

COMPANY FORMATION CHECKLIST

A checklist cannot possibly enumerate all of the issues that may arise in forming a new business. However, you should certainly consider the following issues and requirements.

1. PRE-FORMATION – ESSENTIAL QUESTIONS FOR THE FOUNDERS

(a) What is the business?

Market potential/demands, competitors, investors, customers
Are you offering a service or a product?

(b) Who are the founders?

As opposed to investors, advisors, employees, etc.
Name, U.S./state resident status, current address

(c) What does each founder bring to the table, and what is the proportional value in relation to the other founders?

Up front money
Product, invention, idea
Time/effort
Credibility/Name - technical expertise, business expertise, connections to investors/customers/etc.

(d) What restrictions does each founder have with respect to the new business?

Currently existing non-compete agreements, assignments of invention, conflicts of interest.
Current stage in life: retirement, family, employment, etc. may have huge impact on each founder's desired role, commitment and exit strategy (level of risk adversity)

(e) What will be each founder's role?

Technical, operational, development, capital raising, sales, President, Secretary, Treasurer, investor, etc.

(f) What will be each founder's ownership?

Up front money may mean up front stock ownership whereas work commitment ("sweat equity") may mean stock ownership vested over time, or the combination of both

(g) What is each founder's vision for the business?

Investor backed company with multiple revenue growth in 3 – 4 years for IPO or big sale

2. FORMATION OF THE COMPANY

- (a) Address issue of representation of multiple founders (i.e. conflict waiver)**
- (b) Determine type of entity: (C corporation/ LLC)**
 - Review anticipated financing, profitability to consider if a tax pass-through entity is appropriate
- (c) Choose name:**
 - Clear name in states in which Company is doing business; make sure to reserve name if not filing immediately
 - Consider trademark search for name if name is to be used for product, etc.
- (d) Determine state of formation, and states in which the Company will do business or have an office**
 - Determine requirement for special licenses or similar filings, such as:
 - Insurance filings
 - Broker/Dealer Filings
- (e) Plan for transfer of intellectual property and other assets into the Company**
 - Description of assets
 - License vs. sale
- (f) Determine capitalization**
 - Determine number of shares to be authorized -- consider future needs of share, including for financings, acquisitions, employee incentives
 - Construct a pro-forma capitalization, showing how the stock is to be allocated among founders, etc. (based on 1 above)
 - Consider the method of granting equity to employees - Restricted Stock or stock options (if options, stock plan required)
- (g) Determine officers and directors and other mechanics**
- (h) Issue initial shares of stock**
 - Issue certificates
 - NOTE: File Section 83(b) Elections within 30 days of issuance, if shares are subject to vesting
- (i) Obtain a Federal tax ID number**

3. EXECUTE STOCKHOLDER AGREEMENT (See 1 above which should be basis for decisions on the following)

(a) Consider such terms as:

Vesting relating to term of service
Right of first refusal in favor of the company and/or other stockholders.
Restrictions on the transfer of stock to competitors.
Voting for specified directors.
Deadlock provisions

4. POST-FORMATION ACTIVITIES:

(a) Town or local filings

Business license, if required
If planning to do business under a trade name (other than "Environmental Technologies International, Inc."), file a d/b/a certificate in the office of the clerk of the town where the company has an office.

(b) State Tax/Employment filings:

Obtain forms from each applicable state/foreign country tax department, for registering for withholding taxes, and for other taxes (such as the sales tax) to which the business may be subject.

(c) Doing business in other states

If planning to do business in another state (beside Delaware), it may be necessary to qualify in that state also by making a filing with the appropriate state authority.

(d) Federal filings

BEA filing may be required if 10% or more of the voting stock of the company will be owned by one or more persons/entities residing outside of the U.S.

5. BUSINESS ARRANGEMENTS

(a) Open corporate bank account(s).

(b) Arrange for payroll services or similar arrangement for payment of payroll and payroll taxes

(c) Insurance

Discuss with insurance agent the needs of the company for casualty, liability and workmen's compensation insurance.

(d) Employee Benefits

Discuss with employee benefit professionals the needs of the company for medical, life, disability and other coverage plans

(e) Transfer of Business Property, etc.

Be sure that all appropriate business property, leases, licenses, permits, and the like have been transferred to the company and that transfers have been properly documented.

(f) Accountant

Engage accountant for preparation of financial statements and tax returns, if applicable

(g) Corporate Records

Create physical/electronic corporate records in an organized and secure manner, including employee files, originals of material contracts

6. INTELLECTUAL PROPERTY PROTECTION

(a) Implement trade secret protection program, including:

Execute Invention, Confidentiality and Noncompete Agreement with all employees
Physically protect access to source code
Have available form non-disclosure agreement ("NDA") for use whenever product or plans are discussed

(b) Consider need for trademark searches/filings

(c) Consider need for patent protection

Review plans for patent possibilities (note that NDA is critical for all disclosures to third parties until US patent is filed, to protect foreign patent rights)

Do not disclose or demonstrate product (except under non-disclosure agreement) or foreign patent rights may be lost

7. ANNUAL REQUIREMENTS

(a) Annual Meeting

Hold annual Stockholder meeting to re-elect directors

(b) Annual Filings

File Delaware Corporation Franchise Report which is due with the Delaware Secretary of State by March 1.

File a Foreign Corporation Annual Report with the applicable states and foreign jurisdictions within applicable time periods.