

BUSINESS PROJECT (NOTES)

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INTRODUCTION

Prior to starting up an enterprise, a promoter must take several preliminary steps that will enable him to validate the opportunity at hand and to take the appropriate measures to ensure that the opportunity is exploited to its full potential.

1.00 PROJECT VALIDATION

First, one must validate the opportunity in question. Given that this process is at times very speculative in nature, the process is not as simple as it seems. To complicate matters, the crucial success factor of an opportunity often involves rapid deployment to the marketplace or accelerated development of a new product, idea or service to ensure good market penetration. Nevertheless, given the financial risks affecting both the promoter and any investor that may be solicited, it is always important to take the time to look before leaping.

Although an opportunity generally serves as a springboard for a business project, it need not necessarily give rise to the creation of an enterprise. A number of issues must be examined prior to committing time and money to an opportunity.

The review period that must be undertaken falls within the preliminary steps of forming an enterprise and plays an important role in the decision-making process that will lead to the launching of an enterprise.

1.01 Exploitable Resource

An opportunity is first and foremost an exploitable resource. This resource can take many different forms, such as an idea, a new product, a business purchase, a franchise or any site to be developed. In sum, a variety of exploitable resources may give rise to a business project. At this stage, it is especially important to avoid being rash, and so one of the duties of legal counsel, when meeting with a client to discuss a project, is to challenge its merits so as to prevent the client from committing time and money to a project that may, after thorough review, prove to be unprofitable.

1.02 Project Viability

All too often promoters fail to spend enough time assessing the viability of a project. In their eagerness, they often believe that they must act quickly for fear that someone else will seize on the idea or realize a similar project, and as such they are often ready to leap without looking. At this stage it is, therefore, very important that legal counsel rein in the client's enthusiasm to make him realize the importance of thoroughly examining the viability of the project.

When a client meets with legal counsel to start-up an enterprise and counsel does not ascertain the details as to the nature and viability of the project, it is our view that counsel has failed in his duty to protect his client. If legal counsel determines that the client has not conducted a sufficiently in-depth analysis of the project's viability or profitability, it is

important for legal counsel to compel his client to slow his pace and take the time to determine whether the project is truly profitable in the short-, medium- and long-term. The client has to realize that starting up an enterprise is not a matter of impulse, but rather one of reflection. As such, if it hasn't already been done, it is advisable to strongly urge the client to meet with an accountant or auditor to evaluate the profitability of the project. It is only once the project's profitability has been established that one can truly begin the legal phase.

1.03 Soundness of Project

A positive evaluation of the profitability must not, however, justify the immediate acceptance of the business project. In fact, in addition to profitability, one must also be concerned about the soundness of the proposed business project. By soundness, we mean examining the legal constraints that may undermine the project.

All too often promoters fail to concern themselves with the vulnerability of the enterprise, and it is unfortunate to see to what extent a lack of analysis in this respect may lead to failure. Legal counsel must, therefore, try to resist being captivated by the client's enthusiasm and the projected profits, and instead focus on the elements that may seriously threaten the project. It is only once legal counsel is convinced of the soundness of the project that he may, in good professional conscience, accept the mandate to start up the enterprise.

1.04 Comprehensive Risk Assessment

By examining both the profitability and the soundness of the project, one is able to evaluate the comprehensive risk inherent in the business project. The quality of a decision is proportionally related to the information at hand prior to making a decision. Urging the client to properly assess and determine all the risks associated with carrying out the project will allow him to make an informed decision in respect of starting-up the enterprise. It goes without saying that the success of an enterprise depends on a good understanding of the risks involved. By being able to identify the weak points beforehand, the client will be able to plan accordingly. Indeed, having this knowledge before the enterprise is even started-up will allow the client to focus on these weak points and have a contingency plan in place should such threats become a reality. Conversely, a client who fails to foresee the potential pitfalls and to formulate a response plan to confront such events may destroy his enterprise before it has even had the chance to be properly started.

Lastly, when the validation process ends on a positive note, one can then move on to assess the elements that will ensure that the opportunity is exploited to its full potential. This entails an assessment of the resources required to properly execute the mission of the enterprise that flows from the business project.