Things to Consider When Planning to Start a New Business

There is not necessarily any failsafe order to the steps you must take to start every type of 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, when you are considering the start-up of most types of business. What I've set out below is a general guide to steps my experience has shown me might help most people in the first stage of considering a business start-up.

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.)

> [I've put together an "Entrepreneurial Self-Evaluation," article which is available to you at our Web site: http://www.juristechnology.com/BookEntEval.htm."]

•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.)

> [A follow-up to the last article is also found at our Web site. It provides a short outline of some considerations you might want to review in matching your personal "life goals" with those involved in your consideration of starting your own business. http://www.juristechnology.com/BookOutliningBusinessPlan.htm.]

•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:

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

•If you intend to associate with other "founders," determine whether you should have them sign a non-disclosure agreement and non-compete agreement before you talk with them

•Whether of not you do decide to associate with other "founders," the role of each individual or entity involved in the start-up must be clearly defined and documented. A great many suits have been filed by individuals who felt they had gained "a piece of the rock" through sweat equity or in-kind contributions. The Facebook litigation is a great example of relationships which were not properly documented from the start and then resulted in years of litigation between initial participants in a business venture.

•It can be invaluable for founders and pre-incorporation investors to sign a subscription agreement. This is a document which can be very important for a group of founders to negotiate and execute for the purpose of identifying:

- what each will contribute at the start-up phase
- what role, if any, each will play in the ongoing operations of the enterprise (including title, duties, role on board of directors, etc.)
- additional contributions of capital, expertise, or other assets beyond start-up phase
- percentage or formula for equity in exchange for contributions
- other conditions or contingencies for their contributions

•It can be equally invaluable for founders to execute a buy-sell agreement. This is a document which typically restricts the right of an equity owner to sell or transfer their share of the equity without complying with the terms of the agreement. The agreement can be drawn in many ways, but most often contains some sort of right of first refusal, for the company, or the various founders, or both, to exercise an option to buy out another departing equity owner. Of nearly equal importance, is the ability of the founders to include formulas for valuation of a departing equity owner's interest, installment methods of payment, "key man" insurance, and a host of other options.

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

•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 non-disclosure agreements.

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 details of 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 the details of drafting a non-compete agreement before allowing anyone 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.