

MAXIMIZING OPPORTUNITIES: A LEGAL PERSPECTIVE

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**Chamber of Commerce Southern New Jersey
2017 Hispanic Business Forum**





Legal Audit/Counseling

- Assist company with operating more profitably by evaluating its legal health, identifying risks, and minimizing the possibility of legal issues disrupting its progress.
- Prepare the business to meet its goals and to take advantage of business opportunities, such as financing, expansion, and tax benefits.



Business Plans

- Goal is to assist company with avoiding crucial mistakes while working towards achieving its objectives in an appropriate and advantageous manner.
- Committing a plan to writing forces business owners to establish goals, confront weaknesses, and might make the difference between success and failure.



Risk of Not Planning

- Non-compliance with laws and regulations can result in fines, penalties, and even closure of the business.
- Failure to abide by corporate formalities or commingling funds can lead to the loss of the limited liability protection.
- Failure to implement proper employment policies may result in liability.



Risk of Not Planning

- Failure to protect intellectual property, such as trademarks and domain names, creative works, patents, trade secrets and other proprietary and confidential information.
- Failure to ensure compliance with representations and warranties made in contracts.
- Disputes and litigation among co-owners.
- Such failures can be catastrophic to business.



Form of Organization and Governance

- Review form or organization, i.e., corporation, limited liability company.
- Review Corporate Books and Records, i.e., Articles of Incorporation, Bylaws, Shareholders Agreement, Operating Agreement, Minutes, Accounts, Corporate Reports, Written Consents, Stock Ledger.
- Review government filings.
- Review insurance policies.



Contracts

- Are all important agreements in writing?
- Are there good form contracts being utilized with appropriate standard terms?
- Do the contracts provide for alternative dispute resolution?
- Do the contracts permit injunctive relief?
- Is the company abiding by the terms?
- Are contracts executed in company's name?



Employee Matters

- Review employee handbook and policies, i.e., non-discrimination, sexual harassment.
- Review hiring and firing procedures.
- Ensure compliance with statutory and case law changes.
- Ensure proper designation of personnel and discuss alternatives for hiring.
- Review employment agreements.



Intellectual Property

- Review nondisclosure agreements.
- Ensure that trademarks/service marks have been obtained to protect names and logos.
- Ensure patents and copyrights have been applied for inventions and written materials.
- Ensure steps are taken to maintain trade secrets.
- Ensure company is not infringing on IP and all needed licenses have been obtained.



Further Review

- Website/Internet Issues – copyright, graphics.
- Applicability of Laws – Environmental, Consumer Protection, Securities, ERISA.
- Record keeping – employee records, income and expenses, clients records, cyber security.
- Personal Matters – estate planning, business succession, insurance, avoidance of personal liability.



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