

# **Business & Legal Checklists In Starting A New Business**

## **Introduction**

Starting a business or enterprise in a depressed economy can be overwhelmingly discouraging if the passion and conviction are not harmonised and properly kept in focus. Wealth creation addicts agree that the ownership of one's business is essential to economic independence and possibly, to prosperity if the opportunities of the business are properly harnessed.

Also very important when considering starting a business are informed business and legal factors, which influence a successful business. I have tried to provide you with a working checklist on business and legal factors to consider when electing to start a business and seek professional advice for this process.

## **Business Checklist**

- Have a Business Plan. It serves as a road map/guide that you should always refer to from day number one of the business, to its day to day operations, month to month and year to year. This is to ensure that your business is on track or requires realignment for any reason.
- What are the products and or services that you intend to provide when you start your business? It is key that you enter a business that you have a flair and passion for and not a business that everybody else is involved in. This is because in lean times, your passion will sustain the business.
- What are the strengths and weakness of the business that you intend to undertake? The answer to this would be provided from your market survey and research vis-à-vis your core competence. These must be reflected in your Business Plan including how the weaknesses can be overcome and the strengths maximised.
- Your business plan must be realistic. Most Business Plans are too flowery and rosy. No accommodation is made for issues like changes in government policy towards that product or service you are in business for, market changes, attitudes of silent cartels, late collection of payments from customers, etc. An example of a change is the Nigerian government banning the importation into Nigeria of finished textile materials after granting permission for a franchise to be established in Nigeria by a popular clothing chain.
- What is the start-up cost of the business? Where are you getting the initial financing to

start the business? From your savings, sale of some of your easily disposable assets, family members, friends, bank loan or others?

- It is advised that if you are starting any business, you should have a separate bank account for that business. In addition, the business should have trading books separate from your personal account and books. This will assist you to know the state of health of your business.
- Is location very important to the success of your business? In some businesses, you will always have to go to the customers in their offices. In others, the customers have to come to you; in the latter case, the quality of your office must be good and locating it very convenient to the customers. Remember that you are strictly in business for the benefit of customer and not just for your passion.
- Do you require any form of permit(s) or licenses for this business and if so from whom? Telephone lines, possible a computer with a printer, etc will be required. Where will you obtain them and how?
- Get appropriate business cards, stationeries and electronic mail address, prepared; you can also print the stationeries yourself. I once choose a home electrician over his competitor because he had a clean business card with an address and a mobile number.
- What is the legal structure of this new business? Let us go to the next Checklist.

### **Legal Checklist on Starting a New Business**

A successful enterprise must expend a lot of time on business research and development. This is because a new business is very similar to a sports athlete who will only excel on competition day -- profit sharing day for the businessperson -- if he, she or they train for weeks and months before the event.

In deciding whether you require additional training or professional qualifications before starting your business, you must also keep a close watch on the type of legal structure that will best suit and advance your business. Lawyers 'feast' on businesses that do not do their due diligence -- legal and business -- before opening shop.

In most common Law countries, there are three main types of businesses. They are:

- Sole Proprietorship, which is commonly called the one-man business.
- Partnerships between two or more people provided they are not more than 20 (Solicitors

and Accounting practices are exempted).

- Limited liability companies and other related corporations, which may be private or publicly quoted.

I will share with you under the following sub-heads the advantages and disadvantages of each type of business to assist you further.

### **Liability of members of different business models**

The primary advantage of a Sole Proprietorship is that the sole owner takes all the profits and does not share it with anyone unless he chooses to. The primary disadvantage is similarly that he bears all the losses, in case of one, as there is no shield for him. In contrast, a business with partners shares the profits and loses together.

In the case of a limited liability company, the company is separate and distinct from its Shareholders. The liability of each Shareholder is limited to the value of the shares allocated to him/her/it and for which no payment is received by the company before the loss arises and the company is unable to pay it or them.

### **Number of Members**

Sole Proprietorship consists of only one person. A partnership on the other hand is only permitted to have a minimum of two partners and a maximum of 20 members unless its business is that of Legal or Accountancy professional practice. A private limited liability company is allowed to have a minimum of two Shareholders and not more than 50 Shareholders whilst a Public Limited Liability Company has unlimited number of Shareholders but also a minimum of two Shareholders.

The advantage in the number of members that a company has includes the sharing of profits, losses, business experiences and expertise, contacts, etc.

### **Borrowing Powers**

The borrowing power of a Sole Proprietor is usually limited to the credit worthiness of the Sole Proprietor. Also, the risk level is greater for the Lender as there is always the concern that should the Sole Proprietor develop a ailment as small as a cold, the credit facility may be in danger. This is in marked contrast with other forms of business mentioned above.

## **Registration Formalities & Costs**

The registration formalities for a Sole Proprietorship and Partnerships are much simpler. Key information that your Solicitor will request for from you include (1) the proposed name for the enterprise. (2) The nature/objects of the new business. (3) The names, addresses and passport pictures of the proposed Proprietor(s). The time line for registration can be as little as one week and at nominal costs. Also, based on the present procedure, you can elect not to retain a private Solicitor and undertake the registration yourself.

In contrast, the registration of a limited liability company is more cumbersome and expensive. A limited liability company must have a minimum share capital of N 10,000 (Ten Thousand Naira) for a private company and N 500,000 (Five Hundred Thousand Naira) for a public limited liability company. Where the company intends to have some foreign participation, it is advised that its start-up share capital should be between N 2Million and N 5Million, as this will determine how many expatriate quota positions will be allowed to the company.

The timeline for commencing registration and obtaining a certificate of registration is an average of three to five weeks if nothing goes wrong at the Corporate Affairs Commission Registry.

A Checklist you should have answers for before instructing a Solicitor includes (A) the proposed name of the Company. (B) The kind of enterprises that the proposed business will undertake. (C) The share capital, Directors, Shareholders, registered office of the company, etc. Note that the name of an enterprise is very important as it indicates its identity and niche. A Company must also not have a name that is already in use by another company.

The average costs of registering a limited liability company excluding a Solicitor's professional fees include (i) stamp duties of 1.25% of the nominal share capital of the company to be paid to the Federal Board of Inland Revenue (FBIR). (ii) Filing Fees is 0.5% of the nominal share capital of the proposed company payable to the Corporate Affairs Commission. (iii) Certified true copies costs of about N 10,500 for the particulars of Directors, Shareholders and the company's Memorandum and Articles of Association.

## **Capacity To Sue & Be Sued**

A limited liability company can only be sued or sue in its own name. The Shareholders are not directly placed on the firing line of a litigation. In contrast, members of a partnership or a Sole

Proprietor usually bear direct liability and responsibility for any litigation that is commenced against them.

## **Tax Implications**

In also deciding on the type of business medium you want to start with, it is recommended that you pay attention to the tax obligations of each kind of business. For example, the tax liability of a Sole Proprietor or Partnership is direct to the Owners and the tax allowances/savings available to them are nominal. On a graduated basis, a Sole Proprietor or Partner's tax liability can amount to a graduated percentage of 25% of profits Whilst a limited liability company though pays an average of about 32% in Companies Income Tax, Education Tax, etc the allowances for the company are more as is the management of the tax liability. Consult a tax consultant for more advice on this.

## **Reasons Why Start-Up Businesses Fail**

In addition to not complying with some of the above matters, some businesses fail because of:

- Incompetent management often in owner-managed enterprises where the owner lacks the required skills.
- Lack of adequate working capital.
- Costs overruns.
- Change in government policy and sometime, the target market is not properly identified.
- Adverse competition from existing business

In conclusion, I encourage you not to give up. Take encouragement from the words of the famous American basketball player, Michael Jordan, who said that he would never regret failing but would always regret not trying where he fails to try.

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