Gravis Law | Business Law

New Business Checklist

An entrepreneur's guide to a successful start

Gravis Law has put together a small checklist to ask the questions you may or may not have thought of. So dive in, take a look, and let us know how we can help.

New Business Discourse

An entrepreneur's guide to a successful start!

You have a vision. You've taken some initial steps. You're ready for the Big Leap. But what does that even look like? Whether it's your first business or this is your fiftieth venture, this Guide offers helpful tips and checklists to get you off to a great start.

Select a Business Name – Please Introduce Yourself

Ensure your new business name is "clear" before its first use. Preliminary name clearance involves:

- checking name availability with relevant secretary of state databases
- performing a trademark search for the name at the state and federal levels;
- conducting internet searches to disclose common law uses of the same name or similar names; and
- verifying name availability with domain name registrars for your website.

Once the business name is cleared for use, protect it by:

- filing the name with the relevant secretary of state office;
- registering the name as an internet domain name
- filing an application for federal or state registration of the name; and
- filing applications for foreign trademark and service mark registrations in key international markets, if the new business plans to operate outside of the U.S.

Consider whether the following additional filings are necessary:

- fictitious name filings, like registering "doing business as" (or DBA) (especially in regulated industries like liquor or cannabis)
- Foreign Qualification of the business, if it will conduct business in states other than its state of formation

Jot down some name ideas!

Develop a Business Plan – What's the Path To Reach Your Goals?

At the outset of a new business, take the time to clearly define the business' objectives in a concise, dynamic business plan to better communicate these goals to key stakeholders, including:

- lenders and equity investors where applicable;
- customers, help them understand what's unique about your service or produc
- suppliers and distributors, communicate the value of positive and lasting relationships.
- management, create brand ambassadors;
- employees, create company culture
- Family and Loved ones, help them understand the value of the sweat equity, investment, and commitment to this venture
- Include in the business plan:
- an executive summary – broadly describe your vision and the purpose of this business venture
- a description of the products or services to be offered;
- a summary of the business' history, management, and goals;
- a profile of the target customer;
- an analysis of the competition and market trends;
- advertising and marketing strategies – where will you find the target customer? How will you grab their attention and make your business offering attractive to them?
- a list of assets, liabilities, budgets, and time lines; and
- a forecast of sales growth and profits.
- Before disclosing the business plan to outside parties, ensure that a confidentiality agreement (also called a nondisclosure agreement or NDA) is signed to protect sensitive business information like:
- marketing plans;
- budgets;
- customer and vendor lists; and
- other intellectual property

Notes:

Select a Legal Structure – How Should You Set Up This Venture?

One of the most important decisions in forming a new business is selecting the appropriate legal structure, which impacts choice of entity, management, liability, taxation, financing, and other key issues.

Business Type	Ownership	Liability	Taxes
Sole Proprietorship	One person	Personal Liability Unlimited	Personal taxes
Partnership	Two or more people	Personal Liability Unlimited, UNLESS it is a Limited Partnership	Self-Employment Taxes (unless Limited Partnership); Personal Taxes
Limited Liability Company (LLC)	One or more people	Owners NOT personally liable	Self-Employment Tax; Personal or Corporate Taxes
C Corp	One or more people	Owners are NOT personally liable	Corporate Tax
S Corp	One or more people, but no more than 100, and all must be U.S. citizens	Owners are NOT personally liable	Personal Tax
Nonprofit Corporation	One or more people	Owners are NOT personally liable	Tax-exempt, but corporate profits can't be distributed

The state law classification of a business entity is not always the same as the tax classification of a business entity (for example, a state law partnership can often elect partnership or corporation tax status).

Create a Budget & Finance the Business – Know Your Numbers

Factors affecting the choice between debt and equity include:

- The company's need to retain control over the business. If retaining control is a concern, but the company is unwilling or unable to take on debt, the company may consider raising capital through a minority investment
- The company's existing capital structure. If the company already has a lot of debt, is subject to restrictive financial covenants, or does not want to provide a guaranty or other credit support, it may only be able to obtain funding through the issuance of equity.
- The availability of debt versus equity financing. Lenders may be unwilling to lend to the company, or suitable investors may be difficult to find.
- The costs of issuing debt versus equity. If lenders are unwilling to lend to the company, the interest rate offered may be too expensive. The proposed terms of equity investors may be too onerous. In addition, the costs of conducting a public offering typically exceed the costs of an unregistered offering, unless the company is already a reporting company

Depending on the type of business entity selected and its financial goals, you have choices in how to finance the business by:

- Self-finance the startup – speak with an attorney and accountant if you are starting with your own capital
- Crowdfunding
- Commercial Debt - obtaining loans from a bank or other lender
- Issuing short-term or long-term debt-securities; or
- Issuing equity securities
- Tax considerations

Choose a Business Location – Where Will You Operate?

When choosing a business location, consider:

- Proximity to customers, suppliers, and distributors as well as competing businesses near the proposed location;
- Minimum business requirements, like office square footage, accessibility to public transportation, and parking facilities;
- Whether to buy real estate;
- Whether to rent real estate;
- Real estate, sales, and other tax considerations;
- Compliance with local zoning and other regulations
- Availability of qualified employees and the going rate for wages;
- State or local laws regulating various employment-related issues like wage and hour paid and unpaid employee leaves, and new hire requirements
- Nexus to state for choice of law and choice of forum; and
- Compliance with U.S. international trade laws and local country laws, if the new business will be located outside of the U.S.

After the purchase or lease of office space, but before commencing operations, consider the need to contract with:

- Architects, designers, general contractors, and builders to modify the office space
- facilities-related services like cleaning and gardening; and
- utility companies.

Consider whether the business needs to lease equipment and a warehouse.

Recruit and Hire Employees– Build a Star Team

Recruiting and hiring employees creates new legal obligations for the business to consider, including:

- Complying with federal, state, and local anti-discrimination laws in the hiring, interviewing, and selection process.
- Satisfying Form I-9 requirements.
- Providing employees with the requisite notices on hiring.
- Properly classifying individuals as:
  - Exempt or non-exempt employees;
  - Independent contractors
- Complying with employment-related filing, reporting, and insurance requirements.
- Maintaining the at-will status of employees, unless an employment agreement states otherwise.
- Documenting various aspects of the employment relationship through:
  - offer letters;
  - employment agreements
  - confidentiality and inventions assignment agreements;
  - non-competition and non-solicitation agreements, to the extent allowed by state law; or
  - mandatory arbitration agreements.
- Complying with wage and hour laws, including minimum wage and overtime.
- Determining the employee benefit plans to provide, and administering the payroll and employee benefit plans
- Drafting and maintaining employee policies or an employee handbook
- Posting required workplace posters in the office.

Obtain Business Licenses and Permits – Pay to Play

Based on the nature and location of the business, determine whether licenses and permits are necessary under:

- federal law for businesses that are federally regulated; and
- state and local laws and regulations, which vary by jurisdiction.
- Consider whether additional licenses and permits are necessary to comply with federal, state, and local environmental regulations
- For tax filing and reporting purposes, apply for an employer identification number (EIN) with the IRS.

Develop Advertising and Marketing Strategies – Getting the Right Customers

Comprehensive advertising and marketing strategies:

- Promote new business success.
- Increase brand awareness of the products and services offered.

Some elements of a successful advertising and marketing program include:

- Product packaging that complies with product labeling laws
- Traditional print and media
- Direct marketing.
- Sponsorship arrangements
- Sales promotions, contests, and sweepstakes
- A website
- Online advertising and marketing, including social media
- Mobile apps

Acquire and Protect IP – Better Safe Than Sorry

Many new businesses create IP to be used in connection with the manufacture, marketing, advertising, and sale of their goods and services, including:

- Trademarks.
- Copyrights.
- Trade Secrets.
- Patents.

Before exploiting IP, these assets should be:

- Cleared for use.
- Protected.

Notes:

Evaluate Insurance Needs – Know your Risks and Liabilities

All new businesses need insurance. Factors to consider when deciding what insurance to buy, and how much is necessary, include the scope of:

- Exposure to suppliers and customers.
- Activities of employees and independent contractors.
- Corporate activity, including inherently dangerous activities.

At a minimum, the new business should consider obtaining the following types of insurance coverage:

- Commercial general liability, including property damage, personal injury, and advertising injury.
- Workers' compensation and employer liability.
- Key person
- Insurance for ERISA fiduciaries, including:
  - ERISA bonds;
  - fiduciary liability insurance;
  - errors and omissions insurance; and
  - directors and officers insurance

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