



## EMERGING COMPANY CHECKLIST

### Formation

- A. Choice of Entity
  - 1. C-Corporation
  - 2. S-Corporation
  - 3. Limited Liability Company
  - 4. Partnership
- B. Choice of Jurisdiction of Incorporation/Formation
  - 1. Delaware
  - 2. State in which the operations of the Company will be headquartered.
  - 3. Offshore
- C. Name Selection and Protection
  - 1. Confirm availability of corporate name and reserve with Secretary of State of jurisdiction of incorporation and all states in which the company will conduct business.
  - 2. Trademark/Tradenname availability
    - a. Quick search online with <http://www.uspto.gov>
    - b. In-depth search with Thompson & Thompson (3 to 5 days at approx. \$400)
  - 3. Internet Domain Name
    - a. Search on-line Domain Names with <http://www.whois.org>
    - b. Register Domain Names with on-line <http://www.register.com> (also domain names with different extensions (.net, .bus, etc.), misspelling and derogatory terms).
- D. Incorporation/Formation
  - 1. Corporation
    - a. Certificate of Incorporation
      - (i) Capitalization
      - (ii) “*Blank Check*” Preferred provision
      - (iii) Indemnification
    - b. Action by Incorporator
      - (i) Approval of Bylaws
      - (ii) Appoint Directors
      - (iii) Resignation of Incorporator
    - c. Bylaws
      - (i) Meeting of Stockholders
      - (ii) Election of Directors
      - (iii) Election of Officers
      - (iv) Types of stock issued
      - (v) Notices to parties
      - (vi) Indemnification provisions
      - (vii) Amendments
      - (viii) Miscellaneous corporate/general provisions



- d. Organizational Minutes of Board of Directors (Initial Board of Directors)
    - (i) Directors and Officers
    - (ii) Bank Accounts
    - (iii) Registered Agent
    - (iv) Acceptance of Subscriptions
    - (v) Committees
    - (vi) Fiscal year
    - (vii) Establish Policies (e.g., sexual harassment, securities trading, etc.)
  - e. Initial Shareholders Consent
  - f. Obtain taxpayer identification number (IRS form SS-4)
  - g. Subchapter S Election (if applicable)
  - h. Qualification of Foreign Corporation (required if the company is “doing business” in states other than the state of incorporation)
  - i. Stock Transfer Ledger
  - j. Form of Stock Certificate
2. Limited Liability Company
- a. Certificate of Formation
    - (i) Publication requirement (applicable in New York)
  - b. Operating Agreement
    - (i) Capital contribution schedule
3. Partnership (General Partnership)
- a. Certificate of Limited Partnership (No state filing required for general partnership.)
  - b. Partnership Agreement (oral or written)
  - c. Qualification of Foreign LLC (required if the company is “doing business” in states other than the state of formation)
    - (i) Publication requirement for foreign LLC doing business in New York.
- E. Agreements with Employers
- 1. At-Will or Term of Employment
  - 2. Expenses Reimbursement Policy
  - 3. Nondisclosure provisions
  - 4. Intellectual Property ownership
  - 5. Employee nonsolicitation
  - 6. Noncompetition provisions