

# REPRESENTING ENTREPRENEURS AND SMALL BUSINESSES IN OHIO

A Getaway C.L.E. Ltd. Seminar  
Presented by John (Hui) Li, Esq.  
JHL Legal LLC  
3209 Carrier Avenue  
Dayton, Ohio 45429

---

# TOPICS

---

- ✕ Business Start-up
- ✕ LLC Operating Agreements
- ✕ Employment Issues
- ✕ Intellectual Property
- ✕ Exit Strategies

# BUSINESS START-UP

---

## ✕ Choice of Entities

- + Partnerships

- + Corporations

- + Limited Liability Companies (LLC)

## ✕ Formation

## ✕ Internal Governance



# CHOICE OF ENTITIES

---

## ✖ Partnerships

- + General Partnerships (ORC 1776)
- + Limited Partnerships (ORC 1782)
- + Limited Liability Partnerships (ORC 1782.64)

## ✖ Corporations

- + C-Corp (ORC 1701)
- + S-Corp (Internal Revenue Code Subchapter S)

## ✖ Limited Liability Companies (ORC 1705)

# CHOICE OF ENTITIES

---

- ✖ State Law Considerations
  - + Structure
  - + Formalities
  - + Liability
  - + Management Rights
- ✖ Tax Considerations
- ✖ Other Considerations

# CHOICE OF ENTITIES

---

## ✕ Partnerships

### + General Partnership

- ✕ No limitation of liability
- ✕ All partners are jointly and severally liable

### + Limited Partnerships

- ✕ At least one General Partner
- ✕ Limited Partner cannot have control or manager role

### + LP converted to LLP under ORC 1782.64

- ✕ All partners are limited partners, thus protected from personal liability except for personal conduct



# CHOICE OF ENTITIES

---

## ✕ Corporations

- + Formed by filing articles of incorporation
- + Must maintain corporate formalities
  - ✕ Director (minimum one), annual meetings, minutes, stock records, etc.
  - ✕ May dispense with some formalities via close corporation agreement ORC 1701.591
- + Taxed at corporate level
  - ✕ “Double taxation”

# CHOICE OF ENTITIES

---

## ✗ Corporations (cont'd)

### + S-Corp (IRC Subchapter S)

#### ✗ Disadvantages

- ✗ Must be domestic corp.
- ✗ No foreign shareholders
- ✗ Only US citizens, resident aliens, some trust and estates
- ✗ One class of stock only
- ✗ Limited to 100 Shareholders
- ✗ Strict profit/loss allocation
- ✗ Corporate formalities
- ✗ Ineligible for certain corp. (financial, insurance, domestic international sales corp.)

#### ✗ Advantages

- ✗ Pass-through entity (no “double taxation”)
- ✗ Salary and dividend allowed (reasonableness standard)
- ✗ Full limitation of liability for all shareholders
- ✗ Ease of conversion to C-Corp.



# CHOICE OF ENTITIES

---

## ✕ Limited Liability Companies

### + Disadvantages

- ✕ More confusing at beginning
- ✕ Less standardization
- ✕ Possibly more taxes depending on election
- ✕ Limited life by default

### + Advantages

- ✕ Flexible governance, ownerships, tax treatment
- ✕ Full limitation of liability for all members
- ✕ No formalities

# CHOICE OF ENTITIES

---

## ✕ Formation

### + Partnerships

- ✕ General Partnership: None
- ✕ Limited Partnership: File Certificate of Limited Partnership
- ✕ Limited Liability Partnership: File a Statement of Qualification

### + Corporations

- ✕ Articles of Incorporation

### + Limited Liability Companies

- ✕ Articles of Organization

# CHOICE OF ENTITIES

---

## ✕ How do you pick?

- + Help your client by providing information to make an informed decision
- + Take into account other factors
  - ✕ Perception
  - ✕ Investment issues
    - ★ Angel funds, venture capital, private equity all prefer Delaware C-Corp.
- + Pick LLC if all else fails!



# INTERNAL GOVERNANCE

---

- ✕ Partnerships:

- + Partnership Agreements

- ✕ Corporations:

- + Code of Regulations
  - + Bylaws
  - + Close Corporation Agreement

- ✕ Limited Liability Companies:

- + Operating Agreement

# LLC OPERATING AGREEMENT

---

✕ Why is everyone going to Delaware?

# LLC OPERATING AGREEMENT

- ✗ Compare Ohio to Delaware (example)
- ✗ Delaware:
  - + Section 18-1101(c) states, in part, operating agreement may expand, restrict or eliminate all duties any member or manager may have to company or other member/managers, including fiduciary duties.
- ✗ Ohio:
  - + Operating agreement may not eliminate such duties, but can “prescribe the standards by which the duty is to be measured.”



# LLC OPERATING AGREEMENT

---

- ✖ Why put operating agreement in writing?
  - + Avoid uncertainty and inefficiency
  - + Avoid “default” provisions under ORC 1705
  - + Requirements of third parties

# LLC OPERATING AGREEMENT

## ✕ Key Provisions

### + Contribution of Members

- ✕ Many default provisions rely on initial contribution record

### + Membership Interest Issues

- ✕ Avoid 50/50; Deadlock Process
- ✕ Voting Thresholds

### + Withdrawal Rights

### + Allocation of Profits/Losses and Distributions

### + Management Powers

### + Indemnification of Members and Managers

- ✕ Default provision: LLC “may” indemnify

### + Confidentiality of Information

- ✕ ORC 1705.081 – cannot unreasonably restrict right of access; but ORC 1705.22 allows for right to keep certain information confidential

### + Competition with LLC

# EMPLOYMENT ISSUES

---

## ✕ Basic Employment Law

- + Requirement for record keeping, e.g., Form I-9 and employment files
- + Employment at-will vs. contractors
- + Minimum Wage Laws
- + Anti-discrimination laws
- + Unemployment Insurance
- + Workers Compensation



# EMPLOYMENT ISSUES

---

## ✕ Minority Shareholder Rights in Ohio

+ Crosby v. Beam, 47 Ohio St. 3d 105 (1989)

✕ Close corporation defined by major attributes

- ✕ Few stockholders, not publicly traded
- ✕ Operated like a partnership
- ✕ Shareholders are active participants/employees
- ✕ Majority exercises control over company
- ✕ Susceptible to “squeeze out” tactics against minority SHs

# EMPLOYMENT ISSUES

---

- ✗ Most Prevalent “Squeeze Out” Tactic
  - + Loss of employment or wages
- ✗ Courts Apply Heightened Duty
  - + Utmost good faith and loyalty more like partnership

# INTELLECTUAL PROPERTY ISSUES

## ✖ Who Should Own IP?

- + Entrepreneurs are often tempted to put everything under personal ownership

## ✖ Who Owns IP Developed By Company?

- + Written Agreement Needed!
- + Work Made For Hire Doctrine

## ✖ Trade Secrets

- + Protection/Security Needed
- + Keep It Secret!



# EXIT STRATEGIES

---

## ✕ Buy-Sell Agreement

### + Set Price

- ✕ Reviewed regularly/annually
- ✕ Agreed upon by shareholders/members

### + Buy-Sell Offer

- ✕ One party initiates by “offering” a price
- ✕ Other party/parties decide to buy or sell at that price

### + Arm's Length Transaction

- ✕ Third party good faith buyer
- ✕ Right of first refusal to other shareholders/members

# QUESTIONS?

---

Thanks for your time and attention!

John (Hui) Li

JLI@JHLLEGAL.COM