



## New Year's resolutions for your small business

by Kimi N. Murakami

As the year begins it's a good time to make a list of New Year's resolutions to make sure the corporate matters and affairs of your small business are being reviewed, updated, and addressed as your company heads into 2014. Use the following list of items to begin your to-do list of corporate issues to be resolved this year.

### Entity Formation Basics

Your company should have a corporate record or minute book that contains the articles of incorporation or articles of formation for a limited liability company (LLC) that were filed in the state where the company was incorporated or formed; the bylaws of the corporation (or an operating agreement if an LLC), stock certificates and the stock ledger, and the minutes from the meetings of the board of directors and the shareholders (or the members if an LLC). As you begin the new year, ask the following:

--Are the articles of incorporation and the bylaws up to date or do they need to be amended to reflect changes in corporate governance matters?

--Has the company held its annual shareholders and directors meetings approving and memorializing the corporate actions taken this past year?

--Have all of the directors and officers been duly appointed for the new year?

--Have all of the stock certificates been properly issued to the shareholders and recorded in the company's stock ledger establishing a clear chain of title of ownership?

--Have the annual franchise taxes or fees been paid in the state of incorporation or have you made note when they will be due this year?

### Registrations and Permits

As your company has grown and business expanded, have your corporate registrations, licenses and permits been updated to keep up with such changes? You should

confirm the following:

--Is the company conducting business in any states in which it is not registered to do business as a foreign corporation?

--Has the company registered all trade names or DBA's in the states that require such registration?

--Does the company have a current registered agent in each state in which it is authorized to transact business?

--Are all permits, licenses, and similar authorizations from governmental agencies necessary for the lawful conduct of business renewed and up to date?

### Employee Matters

Taking care of the talent in your company is important all year long but right now ask the following:

--Does the company have a stock bonus plan? If so, does it provide the incentives the company needs to build success in the new year?

--Has the company considered equity-linked alternatives to issuing actual ownership such as phantom stock plans or stock appreciation rights plans?

--Have all employee benefits, handbook, policies, codes of conduct been updated for the new year?

### Intellectual Property

In addition to protecting the company's "human" capital, the intangible assets such as methods, proprietary information or "secret sauce" must be protected, so check on the following:

--Are employees adequately bound by restrictive covenants such as confidentiality agreements, non-competition and non-solicitation provisions?

--Has the company taken actions needed to protect its intellectual property such as:

1. Using a proper copyright notice on its website?

2. Limiting dissemination of confidential information and using written agreements where feasible to protect trade secrets and other proprietary information and know-how?

3. Using a "TM" symbol for the

company's trademarks and/or filing a trademark registration application?

### Other Business Matters

--Have all taxes been properly paid to federal, state, and local authorities?

--Does the company have a clear understanding of what creditors have liens on its assets and what restrictions the company is subject to when trying to qualify for additional credit facilities?

--Has the company checked to make sure that there are no judgment liens against it?

--Does the company have a clear understanding of all its real property owned or leased, and are all title records, lease agreements, and amendments in order?

--Is the company aware of and/or addressing any known environmental, health or workplace safety issues?

--Are all insurance policies up to date, premiums paid, and documents in order?

Using the foregoing checklist is a quick way to ensure that the company's corporate records and related matters are organized, accurate, and in good order as you begin 2014. Taking this prudent course will help your small business to be better prepared, for example, to get new financing from a bank, to face a challenge to your company's status as a small business or to showcase how well your small business is operated should a prospective buyer come knocking on your door with an offer to purchase your company this year. Corporate housekeeping as guided by experienced counsel is a sound practice for any small business to meet the challenges the new year may bring.

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