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JOINT ENTERPRISE ISSUES

Brief list of common issues
(*not* comprehensive)

1. PURPOSES

Limited? (i.e., to develop/exploit one specific property/opportunity/business only?)

General? (i.e., to develop/exploit other opportunities in same general lines of business/properties as they may come up?)

Are members free to exploit other or future similar or potentially-competitive opportunities individually, or must be exploited on behalf of the enterprise only?

2. PARTICIPANTS

Will they be participating as individuals, trusts, pension plans, or other corporations/partnerships/LLCs, etc.?

Are any foreign nationals? (If so, Subchapter S corporation probably not available option.)

3. CONTRIBUTIONS (What goes in...)

Contributions of capital (investment/non-returnable/non-compensable):

What?

Cash?

Property?

Real Estate?

Personal property/equipment

Intellectual

Services/contacts? (Exactly what definition, and how much?)

When?

At beginning?

Later?

What? How much further required? How much from each participant? Is "how much" agreed on at beginning, or to be determined later? (If to be determined later, how will the amount be agreed on?)

What are consequences if a participant won't/can't come up with their share at the required time?

Loans from a participant to the enterprise? (returnable/compensable)

How much? When? Optional or mandatory? Interest or other fees to lender/participant?

Secured or unsecured? Consequences to enterprise of default in repayment?

Furnishing of labor (separately compensable):

By which participants? Definition of duties? What/how much will they receive in return for the furnishing of this labor? Per hour or per task, salary, fixed fee, etc.? How long are the enterprise and/or the labor-furnishing participant committed to furnishing the agreed labor, or the agreed compensation?

Furnished as an employee or independent contractor?

Furnishing of other things (separately compensable):

(E.g., lease to enterprise of equipment, office space, etc.; license to enterprise of software, patents, trademarks, designs, etc.)

By which participants? Definition of exactly what being furnished? What/how much will they receive in return for the furnishing? How long are the enterprise and/or the furnishing participant committed to the agreed compensation arrangement?

4. DISTRIBUTIONS (What comes out...)

Income/loss from day-to-day operations:

How are actual cash flows or cash deficits divided up?

How are "tax" income/losses allocated?

Gains/losses from capital events (loans or sales of business or assets):

How are actual cash surpluses or cash deficits divided up?

How are "tax" gains/losses allocated?

Payments for labor furnished? (See 3 above)

Payments for other things furnished? (See 3 above)

5. MANAGEMENT & CONTROL

How are decisions made on matters between enterprise and outsiders? By a designated individual? By vote?

How are decisions made on matters between enterprise and participants?

By majority vote per capita? By majority vote per married couple? By majority vote per percentage of ownership? By super-majority vote on certain issues? By vote of specified participants on certain issues? By unanimous vote on certain issues? (e.g., admission of new participants; purchases/sales/refinancings of property or other major changes in business; termination of the enterprise; changes in governing rules or structure of the enterprise?)

How are decisions made on how much cash is available/appropriate to distribute to participants, as opposed to leaving in for expansion, etc?

By automatic formula? By vote of a Board of Directors? By direct majority vote of participants? By unanimous consent of participants?

Bank account signatories/signature requirements?

6. TERMINATION

Mutual consensus on the participants' goal for the enterprise: Exit strategy? Or not?

Termination of whole enterprise:

On specific date, or on completion of specific goals?
By majority vote at any time? Only by unanimous consent?

Termination of one participant's interest:

Involuntary circumstances beyond anyone's control:
Death? Disability? De-licensing?
Divorce?

Involuntary at option of enterprise (expulsion):
What grounds? What financial effect?

Voluntary departure:

Retirement from the field of practice?
Just don't want to be partners anymore?

How determine amount of payment to departing participant?

How will the calculated amount be paid?

How will the payment be funded? From operation cash flow? From enterprise property, by sale, refinance, or direct distribution? In the case of death, by insurance?

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