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SOLOPRENEUR: A CHECKLIST FOR SUCCESS

A one or two person company faces many challenges. The principal entrepreneur is probably very good at doing the company's core business activities and providing services or products to the company's customers. However, going out on your own as a solo entrepreneur means dealing with many issues about which the principal entrepreneur may know little or nothing. The following is a list of business and legal issues about which a solopreneur should be thinking and with respect to which s/he may need professional assistance in order for the venture to achieve its business objectives. These issues are typical in the world of the solopreneur and each business person will have a range of knowledge and ability in dealing with them. It is critical for a solopreneur to give some attention to these issues and to know how to get assistance with them.

1. Business Plan. Every business should have a comprehensive business plan which should coherently outline the planned business, markets, strategy, and technology, with appropriate and credible revenue, profit and expense projections produced either by the principal, or by an experienced accountant or other consultant. The business plan is a working document which needs to be reviewed and revised regularly so that it reflects the entrepreneurs changing business goals. To the extent that your business needs financing the investment marketplace will closely scrutinize these projections in evaluating the long-term viability of the company. Cooper Law LLC assists companies by helping draft or revise their business plans and by introducing the principal to consultants who specialize in working with businesses like theirs.

2. Choice of Entity. Most new ventures today are being organized as limited liability companies (LLCs). However, if you need to raise capital by selling stock or units to investors, the company should be structured as a Delaware C-corporation. This is the structure favored by venture capital firms. Aside from that, an LLC will provide a very favorable and flexible structure for tax and capitalization.

A limited liability company can be easily and cost-effectively converted to a corporation if that is needed or if the company grows and plans to go public. However, operating as a limited liability company avoids taxation of the entity and provides tax advantages in the event of a strategic acquisition. Further, as opposed to an S-corporation, a limited liability company can have an extremely flexible capital structure. However, there are certain tax advantages to forming a C-corporation and treating

oneself (the principal/entrepreneur) as a W-2 employee. This creates a discipline for tax withholding for the new entrepreneur who is not comfortable with saving revenue and filing quarterly estimated tax returns. If your company grows and takes on employees to whom you want to provide incentives, limited liability companies can create incentive compensation structures which mimic corporate structures (options, restricted equity, phantom equity), as well as unique highly-flexible compensation structures using incentive units which have profit participation and capital appreciation provisions.

3. Accountant. No matter what the nature of your business, it is critically important that you find a competent accountant with experience in advising businesses like yours. They can help teach you about keeping your books appropriately, keeping your personal expenses and funds separate from your business and about how to save for and file your taxes. If you will need financing, the company needs to make sure it has an accounting firm on board that has credibility in the marketplace. If the company is organized as an LLC and has more than one member (and consequently is taxed as a partnership), you must also choose an accountant who is expert in partnership taxation or in accounting for sole proprietors (if there is only one member). LLCs with one member are disregarded for tax purposes and treated as sole proprietorships. Engagement of an excellent accounting firm to provide auditing and tax accounting improves the credibility of the company's financials and projections with investors or lenders.

4. Price setting. One of the most difficult things for a solopreneur to do well is set the prices for its products or services. Market research may be needed to be sure that your prices are in the right range. You may be able to find workshops or YouTube videos which will provide solopreneurs and small businesses with information about how to do this.

5. Advertising, Marketing and Communications. As an entrepreneur, you need to feed the pipeline to develop new business. You need to figure out where and when it is cost-effective to advertise your business. You then need to find experts who can help you design and create advertising materials which are appropriate for your business and figure out how to get word out. Is print advertising right? Should you distribute brochures? Should you buy radio or TV time? Should your advertising be online through banners and ads on the sites of strategic partners? Is social networking the best way to get the word out about your business?

6. Networking. You must figure out where you are likely to meet your best referral sources and to which organizations you need to belong in order to secure more business. You need to learn about how to present yourself in networking situations. You need to develop and be comfortable delivering your "elevator pitch." You need to learn how to capitalize upon and follow up with the people you meet through networking.

7. Staffing. Though you have formed a business on your own, you do not need to do everything yourself. Of

course, for financial reasons you may begin in that mode. However, the sooner you arrange assistance for certain tasks the more you can focus on higher level issues for your business and become more efficient. Finding the right help for your business is not always simple or cheap. You need to learn what you can delegate, when to delegate and when not to do so. You need to consider whether you want to hire someone to work with you in your space or to find a virtual assistant. If you believe you need someone on site, you need to consider whether that person should be full-time or part-time. You need to learn about good practices in hiring and managing employees. You will need to find assistance with payroll, tax filing and workers' compensation insurance.

The next issue is figuring out how to find good candidates for the position you decide upon. Can you use an independent contractor or do you need an employee? Where and how should you advertise? What can you afford to pay? You need to identify the market for the type of assistance you need. Consider inexpensive or free ways to advertise. Universities and colleges often take listings for free and you can pay a college student as an intern and get some good help. However, this should be balanced against the mobile and changing and impermanent nature of this workforce.

8. Sales skills. Many solopreneurs are working in professional service businesses and have no explicit experience or training in sales. They are experts at how to deliver the professional services, but beginners at trying to sell

those services. It is critical for such individuals to learn the basics of selling.

9. Time management. You may need to learn how to manage your time in order to be able to get all of the tasks done that are required of you as a solopreneur. If your history is as an employee of a larger organization, you are used to having a number of things done for you that you will need to take on as an entrepreneur. This will force you to manage your time more efficiently. You may engage an expert to advise or coach you on this or you may just naturally be adept at scheduling specific time for each of the new tasks you need to accomplish, including accounting, payroll, accounts payable, preparing and sending invoices, developing new business/marketing, etc.

10. Presentations. The skill of preparing and presenting a proposal, a lecture or seminar and providing written materials to illustrate what you are saying is one that shifts depending upon the nature of your presentation and your audience. There are also trends in presentation style which shift over time. You may need expert help with this and with developing opportunities to present. There are also methods to heighten your success with this.

11. Public relations. Your business probably will benefit from getting good PR. Figuring out how to achieve this is certainly not something that comes naturally to those of us not familiar with these issues. An entrepreneur may need to learn how and when to prepare a press release, where to send a press release, and how to get the press and media to come to him or her for opinions. Almost

certainly an expert will need to be consulted about these issues.

12. Access to large companies as customers or clients. Small companies often can profit from, but have difficulty gaining access to, large companies in order to be able to present their services or products to the large company. One sale with a large company may make the difference between success and survival for a solopreneur. By sharing experiences in this area solopreneurs may learn what can help get them that critical first appointment.

13. Franchising. Some solopreneurs have found that the way to expand their business is through creating a franchising business which will allow them to expand by finding other solopreneurs who are interested in duplicating their successful systems. Other solopreneurs may be franchisees of existing successful franchise companies. In either circumstance learning the details of how franchising works may be critical to these solopreneurs.

14. Storytelling for your business. Being successful is often strongly linked to being able to tell your story; the story of your business or of your success in a way which hooks your audience, whether your audience is a potential customer or a potential referral source or a potential strategic ally.

15. Capitalization. To build the business in the way you would like you may need additional financing. Prior to seeking financing, the principal must be clear about the business' needs and ability to repay lenders or investors. If

you will have one or more silent partners financing your business, your limited liability company operating agreement must be drafted to reflect their respective roles in controlling the company, setting compensation and providing procedures in the event of death, disability, or non-performance of any founder or member. Units may be reserved for investors, new employees and consultants, depending upon whether your goal is to grow your company. The percentage provided to investors will often be determined by negotiation, but entrepreneurs may begin with terms and expectations that set the stage for those negotiations. The further an entrepreneur can get in developing the business and getting it operational before seeking outside funding, the smaller the interest which the entrepreneur may need to give to investors.

16. Disclosure Documents. If you need to raise funds through a private placement of your company's equity (units of LLC interests, or shares of stock), you will need disclosure documents that comply with state and federal securities laws. The issuer of the equity is required to provide substantial disclosure (in a "Private Placement Memorandum") to investors who do not qualify as "accredited investors." However, in practice the same level of disclosure is provided to both "accredited investors" and others. Generally, the Private Placement Memorandum is distributed to the investors with the issuer's business plan (including financial projections), which tells all of the positive factors which the entrepreneurs have put in place, which "sells" the company.

17. Non-Compete - Confidentiality Agreements. All new hires should be interviewed to determine whether they are constrained by non-competition agreements with prior employers or business partners. The entrepreneur will not want such prior employers or prior business parties to have a claim against the new venture with respect to the type of business planned. A release must be obtained with respect to potential conflicts.

Employees and consultants, strategic partners and potential investors should all be asked to sign a confidentiality or non-disclosure agreement (NDA) covering non-public information concerning the new venture's business. If a potential investor does not agree to sign the NDA (the usually will not sign), a business judgment must be made concerning whether the potential investor may be trusted without an executed NDA. Personal knowledge and the reputation of the investor is the key to this decision.

18. Intellectual Property. The company's trademarks, tradenames, proprietary processes, programs and inventions should be registered with the U.S. Patent & Trademark Office. This may include copyright protection of software, trademark protection of any brand names (including the company name) and marketing catch phrases, and/or patent protection for inventions, processes and/or products. Certain intellectual property may only be effectively protected by keeping it as a trade secret (like the formula for Coca-Cola). All of the content on a company's website should be protected by copyright and may be registered for

protection with the U.S. Copyright Office. The initial entrepreneurs who form a new company (or the new entity itself) must acquire any domain names which they intend to use.

19. Barriers to Entry. It can be very helpful if the venture can establish barriers to entry in its marketplace. Barriers to entry can be established through (i) the creation of proprietary technology and processes (which are properly protected and, when appropriate, registered), (ii) the creation of solid and loyal relationships with its leading accounts (this will require the identification of industry market leaders); (iii) the establishment of a viable distribution network characterized (again by exclusive relationships), and/or (iv) the establishment of a first-rate and difficult to replicate team to run the company.

20. Board of Managers or Directors. The "Board of Managers" is the limited liability company equivalent of a corporate board of directors. For a small solopreneur company, the principal is usually the sole director or manager of the company. However, this individual will be the company's formal board. If you are the sole director or manager of your company, you should find trusted advisors who will serve, at least informally, as a board of advisors for your company. If you need to raise capital for your company, the investment marketplace puts a premium on the presence of well-known industry leaders on a board of directors/managers and discounts for the absence of the same. For this reason, the entrepreneur should consider recruiting additional expertise to serve as independent

director/managers of the company. The independent director/managers should provide expertise from banking, finance, general or specific business backgrounds. The principal should develop a list of potential candidates.

21. Incentive Compensation. In order to attract high quality personnel, the company might want to adopt an incentive compensation system for managers, executives and consultants. This allows the company to conserve limited cash and still attract top-level people. Corporations have long-standing means for issuing a number of types of options (incentive stock options and non-qualified stock options), phantom stock, restricted stock and other devices. Limited liability companies can issue either options to acquire membership units, or “incentive units” (with “profit participation” and/or “capital appreciation” provisions). Incentive units are similar to restricted stock but provide greater flexibility in structure.

22. Advisory Board. A solopreneur might also want to have an “advisory board” which would be distinguished from the Board of Managers. The advisory board might include investors or experts in the company's particular area. Advisors would not be fiduciaries and need not be involved in the day-to-day operation of the business. The involvement of the board of advisors could be helpful to the extent the advisors provide advice; use of their names would also be helpful in establishing the credibility of the company.

23. Summary. Each of these items has an impact on a company's need for legal and other professional advice and on its budget. A start-up's legal needs should be met in segmented steps as the importance of each layer of legal protection is added at the appropriate point in your company's development, with full consideration of your budgeting constraints. Cooper Law LLC is prepared to provide cost-effective and practical legal assistance to companies at each stage of the venture's development. Additional commercial and operational issues will arise as your company commences and continues operations and growth.