Business Formation 101

Congratulations! You are about to enter into a new business and the business plan has been completed. Now it is time to make your dream a reality; however, before opening a bank account, signing a lease and purchasing office furniture you suddenly realize that there are a few more questions that must be answered before the grand opening.

What are the options in terms of the business structure and what are the pros and cons? Should a lawyer be consulted or is it possible to find the answers on the internet? Essentially, there are four basic structures in which to operate as a business: (1) a sole proprietorship, (2) a partnership, (3) a corporation, or (4) a limited liability company. As a new business owner, it is important that the form of enterprise chosen will achieve the short- and long-term goals for the enterprise.

It is important for the entrepreneur to recognize that a sole proprietorship is not a separate legal form and that when operating as a sole proprietorship there is no legal distinction between the owner and the business entity. There are some benefits to operating as a sole proprietorship; i.e., administrative simplicity, no requirement to file documents with the Secretary of State and there is no need to file a separate tax return for the business. The negatives to a sole proprietorship include, the owner has personal liability and since there can only be one owner there is no opportunity for investment by third parties.

If the entrepreneur decides to operate with others, he or she could operate as a partnership, which, unlike corporations or limited liability companies, are formed merely through a written or oral agreement by and among the partners. A partnership does not have to register with the Secretary of State unless it is in the form of a limited or professional partnership which vary in terms of control, liability and compensation.

A corporation or limited liability company structure are both statutorily created structures and require the owner(s) to file articles of organization or articles of incorporation in order to be recognized as a separate entity from the individual owners. A significant advantage to this form of ownership in addition to limited liability is that the founders have the ability to raise capital necessary for the enterprise to operate by issuing shares or membership interests. It is important for the owners to seek tax advice when using this form of ownership.

This brief outline establishes a base line of understanding for the entrepreneur. If a partnership, corporation or limited liability company for of ownership is determined to be appropriate, the owners will next be required to outline and document the rights, obligations and dispute resolution mechanism in the form of a partnership agreement, shareholder agreement or operating agreement.

Forming the legal entity for your business is only one of the first steps in the journey of the owners. Once the business is operational and begins to thrive, the owners will be challenged by finding solutions to tax implications, contract negotiations, regulatory considerations and now, in the era of data protection, cyber security.

Gary R. Pannone
Managing Principal

Joshua J. Butera
Associate

PLDO's *Inside Business – Powered Up for Success* is a multimedia series of advisories providing entrepreneurs and business owners with best practice tools and practical tips to thrive and survive in today's business environment. The series covers a wide range of topics that will help individuals make informed decisions about starting and operating a business. *Inside Business* is created and produced by PLDO Business and Corporate Attorney Joshua J. Butera and Managing Partner Gary R. Pannone, recognized by his peers and clients as 2020 Best Lawyer® "Lawyer of the Year" for his business practice. To contact Attorneys Butera and Pannone, please call 401-824-5100 or email jbutera@pldolaw.com and gpannone@pldolaw.com.

PANNONE LOPES DEVEREAUX & O'GARA LLC
counselors at law

Northwoods Office Park, 1301 Atwood Avenue, Suite 215 N Johnston, RI 02919
401-824-5100
pldolaw.com