnold

darnold@rcolaw.com

(419) 249-7900

Four SeaGate, Toledo, OH 43604

Michael R. Olsaver

molsaver@rcolaw.com

(517) 423-5404

105 Brown Street, Suite 105 Tecumseh, MI 49286



www.rcolaw.com