

Existing Business Checklist

The following are important considerations when you are operating a business with a partner or partners. Careful and diligent up front planning can lessen or eliminate future problems and provide a roadmap for the company's operations. Either a Shareholder or Operating Agreement will provide guidance to the company.

The relationship between the owners

How long have you been in business?	Months	Years
What are your respective roles?		
Number of years of experience in this specific business?	Months	Years
Is the role of each owner clearly defined?	Yes	No
Respective voting percentage?	Yes	No
If equal, is there a tiebreaker mechanism?	Yes	No

<u>What capital or other financial resources/contributions/guaranties</u> <u>did/is each owner providing to the business?</u>

Has value been placed on goods/equipment if contributed by 1 owner?	Yes	No
Did owners contribute capital as debt?	Yes	No
Did owners contribute capital as equity?	Yes	No
Are profits to be distributed?	Yes	No
Did owner take a security interest in company's assets to secure loan?	Yes	No
If debt, what is the interest rate and repayment terms to the owner?		

Is the entity going to incur other debt? Bank loans, equipment or vehicle loans/leases?

Have either or both owners personally guaranteed any of this debt?

Does owner have "right of contribution" from other owner if they are forced to pay on the guaranty?

Yes N	0
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No

Yes

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Is the entity going to incur other debt? Bank loans, equipment or vehicle loans/leases?

%

If yes, what is the percentage of contribution?	
How is the return of owners' capital determined?	

What type of entity should be formed?

Limited Liability Company		Yes	No
If no, skip to Corporation. If yes, answer the following			
Manager managed or member managed?	Manager	Ν	Iember
Who is the manager?			
Is there a successor manager?		Yes	No
What are the specific duties of the manager?			
How can the manager be removed if he is not performing	g his duties?		
If the LLC is member managed what are the duties and re	esponsibilities o	f the men	nbers?
How is profit and loss distribution allocated?			
How is profit and loss tax allocation allocated?			
Corporation Taxed as a Subchapter S Corporation		Yes	No
Taxed as a C Corporation		Yes	No
How are the shares owned?			
Who are the officers?			
Who are the directors?			
Is a super majority vote required for certain issues?		Yes	No

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Compensation to Owners

Is there an agreement on how owner(s) are compensated?	Yes	No
Are the owner(s) eligible for bonuses?	Yes	No
If yes, how are bonuses determined?		
What benefits do the owner(s) receive?		
What expenses will the company reimburse to the owner(s)?		
Can the owners' employment be terminated?	Yes	No
If yes, under what circumstances?		
Are there provisions for death or disability of owner?	Yes	No
Are owners subject to restrictive covenants?	Yes	No
If yes, what are the length of time and the geographical scope of limitation	ons?	
Stocks and Membership Interest Considerat	ions.	
Upon an owner's termination, is the company required to purchase owner's s	stock? Yes	No
If yes, how should the value and payment terms be determined?		
If buyout is company's option, how is the price of the buyout determined	!?	
Upon owner's death/disability, is there a mandatory buyout of their interest	est? Yes	No
How are price and terms going to be determined?		
Is the buyout funded by insurance?	Yes	No
Can either of the owners force the other owner to sell?	Yes	No
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What is the price and terms of the forced sale purchase?

Are you at ease with all of these questions and your answers to them? If yes, congratulations!

If not, call Gary Jaburg of Jaburg Wilk at 602.248.1000.

These are all items to consider and discuss with your partner or partners. Operating documents that memorialize your mutual understanding are essential.

We can assist you in crafting agreements that will help keep your business – and your partnership – intact.

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