

LEGAL AUDIT CHECKLIST

CORPORATE/LLC ORGANIZATION

- Are the Charter, Bylaws (Operating Agreement) in the Minute Book?
- Is the Company keeping minutes of shareholder/member and director meetings?
- Were the assets appropriately contributed to the Company?
- Is the Company filing annual reports with the State of Tennessee?
- Has the Company received consideration for each share of stock/membership interest issued?
- Are they qualified in all foreign jurisdictions in which they do business?

ALTER EGO/PIERCING THE CORPORATE VEIL

- Are they commingling funds? Diverting company assets for personal use?
- Are they failing to maintain minutes and records of ownership, transfer?
- Are they diverting company assets to the detriment of creditors?
- Are they failing to maintain arm's length relationships between related entities?
- Are they treating multiple entities as 1?

FINANCIAL

- What are the Company's financial needs for the future? Is that structure in place? Does the Company need help making those connections?
- What are the Company's financial obligations to lenders? Do they have the documentation readily available?
- Is management aware of the representations and warranties as well as the scope of any restrictive covenants? Are there any issues? What are the consequences of a breach?

- Are all assets of the Company pledged as collateral? Are there duplicate pledges? If so, is there a subordination agreement (i.e., is everything transparent to the Lenders)?

REAL PROPERTY

- Do they own or lease real property? Any restrictive covenants or lease obligations that we should be concerned about?
- Are there restrictions on encumbrances that need to be reviewed to ensure conformity?
- Do they maintain the required insurance and are they providing certificates of insurance in a timely manner?

IP PROTECTIONS

- Have trademark registrations been obtained for company products and services?
- Is the "TM" or "SM" notice displayed on all company literature?
- Have employees/contractors/consultants signed appropriate Confidential and Invention Assignment Agreements?
- Does the Company infringe on the IP rights of others?
- Are all needed licenses obtained? Is the Company in compliance with the terms of the licenses?

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EMPLOYMENT

- Does the Company have an at-will employment policy in place?
- Do interviewers of prospective employees know what they can and can't ask?
- Is each employee required to fill out a comprehensive employment application?
- Are job offer letters carefully crafted?
- Does the Company maintain all the needed forms from employees (W-2, I-9 etc)?
- Is there a Non-Discrimination Policy in place? Sexual Harassment Policy?
- Is there a Social Media Policy in effect? Email and Internet use Policy?
- Do they need a BYOD Policy?
- Do Management contracts exist? If so, are the terms clear? Is "cause" sufficiently described?
- Are there any Consulting Agreements? If so, do they have any unusual provisions or exclusivity obligations that could be problematic?
- Do you need to have employees sign Non-Competition and Non-Disclosure Agreements? Are those agreements narrowly tailored to fit your specific need?

OTHER MATERIAL AGREEMENTS (Key Client or Vendor)

- How critical is this vendor or client?
- What are the payment terms? Are bills paid in conformity?
- What constitutes default? What are the termination rights? How much notice is required?
- Does the Company have control provisions in place in to access key needs? i.e., ownership of dyes? escrow of mission critical software code? disentanglement processes?

- Are there soft escalation provisions? i.e, within company executives and then mediation before arbitration or litigation?
- Are these contracts assignable in the event of a sale?

SUCCESSION AND EXIT STRATEGY PLANNING

- Is there a shareholder or buy-sell agreement? (may be in an operating agreement) If so, does it include a fair method of valuation?
- Is there a method of funding the buyout (i.e., insurance policy etc)?
- Do the principal owners have an estate plan (will, DPOA, etc) that allow for smooth transition of ownership or a reasonable method of liquidation, and permit business continuity?
- Does the Company documentation permit someone the principal owner(s) trust to take over in the event of a death or disability?
- Has the succession plan been communicated to all appropriate stakeholders?
- Are there business loans that have been personally guaranteed by the stakeholders or loans that may be over-secured?

Wood Stabell Law Group is corporate/transactional law firm with extensive experience closing complex negotiations, drafting contracts for intricate business relationships in a challenging business environment, and providing practical and strategic advice to c-suite partners. We deliver results and improve your bottom line. We specialize in helping high growth companies achieve their goals while protecting stakeholder value.

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