



## How to Draft an LLC Operating Agreement for Your International Business Venture

**A**t its annual World Economic Outlook press conference recently, the International Monetary Fund announced that global economic growth was **expected to increase** for the first time in several years. This great news has sparked a flurry of activity in the launching of new international business ventures.

Perhaps the most common form of new business that I'm seeing is the **Limit Liability Company** (LLC). While it's a great choice for many, I'm getting lots of questions about the Operating Agreement--the blueprint of an LLC.

### Operating Agreement

While the term "Operating Agreement" is familiar to many entrepreneurs, it is rarely understood. In its purest form, it is a partnership agreement that can be specifically tailored to suit the needs of a wide variety of **partnership structures**. And because no two situations are alike, the Operating agreement provides a high level of flexibility in structuring a workable management framework.

Please note that many States require that members enter into an **Operating Agreement** before an LLC is legally valid.

Although an operating agreement may be either oral or in writing in many states, I suggest you have a written operating agreement. If you don't create a written operating agreement, the LLC laws of your state will govern your LLC.

### Key Provisions

An effective LLC operating agreement addresses the following points:

- **Purpose.** Most startups have broad statements as to the LLC's purpose. Usually, an Operating Agreement states that the LLC can engage in any "lawful" purpose. However,

there are times when specificity is called for. For example, if the LLC is being used as a fundraising vehicle for the development of one real estate property, that may be specified in the Operating Agreement. Hence, in particular cases, it may make sense to limit the activities in which the LLC is permitted to engage.

- **Capital Contributions.** Describes the capital contributions that the members have made in the LLC. Most LLCs accomplish this by including an “Exhibit” at the end of the Operating Agreement. The Exhibit breaks down the member names, the initial amount of capital they invested into the LLC, and the percentage interest each member actually owns in the LLC. Unlike a corporation that often has share certificates evidencing ownership, LLC’s can and often do rely on the schedule in the Operating Agreement to set forth the relative interests of the members.
- **Allocation and Distributions of Profits and Losses.** Unlike a corporation, the equity a member has in the LLC and the amount of profits or losses that member is entitled to receive can be different. In contrast, in a corporation, a 50% shareholder would usually receive 50% of the profits of the corporation automatically. However, in an LLC, a member with a 50% Membership Interest could be configured to receive only 10% of the LLC’s profits/losses, which is something that can be specified and agreed to in the Operating Agreement.
- **Admission of New Members; Transfer of Membership.** One of the core functions of an Operating Agreement is to set out the mechanics and restrictions for the transfer of equity members ownership interests. One of the common approaches is the so called “right of first refusal” which grants the LLC and other members the opportunity to match any offer obtained from any third party by a member wishing to sell his or her.
- **Dissolution of the LLC.** Few want to address the possibility of having to “dissolve”. However, relying on State law alone can be disastrous. Rather, the partners should make sure the Operating Agreement sets forth the scenarios in which the LLC can or should be dissolved and the timing and mechanism to do so. Often the two major triggers are the unanimous consent of the Members or by application to a court for a judicial decree. However, many ventures have unique needs that may demand a different approach, which should also be dictated in the Operating Agreement.

## Conclusion

An Operating Agreement is an essential LLC component. In the short term, developing one will assist the partners in identifying and articulating their particular concerns. In the long term, an Operating Agreement will be the reference guide for many if not all of the scenarios that may impact the partners’ relationship.