

# A Checklist for Business Owners

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Business owners and operators are often so preoccupied with the day-to-day operations of the enterprise that they overlook legal and practical details that may be of immediate or long-term importance.

As a “reminder,” here’s a Checklist for business owners and operators, highlighting issues common to nearly all businesses. Consult with your attorneys and other professional advisors to ensure your business is appropriately covered.



## General Corporate / Corporate Housekeeping:

- Registration to conduct business in various states or municipalities (e.g. Chicago)
- Minute Book update. Have you documented all board minutes/meetings/written consents?
- Board Schedule and Board Goals for coming year. Be organized and have goals for both the company and the board for the coming year.
- Any review/updating of standard contracts. (e.g. licenses, SaaS, services agreements, etc.)
- Officer/Director Indemnification Agreement for any new officers and directors.
- Hold annual stockholders meeting, if applicable.
- Make sure your contracts are all set up for an M&A deal and organized in a central electronic storage system. Be aware of those that require consent in a merger, sale or transaction.
- Review Charter, by-laws, cap table and shareholder agreements to ensure they are up to date.
- If any company activities, investors or counterparties are foreign, consider additional review by a U.S. and foreign advisor.



## Intellectual Property

- Have all employees/consultants/etc executed NDAs, IP assignment, non-solicitation, non-compete agreements? Has anyone excluded IP from their terms of engagement?
- Conduct an IP inventory to determine if you should protect anything.
- Trademark/Service Mark – Verify who holds rights to these and transfer to company.
- Copyright
- Patent
- Trade Secrets
- If you have a trademark/service mark are you using TM or ®? Should a D/B/A be filed?
- Inventory and confirm ownership of all URLs.



## **Employment Matters & Incentive Compensation:**

- Confirm all employee documents are complete and in a secure file.
- Updated Employee Handbook.
- Updated Non-Disclosure/Non-Compete/Non-Solicitation/IP Assignment/Employment/Consulting Agreements and/or offer letter for at-will employees and contractors/advisors. Ensure customized for each state in which you have employees or contractors/advisors and update to reflect recent changes to applicable laws.
- Current posters posted for State, Federal and Local laws (including Chicago PTO compliance).
- Update and review Benefits Plans.
- Update and review Stock Incentive Plan/Appreciation Rights Plans.
- Verify compliance with Section 409A. Verify all options are dated and documented correctly. Make sure 409A valuation is updated and current.
- Have all option grants been memorialized in written minutes of the board or compensation committee? Written documentation is critical.
- Any employees located out of state? If so, need to verify no special requirements in each state and look at insurance and workman's compensation requirements (e.g. New York).
- Have you looked at independent contractor vs. employee categorization?
- Review workforce composition/payroll for minimum wage and employee classification compliance.
- Have founder vesting agreements been executed? If desired, have all founders filed 83(b) elections, if desired.
- Adoption of FCPA, anti-harassment and discrimination policies.
- Perform annual employee anti-harassment and related training.
- Be aware of remote employees and the employment law and tax issues associated with a remote workforce.
- Think about COVID and other related policies.



## **Cyber PII & Regulatory:**

- Review of Terms of Use, Privacy Policy and other disclaimers on websites.
- Review PII, credit card information, cyber issues, cyber breach, biometric e-mail/text and other electronic protections.
- If you have sold securities, be sure you have complied with applicable Federal and State laws (including Form D and blue sky notice filings, as necessary).
- Any other regulatory issues? (FTC, SEC, FDA, FINRA, etc.)
- Review contracts to assess cyber breach liability, indemnification and related risks.



## **Taxes / Licenses:**

- Payment of corporate filing fees and franchise taxes.
- Sales & Use taxes
- City of Chicago Head Tax and Cloud Tax
- Other Taxes
- City and Other Local Licenses – City of Chicago license.
- Qualified to do business in relevant states.
- If you are doing any business internationally, even via the Internet, analyze VAT and other taxes.
- Please discuss all of these with your accountant/tax preparer.
- Review activities in relation to QSBS/1202 stock, if applicable.



### **Accounting Processes & Controls:**

- Audited financials or not? Review compliance with GAAP
- Documentation and controls
- Segmentation of work processes
- Checks and balances
- Disaster plan and recovery plans



### **Insurance:**

- D&O – Discuss this with counsel at least 2-3 months before renewal. D&O coverage is very negotiable, but you cannot do it at the last minute.
- EPL
- General Liability
- Health/Dental/Etc.
- Cyber Liability
- Advertisement/Copyright
- Any potential insurance claims you should have reported? Typically you need to report within 60 days of learning about a potential claim. Make sure to discuss these with counsel before your broker to ensure that you can preserve attorney-client privilege.
- Have you looked at other brokers to make sure you are getting the best possible service and products?
- Update policies to reflect recent changes to corporate structure, acquisitions, changes in directors/officers, etc.



### **Estate Planning / Wealth Management:**

- Have you thought about transferring equity at a low-cost basis for future generations/estate planning?
- Other succession planning.

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For more information about how Neal Gerber Eisenberg can serve your business needs, contact Michael Gray at 312.269.8086 or [mgray@nge.com](mailto:mgray@nge.com).