

Maury and Sons Transition to a Limited Liability Company

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Business ownership is a balance between the rewards of success and the risk of failure.

Maury and Sons is an example of a success in the small business ownership. Maury and Sons is an oilfield-drilling contractor that is doing well, with lucrative contracts awarded to them in the past year for over one million dollars in revenue from ExxonMobil and BP-Amoco. Maury and Sons is a business that is lead by Max and Monty, both are grandsons of the founder Maury, which employs fifty oilrig crewmembers and ten administrative positions. Maury and Sons, having reached the one million dollar milestone for the first time this year, have decided that now is the time to limit their own liability, but still lead the business to a successful future. After careful review, and considering the many other options available, Maury and Sons have decided to become a Limited Liability Company instead of remaining a partnership that it is today.

Max and Monty each own twenty-five percent of the business, with the remaining ownership being held by their two aunts. The two aunts, Wilma and Betty, are both in their early eighties and provide no significant activity in the daily operations of the business. As the two aunts are elderly, a decision had to be made what is to be done with either Wilma or Betty's interests in the event of death. Neither of these women have any surviving spouses and never had children. Max and Monty want to do what is best for their aunts in addition for what is best for the business. Maury and Sons never had a formal partnership agreement in place even after Maury, the founder, brought in Wilma and Betty's husbands as partners into the business. So after reviewing and discussing the pros and cons of remaining a partnership, incorporating the oil drilling business, or establishing a limited liability company, all parties involved have taken the recommendation of forming a limited liability company, or LLC for short.

The vision or idea that Monty and Max have for Maury and Sons is to continue to build the business, then sell the business to a consolidator in due time. A consolidator is company that buys local businesses, usually in exchange for a combination of stock, cash, and debt. In completing the research, and weighing the options, establishing Maury and Sons as a LLC provides numerous advantages over the partnership agreement that currently is in place. According to Mallor et al (2004), a Limited Liability Company provides the favorable tax advantages of partnerships while limiting the personal liability to its members, as in a corporation, being the primary reason to seek this type of business classification. This important fact can not be over emphasized, limiting the personal liability in the event of a lawsuit or poor business decisions makes this choice favorable in protecting each member's assets. In addition to protecting assets, another deciding factor for Maury and Sons to become an LLC is the age of their aunts. Wilma and Betty are both senior citizens and own the other half of the business equally. The LLC offers permanency of a business's perpetual existence as described by Reed et al (2002). This means that the death of one member will not dissolve the business. In addition, Limited Liability Companies have advantages in organization and control. LLC's may have multiple levels of membership interests, beyond just that of control and benefits limited by the controlling members. Again an important factor when considering the age of Wilma and Betty and not knowing whom the beneficiaries may be or how their ownership interests are to be disturbed upon death.

With no current, formal, partnership agreement in writing, the formation of the Limited Liability Company will enable all four members involved to have, in writing, a legal and binding contract. This agreement, called an operating agreement by Mallor et al (2004), shall define the LLC's dissolution, the selling of the business, what is expected to occur after the death of a

member, the early withdrawal of membership consequences, or the disability of a member. Included in the process of creating a Limited Liability Company, one or more of the members must file the articles of organization. The articles of organization, as described by Reed et al (2002), must be filed with the state, usually the secretary of state, and include the name of the LLC, the registering agent's name and address, the identification of the members, who the managers are-members or hired-in managers, and must file annual reports with the state. These are just the important topics to be documented and should not be limited to these topics. Neither Wilma or Betty had any children, so clarification is needed as to whom is the beneficiary of their controlling interests. In addition to the age of two if the members, the vision of Max and Marty is to sell the business in the future. To alleviate any possible dispute, this operating agreement and the articles of organization, will clearly define dissolution process when the decision to sell is reached.

As Maury and Sons continues its growth from the partnership of today into the Limited Liability Company, the recommendation to hire a legal counsel to review both the regulatory and legal issues concerning the company is a wise decision. Forming an LLC may require a number of additional administrative tasks that Max and Maury are not familiar with. Such examples of reserving the name of the company, obtaining local business licenses, obtaining the correct classification with the Internal Revenue Service are just some of tasks that need to be addressed correctly. The preferred means in accomplishing these administrative tasks, for a company this size, is to seek the counsel of an attorney who is familiar with the formations of LLC's and can do the tasks efficiently. With over one million dollars in revenue and sixty employees this past year, it is clear that Marty and Max are doing well. Obviously they know how to run the business, but an outside, neutral advising counsel to review such matters and notify Maury and

Sons of any nonconformance's concerning taxes, federal and state legislation, labor laws, and even the environmental regulations dealing with oil drilling would be a wise decision. Federal and state laws designed to protect individuals and the environment, such as the Clean Water Act, Clean Air Act, OSHA regulations all affect the daily operations of the business and should be reviewed by an outside source. In addition to gaining useful knowledge, it may limit their liability further by using these counsels periodically to review their practices in the event of an accident or incident that may lead to criminal or civil law suite.

After careful review, and considering the other options available, it is in the best interest for Maury and Sons to become a Limited Liability Company instead of remaining a partnership that it is today. The factors include the liability, the age of some of the members, and the vision set forth by the managing members. Limiting the liability and combining the best legal and tax characteristics of corporations and partnerships while avoiding the many tax disadvantages of incorporating are the prime reasons for selecting Maury and Sons, LLC as the new form of business entity. In addition to limited liability and tax advantages, Maury and Sons now have a documented operating agreement and the articles of organization to truly define the business.

References

Mallor, J., Barnes, J. A., Bowers, T., Langvardt, A. W. (2004). *Business Law: The ethical, global And E-commerce environment*. 12th ed. New York: McGraw-Hill.

Reed, L., Shedd, P., Morehead, J., & Corley, R. (2002). *The legal and regulatory environment of business*. 12th ed. New York: McGraw-Hill.