Business Start-up Checklist

by Stuart Adams

There is not necessarily any magic to the order in which you take every step in starting a business. Some types of business and some circumstances, in fact, require that particular aspects of the start-up be handled in what some would consider to be a nontraditional order. There is typically, however, logic in doing some things in a particular sequence.

To give you an example of doing things in the wrong order, I recently had a new client referred to me to form a corporation. He had decided he was going to start a business which, as a major source of its revenue, would sell beer. He had already been to an accountant and had already signed a multi-year lease for the business premises. One of the things he had not taken into consideration was the issue of obtaining the license to sell beer.

Locally, there is a governmental agency which is charged with the duty of reviewing applications to sell beer, wine and liquor. The agency is bound, to a large extent, by certain regulations, which permit "neighbors" to protest the grant of a license to sell such alcoholic beverages in their neighborhood under certain circumstances, and which absolutely prohibit granting such licenses in other situations. One such circumstance might be in the case of an application to sell within a certain distance of a school or church.

In the case of my new client, he found, after signing away his life on a real estate lease, that many of his new neighbors did not want another place selling beer in their neighborhood, and they filed a protest with the alcoholic beverage commission. If he attempted to go forward, this, at a minimum, would cause him several weeks of delay in issuance of the license, although his rent, utilities, and many other expenses were scheduled to start immediately. We call this negative cash flow.

At the other end of the scale, he might not get the license at all, perhaps eliminating any chance of ever making a profit at that location or forcing him into bankruptcy. Somewhere in the middle, was the possibility of hiring me to try to appeal the initial denial of the license. Each alternative constituted an additional expense he had not included in his "business plan." His safest bet might have been to abandon that location and try to negotiate his way out of the lease or find someone to sublease, an uncertain and not inexpensive resolution.

To make things worse, having visited an accountant before he came to see me, the accountant was "driving" the decision on what type of business entity to form to "hold" the business. The accountant, unfortunately not the best I've seen, although he was the source of my client's

referral to me, had decided the client needed to form an "S" corporation. After interviewing the client, my suggested choice of entity was a limited liability company. I had learned a major equity owner was to be someone who was not a U.S. citizen, a factor which would disqualify a corporation from obtaining "S" status if that individual was a stockholder.

Using an LLC, my client could have obtained more favorable tax treatment. The accountant, who was not all that familiar with the LLC form of business entity (one of those red flags), felt an "S" corporation was necessary because bookkeeping would be much easier for the client (something else which was not necessarily correct). Worst yet, my client had signed the lease in his "individual" capacity, meaning he was personally liable for the rent, even if he incorporated and his business filed bankruptcy. Granted, as a new business, he might have had to sign a personal guarantee, but he had no chance in this situation.

Gee, maybe some things should be done in a certain order. Keep in mind that research and planning in the initial stages are critical. Obviously, my client would have been wiser to have made sure he could sell beer at a particular location before he signed a long term lease for that site. His lack of planning could just as easily have resulted in finding the location was not zoned for the use he intended or that the highway department was about to dig up the road in front of the shop. Any of these circumstance could absolutely destroy your otherwise carefully calculated bottom line.

I've run across all too many "troubled" businesses, which could have avoided their major problem if they had just checked with the local highway department or zoning board before they committed to their site. Many businesses are highly regulated with unique licenses and permits, while others are essentially unregulated. In some types of business, location may be critical, while in others the supply chain or access to skilled employees or capital may be the key. It is your job to uncover these hidden traps before you take the next step. Part of your job in the initial planning stages is to determine the mission critical aspects of your particular business. You will be making a tremendous investment of time and money in starting a business. Don't let it go to waste.

In any event, let me suggest the following list of "basic" steps applicable in setting up most types of business. I've set these out in chronological order. The chronology is not absolute, of course, but I hope you will see a certain logic and efficiency. Most of these steps are covered in substantially greater detail in this book, but this is a generally suggested order in which to tackle them.

BACKGROUND ANALYSIS

•Assess your own strengths and weaknesses. These will impact your ability to do well in any type of business, but they may impact some more than others. (Write them down.)

•Establish personal and business goals, keeping in mind that your business should facilitate reaching those personal goals. The personal goals should include both financial and quality of life goals. (Write them down.)

•Identify the product or service you plan to sell.

•Identify and briefly describe the business you plan to start.

•Determine whether your product or service will satisfy an unfilled need.

•Determine if your product or service will serve an existing market where demand exceeds supply.

•Determine if your product or service will be competitive, based upon its quality, unique features, price or other factor valued by customers.

MARKET ANALYSIS

Analyze the market to gather facts about potential customers and to determine the demand for your product or service.

Determine who your customers will be.

Determine and understand your customers' needs and desires.

Determine where your customers live and how they currently shop for your type of product or service.

Determine if you will be offering the kind of products or services they will buy.

Calculate whether your prices will be competitive with the alternatives your customers have for comparable products or services.

Learn in detail how your business compares with your competitors.

Unless your business will be purely "virtual," without a storefront or specific shipping location, make sure your business will be conveniently located for the people you plan to serve.

Map out a promotional program which will be cost effective in terms of ability to reach your target customers.

LAWS AND REGULATIONS

Determine which licenses and permits you may need to operate your business.

Research what business laws you will have to obey, some of which may include:

Occupational Safety and Health Administration (OSHA) requirements.

Regulations covering hazardous material.

Local ordinances covering signs, handicapped parking spaces, snow removal, building regulations related to possible renovation of your intended business location, etc.

Sales and use tax regulations.

Federal tax code provisions pertaining to small business.

Federal regulations on withholding taxes and Social Security.

State workers compensation laws.

FINANCES

- **Determine how much money you will need to start your business, estimating on the high side. There are certain estimates of expenses for many types of business, which can be obtained from various sources, such as trade associations, accountants or banks. Obviously, a shortage of money appears to be a major reason many businesses fail. In reality, it is often simply the result of a failure to plan carefully.**

- **Determine how much money you will need to keep your business afloat until it can pay for itself. Remember the example of the missing beer license and estimate high on how much money you will have to come up with for it, before it comes up with money for you.**

- **Determine how you will raise the money necessary to start and maintain your business through the "nonprofit" zone. If it is to be through loans, make sure they are documented and that you factor in the cost (ex. interest, origination fees, etc.) of the loans, when you calculate how long it will take to pay them back. You will probably raise less and need more than you think.**

- **Determine how much money your business should make, estimating on the low side.**

- **Determine what things must be in place for your business to make money and estimate how long it will take for that to occur, estimating on the long side.**

- **Run a "break even" analysis to determine, week by week and month by month, at what point your income should start to exceed your costs on a regular basis.**

- **Run an annualized income and expense analysis to determine if there may be seasonal fluctuations which can cause you to have shortfalls of available cash to pay your overhead or to order new inventory. Obvious examples would be a lawn care business, a ski resort, or holiday gift wrapping service. These may be extreme examples, but recognition that people may not buy your product or service at certain times of the year or under certain conditions, may save you from a fatal miscalculation.**

GETTING ORGANIZED

- **Determine what type of business entity, if any, is appropriate to "hold" your new business. This decision is often best handled by a conference with both your attorney and accountant. You may be able to operate as a proprietorship, if liability is not an issue. An "S" corporation is often a good choice to save on the risk of "double"**

taxation, while an LLC is sometimes necessary because of the flexibility it can provide. A "C" corporation, on the other hand may be appropriate if you intend to raise money through the sale of stock to a large number of investors.

•Put all of the above information into a business plan. This is not just something you must do to go to a bank or visit a venture capital firm. It is essential just for you to work through all the basics to see if you can at least make a profit at this business on paper. It is also very helpful to review this document periodically, to see how your estimates of your performance are holding up in the face of the realities of the marketplace.

•Determine what the name of your business will be and any assumed names you feel you may need or want. This can be a fun step, but one that has importance to your future. These days, many a business seems to live or die by the availability of a domain name. Since basically every name has already been taken, don't let this be a show stopper.

•Form the business entity, if any, recording any necessary documents, such as articles of incorporation or partnership certificate.

•Obtain your federal, state and local tax identification numbers

•Obtain your licenses, permits and certificates

•Open separate bank accounts for your business, in the name of the business, using your new federal tax number. You should have at least one operating account into which you deposit all income and out of which you pay all expenses, as well as one escrow account for taxes.

•Document any transfers of property to the business by a bill of sale or other transfer document.

•Conduct or have your legal counsel conduct a search of your intended business name to make sure you are not likely to infringe on one used by someone else.

•If your business will require a trademark or service mark, start the search and file your application.

•Register any fictitious or assumed name under which your business will operate.

•Research and register any Internet domain names you will need for a web site, or simply to protect against someone diverting your business to theirs.

PROTECTING YOUR BUSINESS

It makes no sense to invest in your business without taking reasonable steps to protect it. Some of the risks, which can and should be insured against are:

•Fire and flood

•Theft

•Robbery

•Vandalism

•Accident liability

Other types of risk you might want to consider, would include, for instance:

•malpractice insurance for a lawyer or doctor; errors and omissions for a consultant, D& O for a board of direct

•title insurance on property

•business interruption for an ongoing business

•"key man" insurance on critical personnel

•health insurance on at least your critical personnel, including yourself

•If you will need employees or independent contractors, do what you must to find them. The same is true of a board of directors or key officers. Consider the use of non-compete and nondisclosure agreements.

•If you must confide in others, determine whether you should have them sign a non-compete agreement before you chat with them.

Keep in mind, this is a very basic list. It does not take into consideration such matters as the need for securities counsel if your are going to raise money by selling stock or other types of regulated securities. It mentions very little about the multitude of new acts governing employee, nor does it mention drafting a buy-sell agreement. Additionally, it does not tell you much about how to protect your idea, such as by filing for a patent, keeping your mouth shut, or by having anyone sign a non-compete agreement before allowing them access to critical information

This may appear to be a daunting list. It need not be. Tackle it in bite-sized pieces. Unless your time is unlimited, locate and enlist the help of an attorney, an accountant, an insurance agent and other professionals you may need. Each should ultimately be able to save you money, give you confidence you are on a safe path, and at the very least, prevent you from making a critical mistake. Last, but certainly not least, in order of priority, do the research first, make the commitment second, and spend the money last.

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