

Ask the Lawyer: Entrepreneur Considers Expanding in 2012

Question:

The small manufacturing company my best friend and I launched a year ago is finally taking off. My partner is a little more ambitious about growing the business than I am. Do you have any recommendations for entrepreneurs preparing to pursue their first major expansion?

Answer:

With the economic forecast for 2012 looking a little sunnier than previous years, many entrepreneurs in Saratoga County and beyond are taking advantage of the ameliorating business conditions. Over the next 12 months, for example, 59 percent of certified public accountants surveyed by the American Institute of CPAs (AICPA) said their businesses plan to expand. Spending on training, information technology and other capital projects is projected to climb to its highest level since 2007, according to the organization's latest AICPA Economic Outlook Index.

Businesses in Saratoga Springs, Clifton Park, Wilton and Malta pursuing such expansions should consider creating an operating agreement or updating an existing one. An operating agreement is a legally binding document that specifies the courses of action that must be taken in a variety of situations, such as succession

, distribution of profits, bankruptcy

, criminal matters

, introduction of new partners, and other issues.

It is not uncommon for such agreements to be lacking at start-up businesses, whose founders might have initially covered their bases with handshake deals or narrow contracts. When a business runs into problems, however, owners often realize these measures do not adequately protect their interests and expose them to costly litigation.

Running a business without an operating agreement is similar to growing older without drafting a last will and testament

. Just as the laws of intestacy prescribe how a decedent's assets should be distributed should he or she die without a will

, the laws governing limited liability corporations and partnerships similarly outline what should happen to a business under certain circumstances.

If your business is expanding, an operating agreement could recognize your investment in the venture and shield you from other partners' attempts to undermine your contributions or authority. It could also provide a means for blocking the admittance of new partners whom you deem untrustworthy. It is crucial for operating agreements to be annually updated so they

accurately reflect the business' assets and liabilities and its ownership structure.

Should an expansion not go as planned and financial problems emerge, the agreement could prescribe how or when the business should liquidate or reorganize under the U.S. Bankruptcy Code. Additionally, the agreement could provide guidance on how the business should be run or controlled in the event an owner becomes incapacitated, passes away, or is arrested for a serious criminal offense.

One of the perks of owning a business is being able to decide the course it takes. When business owners launch a venture or pursue an expansion without an operating agreement, they run the risk of abdicating such decisions to the courts. For a stronger sense of control over their business, entrepreneurs should consult with an experienced business law or corporate attorney

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