

# STARTING YOUR OWN FIRM

## See legal hassles ahead, avoid them

By JOE MILSTONE

Many common legal issues ensnare entrepreneurs when starting a business, and getting an accounting services firm up and running is no exception. Some are ubiquitous across most businesses and others are more germane to accounting in particular.

No matter the situation, this information will be useful in both starting an accounting firm as well as advising other start-up ventures in one's practice.

### Build or buy?

Like most new businesses, the initiators of an accounting venture often have the choice of starting anew or purchasing an existing practice. In the event of entry via purchase, it is important to have properly considered an equity or asset purchase agreement.

Issues such as the inclusion of an earn-out provision based on continuity of the client or revenue base, non-competition of selling principals and representations and warranties as to possible inherited claims/liabilities, historical compliance with laws, intellectual property stability and employee statuses should all be addressed.

### Name

Typically, individuals are able to operate under their own names 'as of right,' making appropriate registrations and approvals easier. However, it is increasingly common for professionals to use trade names, making appropriate name searches and assessments for potential confusion with other entities more important.

The rules of professional conduct from governing accounting bodies also contain name restrictions. For example, names can't be misleading, self-laudatory or contravene professional good taste.

The practice of public accounting must include the descriptive style of including the designation, such as 'chartered accountant.'

### Formation

Accountants have choices as to how they will form their practice. A solo practitioner will often commence business under a sole proprietorship or professional corporation. For multiple practitioners, the most common choices nowadays are either a professional corporation or limited liability partnership. The net effect of either, from a liability perspective, is that the whole of the business's assets will be exposed to liability and claims,



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*Joe Milstone, Cognition LLP*

but a principal's personal liability can be limited to his or her own actions and the actions of those he or she directly supervises and controls.

### Partnership agreements

For any new practice with multiple principals, a well

votes per partner? Does this vary among individuals, and how is this to be determined? What matters require more than a majority of votes and what requires unanimity?

- Ability for partners to conduct other business and the impact on equity percentage?

### Website terms of use

Like any business, new accounting firms are sure to have a web presence, regardless of whether or not they formally transact business as part of it. As such, it is important for them to have appropriate terms and conditions for website usage.

**A common flaw is to borrow another company's template, resulting in a policy that does not fit the actual operations or intended practices of the firm.**

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thought out and comprehensive partnership agreement at the outset is highly advisable. The following are some examples of what should be considered and covered:

- Commercial operating understanding: Is the firm meant to be a vehicle for the principals to 'eat and kill' their own revenues under a shared cost structure? Or the opposite where all revenues are shared but costs are allocated differently? Or, perhaps most likely, some combination or formula-based system based on the above? In the event of pure profit sharing, how is the allocation to be determined — by formula, by committee or otherwise?

- Governance: How many

- Ability for new partners to come in; how to decide and who decides on buy-in price. Transferability of all or part of individual's stakes? Rights of first refusal? Shotgun provisions?

- Transitioning: Who owns the clients? What if clients go — will there be some payback with the applicable partner on true-up of the capital account? What happens upon a departure or retirement? Are there valuation issues for transfers and departures? What are the non-competition terms? Is there mandatory use of insurance for buyout on death or long-term disability?

- Property lease: What if some partners own the property? How is the lease decided and rent determined?

If information resembling advice is provided, it is wise to disclaim responsibility for use of that information, particularly in any context. Where there are links to other websites, there should be a disclaimer for such third party content.

It is also advisable to note the copyright and ownership of content displayed on the website and to establish the parameters of the viewer's right to use such content.

Personal information will inevitably come into the possession and control of the firm. Therefore, it is critical at the front end, as systems and processes are instituted, to properly think through the various principles under privacy laws and develop a policy that can be

adhered to and will provide satisfactory protection to clients.

A common flaw is to borrow another company's template, resulting in a policy that does not fit the actual operations or intended practices of the firm.

### Customer engagements

A common omission for professional services firms is a client-facing agreement. This is ironic given that such a gap is often at the forefront of the professional's own critique of clients. Setting out the basics as to who is doing what scope of work, by when, and what the outputs and associated costs will be, goes a long way to diffusing disputes later.

Similarly, accountants can (and probably should) seek to limit or cap liability with the client, recognizing that, in this profession, much of the exposure comes from third parties relying on the work of those who, of course, are not bound by the client agreement. Engagement letters can also clarify the extent of the 'work for hire' relationship between the firm and client.

### Technology licences

Few businesses today are immune from technology contracting issues. For an accounting firm, it is critical to obtain, review and tailor the right licences for the software and technology to be utilized. For 'internal use only' licences, such as desktop software, it is essential to procure and track the neces-



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sary quantities, failing which daunting audits and penalties can occur.

For software such as accounting preparation programs, it is important to consider and include whether the firm needs usage or viewing rights for

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# STARTING YOUR OWN FIRM

## Success hinges on discovering good partners

By FRANK FAZZARI

*Fazzari + Partners LLP recently added new members to the partnership. The author describes that process and the methods that worked for the firm.*

A partnership is like a marriage — without the right partner, there is no marriage. Whether in life or business, having the right partners is the key to success and happiness.

You never know where a partnership is going when you start out. I left a big firm to start a small one with two other partners, thinking I would probably spend four or five years with them and move on to something else. Meanwhile, my partners were convinced they would love the small practice life.

Within a year, one discovered he disliked being in public practice so he moved on to a successful carrier in business. The other founding partner struggled in public practice, so he also moved on. And more than 22 years later, I'm still at the firm and enjoying it with six other partners.

There are many reasons for a sole proprietor or an established firm to seek and take on new partners. In our case, the firm's assurance practice has been growing rapidly. For a firm our size — about 20 people before expansion — continuing to be able to perform assurance work required a significant investment in areas like training, quality control and technology. Spreading that infrastructure cost over a larger base makes a lot of sense.

Bringing in partners was a proactive move that would allow us to continue to grow our flourishing assurance business. A second reason for seeking out new people was to bring in skills to the firm that would comple-

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*Frank Fazzari, chartered accountant*

ment the existing skill sets.

For example, one of our new partners, who is also a certified public accountant, is in the process of obtaining his chartered business valuator designation. Because of his U.S. experience and credentials, we can now do some types of American work that we could never do before. By adding a CA-CBV in the near future, the firm will be able to add value for our clients in many areas, including valuations for matrimonial purposes, litigation support and mergers and acquisitions.

By expanding our skill set, we becoming more of a full-service firm. In the end, that will help us retain our current clients, attract new business and help the firm attract top-of-the-class students, especially when the labour market improves. All of this is important to the development and growth of the firm.

To begin the process, our existing partners looked at the types of people who would best fit in with the group. Like a marriage, it helps to have common interests and beliefs, although experience shows that you never truly know a person until you've been around them for a long time. It's always a gamble, but the odds of finding the right partner can be shortened by narrowing down the type of person being looked for and the personal style that would be compatible with the existing team.

For us, we analysed our cur-



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rent situation, and what we needed was a combination of chartered accountants who were either younger or older than most of the existing partners. We wanted an injection of youth because we wanted to ensure the future of the firm. On the other hand, we saw a good fit in bringing on board some older CAs because the arrangement offers a solution for CAs who are closer to retirement and want to smoothly hand off their business without waiting until the last minute.

So, when we started looking for partners, we knew a great deal about the type of person we wanted and why. Now the challenge was finding them. By nature, the existing partners are conservative and cautious, so we were not going to recruit partners

on a 'cold call' basis.

There are business people who advertise that they can help you find suitable partners — be extremely careful if considering this route. We tried that method and were quite disappointed. The person who was supposed to be recruiting did not come through for us and we ended up paying for a service that was of no use.

Networking is the best way to finding good partners. We found success by recruiting people within our existing business network — chartered accountants and CA firms we had gotten to know and respect over the years. And it was a two-way process — they heard we were looking, and were just as interested in joining us as we were in having them.

A firm looking to add partners should give itself plenty of time. The process can be long and involved. The process took us about two years, and we ultimately finalized an agreement with a two-partner firm with staff.

Before the deal was finalized, we brought our potential new partners to our annual four-day off-site meeting in Niagara Falls so we would all have a chance to get to know one another even better.

By the way, we have had an annual off-site meeting for over 10 years, which we believe is critical to 'keeping the marriage going.'

Timing is often key to taking on partners and it's important to

get it right. Don't wait until it's too late. I recently had a meeting with a sole proprietor who is now in his late 60s. He wants to continue practising although he knows that in a few years he'll be ready to retire. Also, he is overwhelmed by the new standards so he needs an infrastructure similar to our firm's to survive. Quite prudently, he wants to start managing that process now while he has some years to prepare to get it right. That is similar to what we did when we made sure we brought to our firm fresh blood for the future.

Unfortunately, some people wait until it is too late, and they are actually on the doorstep of retirement or, worse, they have an unexpected setback like a health issue that makes it hard to continue their business.

Like many things, it is not that easy to bring in partners or pass on your business when you have to do it by circumstances beyond your control. To maximize the return from selling your client list, it is better to demonstrate to clients that their account will be passed on to another person or firm, and have the client become comfortable with the people they will be dealing with in the future.

Whether you're trying to better serve existing clients or find a successor to take on their business, when looking for a new partner or to join a partnership, it pays to take your time and make sure it is the right move for you.

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## Today's ignored issues trouble tomorrow

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clients. Is the firm going to purchase a perpetual licence with support, upgrades and possibly escrow rights?

The firm can also take a 'pay as it goes' route, even though it often has inherent financing costs, but also adds flexibility and often enables use as a hosted or software as a service (SAAS) offering.

In a SAAS environment, hosting security and storage specifications can become important, particularly if data might leave

Canada. Where the firm itself is hosting content or applications, it will want to institute an 'acceptable use policy' to match its obligations to suppliers and to curtail damage between users.

### Personnel

As with other businesses, it is important for accounting firms to have appropriate employment and consultant agreements in place from inception. Again, these should be tailored to the operations of the enterprise and cover terms like compensation, termination and intellectual property

assignment and privacy/non-disclosure provisions so that the firm can comply with analogous provisions in its client-facing contracts.

The above represents only a snapshot of some of the most common issues and decision points facing start-up accounting entrepreneurs. There are others, including the myriad of licencing, registrations, certificates of authorization, insurance and other regulatory requirements with provincial accounting bodies.

Addressing these sorts of

start-up issues can be daunting and appear to slow things down at a time when speed to market seems paramount.

Nevertheless, dealing up front with what can be sensitive discussions, particularly with new partners, will allow for greater transparency and trust, a smoother operation and not having to onerously fix later what could have been more easily dealt with today.

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