VERHAGEN BENNETT LLP

New Business Setup Checklist

1. Create a business plan, including a profit/loss forecast and a cash flow analysis.
2. Choose a location, taking into consideration state and local laws and regulations, and tax considerations.
3. Obtain financing—assessing the appropriate mix of debt and equity.
4. Select a legal structure, taking into consideration the number of key personnel, control factors, need and type of investors (as above), risk of uninsurable loss, amount of protection needed from personal liability, and the likelihood of initial revenues and eventual profits.
    a. **Corporation**. Corporations are comparatively time consuming and expensive to create. Shareholders' personal assets are protected from liability for corporate debts and actions. Corporate leadership and management is generally regimented and prescribed and typically includes corporate officers and a Board of Directors. A corporation can raise funds through the sale of stock or taking on debt. Corporations pay taxes on corporate profits at the current corporate tax rate, not on revenue; however, salaries, bonuses and dividends are legitimate business expenses reducing the tax liability. Note that corporate income is subject to double-taxation: first, at the corporate level when the corporation makes a profit and second, at the shareholder level when dividends are paid.
    b. **Limited Liability Company**. An LLC provides the limited liability features of a corporation and the tax efficiencies and operational flexibility of a partnership. LLCs are not taxed as separate business entities, but profits and losses are "passed through" the business to each “member” (i.e., owner) who reports profits and losses on their personal tax returns.
    c. **Sole Proprietorship**. A sole proprietorship is an unincorporated business owned and run by one individual. The sole proprietor is entitled to all profits and is also fully liable for all of the business's debts and actions.
    d. **Partnership**. There are several different types of partnerships. The simplest form—a general partnership—typically entails two or more people sharing ownership of the business. This arrangement must be described as fully as

possible in a Partnership Agreement. In theory, each partner contributes to all aspects of the business, including capital procurement, property and material, and labor or skill. Profits and losses are allocated equally unless another arrangement is specified in the Partnership Agreement. Similarly, all partners have an equal say in decision-making unless otherwise specified in the Partnership Agreement. Because of the high level of personal interaction between the partners on a day-to-day basis in several respects (especially in a general partnership), the compatibility of prospective partners is a significant concern that must be considered beforehand.

5. Choose a tax year and, depending on the type of legal structure, pay business taxes, including state and federal income taxes, local property taxes, sales and use taxes, employment taxes and possibly excise taxes.
    a. **Corporation**. Determine whether C or S corporation status is preferable. Taxation is the most significant difference, with C corporations being a separate taxable entity and S corporations being pass-through entities (meaning that all income is taxed at the owner level). In addition, S corporations have restrictions on ownership and are taxed differently in some states. C corporations are required to pay federal, state, and, in some cases, local taxes. All corporations (and other employers) must obtain a federal employer identification number (EIN) (which is the federal tax ID number) and a state EIN.
    b. **LLC**. Consider whether to elect for the LLC to be treated by the IRS as a corporation, a partnership (if there are two or more member owners) or as a sole proprietorship (if there is only one owner). Generally, since an LLC is not a separate tax entity, all federal income taxes are paid through the LLC members' personal income tax returns. Note that members of an LLC are considered self-employed and must pay the self-employment tax contributions towards Medicare and Social Security. The entire net income of the LLC is subject to this tax. Note that while most states follow the federal tax scheme, some states impose additional taxes on LLCs.
    c. **Sole Proprietorship**. A sole proprietorship is not taxed separately. Any sole proprietorship income is filed on IRS Form 1040 and Schedule C. Sole proprietors are responsible for paying income tax, self-employment tax, estimated tax, Social Security and Medicare taxes, income tax withholding, federal unemployment tax (FUTA), and excise taxes.
    d. **Partnership**. A partnership should register with the IRS and file an annual information return to report the income, deductions, gains and losses from the business's operations. The business "passes through" any profits and losses to partners, who file their share on their personal tax returns. Partnerships must also pay employment taxes and excise taxes. Individual partners must pay income tax, self-employment tax and estimated tax.

6. Select and register a business name, checking name availability and running a federal and state trademark search. If clear, these must be registered to retain the right to use them. Note that the availability of a particular trade name or trademark does not mean that these will be available for use as Internet domain names. This must be separately investigated and secured. The same applies to service marks.
7. Protect other intellectual property, such as copyrights and patents.
8. Prepare organizational documents.
    a. **Corporation**. Prepare and file Articles of Incorporation (or "Certificate of Incorporation" or "Charter," depending on the state) with the Secretary of State, or other relevant state agency. Appoint a registered agent for service of process. Incorporators may obtain a Certificate of Good Standing from the Secretary of State to document that the corporation has been properly formed. Draft by-laws and order a "corporate kit" (containing stock certificates and a transfer ledger, the corporate seal, a section to retain original corporate documents such as the by-laws, Articles of Incorporation, Certificate of Good Standing, etc., as well as a separate "minute book" part). File state documents, such as Information Statement identifying officers and directors, and anything required by local authorities.
    b. **LLC**. Prepare and file Certificate of Organization with the Secretary of State, or relevant state agency. Determine whether an Operating Agreement is required. The Operating Agreement usually includes percentage of interests, allocation of profits and losses, members' rights and responsibilities and other provisions. Note that the name must indicate that it's an LLC and must comply with other state requirements. Special rules apply to foreign LLCs.
    c. **Sole Proprietorship**. No action is needed except obtaining necessary licenses and permits.
    d. **Partnership**. Draft a Partnership Agreement, outlining contributions by the partners (i.e., capital, material, or special responsibilities or contributed expertise) as well as roles of partners, and such operational considerations as purchases, property, profits, losses, duration, salary and what happens when a partner leaves or partners want to admit a new partner. File applicable Certificate of Partnership or registration document with the Secretary of State or other relevant state agency. Although this may not be required for a General Partnership, many states have a voluntary registration system.
    e. Obtain licenses, certifications and permits, such as sales tax permits and licenses governing specific industries.
    f. File a fictitious business name ("Doing Business As" or "DBA"), if doing business under a different name than the name filed.
9. A corporation should hold its initial stockholder meeting to (among other things) elect a slate of directors to replace (or ratify) the initial directors appointed by the

original incorporator(s). Record the substance of the stockholder meeting in meeting minutes. However, in some states a stockholder meeting can by bypassed with the written consent of the stockholders (which must be unanimous in some states).

10. Open bank account, order checks, get credit card and establish line of credit, if necessary.
11. Obtain retail or office space, checking zoning regulations. Carefully consider the relative merits of leasing versus buying property.
12. Arrange for phone service, internet, email and utilities.
13. Hire personnel. Implement payroll system. Obtain workers' compensation insurance. Prepare employment agreements. Set up employee retirement and fringe benefit plans. Obtain an EIN from the IRS and file Form I-9 and Form W-4. Comply with state and local regulations regarding hiring employees.
14. Consider supply chain issues, including equipment, suppliers and service providers.
15. As necessary, set up an accounting system, a billing and payment system, a customer relationship management system and a point of sale system.
16. Register a domain name, sign up with a web hosting service and set up a website.
17. Arrange for advertising and marketing, including creating a marketing plan, business cards, signs, stationary, brochures and flyers as well as setting up a social media presence.
18. Secure insurance coverage for business liability, property or casualty, vehicles, etc.