

>>: So hi everyone, welcome to organizing a Mass. business or business in Mass. My name is John Cohan. I'm an attorney in Mass., I've been in practice for close to 25 years now in the corporate practice of M&A, venture capital, general corporate, bank financing, licensing, and have done considerable amount of work with startups in the Commonwealth. So organizing a business in the Commonwealth is near and dear. I have been through it many, many times with clients and there are a number of topics that we can - we will discuss in this session, some of which we'll dive into in some detail, because they are issues that come up probably every, you know, every day with your clients as they're considering organizing their business and some of the things they need to consider. At the end I have - the last slide will have my contact information. And if folks have follow-on questions, they can feel free to contact me at any time. Happy to answer questions as follow up. So the introduction here, I'm going to just give you a little bit of general background and then some initial high-level thoughts for the client before they actually get into, and you get into helping them with, organizing their business. And then some of the topics that we'll cover here - again, as general background, you know, advising clients in this area is - can be somewhat esoteric. And many times, clients are not necessarily thinking about what they need to consider and some of the nuances in organizing a business in Mass., they are more concerned with their actual business and what they're doing, whether it's an idea, whether it's a product, or whether it's some sort of service business that they're in. And their mind is really on concentrating on that piece, which it should be, but actually getting the business organized and off the ground in a way that doesn't require them to double back and redo, if you will, some of the things they did in the beginning, can be very beneficial for them. And having someone like an advisor, that is an expert in this area and then has done this many times before, I think is - for the client it's very, very beneficial. So some of the initial high-level thoughts for the client you want to consider when they are thinking about organizing a business is, you know, what is the business, right? What - have they given some thought and their idea of what the business is? Has there been thought around a business plan, for example, and is there a market for what they're trying to do? And I, you know, you presume that they've gone through and have vetted a lot of that. But you do want to bring that - those particular topics up with your client to ensure that they're actually moving in the right direction and that by organizing this business, there's something there that they can, you know, they can cultivate and keep moving. And is something where - and hopefully they're going to make money at it and it's going to grow and it's going to scale. The topics that we will cover here, kind of a four major categories that I think make sense for when you're initially thinking about a business, and you want to organize it. The first is the choice of entity. And that really, if you look at chapter 156 of Mass. general laws, that's really where they outline statutorily what some of those entities are in Mass., and we'll get into identifying those. And based on input from your client, what really is best for your client under their circumstances in the situation and what type of entity you would recommend that they form and that you can walk them through. Beyond that, the next topic I usually get into with clients when they're organizing a business is, again, we talked a little bit earlier about an idea or what they're basing that idea or their business on - put their business on - excuse me. And you want to make sure that whatever that is, and I happen to advise - a good majority of my practice is in high tech. And so there are ideas that clients want to bring to market, they want to bring to fruition, but you want to make sure that they protect those ideas. And so intellectual property concerns and confidentiality, because the first thing a client wants to do, you know, by human nature, is to take your idea and and tell the world about it, because they want to build that company as quickly as possible and build their brand as quickly as possible. But there are downfalls and nuances to, you know, yelling

from the rooftops what your business is and what your idea is. Until and unless you have that protected in a prudent fashion. I want to talk a little bit about that as one of our topics. The next are key contracts that you want to consider at the outset. And that has to do with key employees like founders of the business as well as shareholders or members - shareholders of a corporation or members of an LLC or partners of a partnership - and, again, we'll get into all of those entities - as well as business partners, customers, prospective customers. And considering what, you know, what contract terms you want to think about - commercial contract terms depending on what your business is and what it's involved with, whether it's a technology, whether it's a product, whether it's a service that you're providing, having a good form of a contract going forward for the company is - can be very, very important. And then, finally, I want to talk about some other miscellaneous areas of concern with respect to organizing a business. And we'll double back a little bit in some of these topics with what we've talked about earlier in the presentation. One of those is a business name. The name itself has to be available in the commonwealth, and there's a way to search that, to find that out. It should be relatively unique, you know, and there are certain statutory requirements for a business name in Massachusetts. You want to consider the fact that your business is going to be a separate entity in and of itself. It'll need a bank account. It'll need insurance policies, whether that's property and casualty or key man, depending on, again, the business and the employees that are involved. There are a number of employee issues and matters you need to think about as the business not only starts out but scales and grows. And then depending again on what type of business it is, whether there are certain licenses and permits for that business that are required in the commonwealth. So in choice of business entity, there are a number of different entities that one can choose from. I think the three major ones that I have dealt with and that are kind of the go-tos and probably the most popular of the business entities are the corporation, which is pursuant to chapter 156D of of Massachusetts laws, the partnership both general and limited, pursuant to 108A or 109 and then finally the limited liability company, or the LLC, which is per chapter 156C. Each one of these entities has its own set of criteria and its own set of features that can be beneficial to your client depending upon what they're trying to accomplish and depending upon what their, not only immediate needs are, but their near-term needs are. And knowing what those are will inform you such that you can advise and recommend to your client what type of business entity makes the most sense for them. For example, and we'll get into this a little bit as we go through this, but in a corporation, whether or not you want to recommend forming a corporation or an LLC may depend upon a number of things, not the least of which is whether or not you're going to be trying to obtain investor financing, whether or not you are - you know, what type of business that it is, whether it's a service business, a product, the technology. The tax implications we'll talk a little bit about as between these - as between and among these three different entity types. And those are just a few of the considerations that, again, you'll find out as you vet this further with your client and then give them the advice that that makes sense, you know, for their situation. So starting with the corporation. Under Chapter 156D, there are essentially two types of corporations. And one is really by default and the other is by election. So the default corporation is a C corp, and that's really - just refers to a section in the Internal Revenue Code. And then the other is an S corp. An S corp is - and we'll go into some of the features of an S corp and what, you know, what's required and what you need to be careful about and understand. But there are definitely benefits and detriments to each one, depending on what your client's intentions are and what their plans are for the future. The C corp is what I call the default corp. And if you're filing in Massachusetts under a corporation, you would automatically be filing as a C corp unless and until you

elect to be an S corp. And we'll talk about that in a few minutes. But with a C corp, you file what's called the articles of organization in Massachusetts. And I've provided the link to the Massachusetts secretary of state's office, which is www.mass.gov. And you're filing those articles with the secretary of state, And there are a number of criteria, a number of pieces of information that that the articles look for and - which I'll walk through in a few minutes. But that's the main form that you're going to file with Mass. And now once you do file that, you are considered an active corporation in Massachusetts doing business in Mass. They also - there's also what's called a FEIN, the federal employee identification number. That is a form that's filed with the IRS. At the same time, you'll get a number issued. So for purposes of employment issues, employment taxes, sales taxes, that kind of thing, filing in your reports, that number is going to be required every time you form. In the articles of organization, the information they look for - and by the way, you can get a form of articles of organization on Mass.gov and see what that actually looks like. But essentially what they're looking for is the name of the corporation. So that presumes or assumes that you have done a search in Massachusetts to ensure that means not being used. And so your corporation name must have either reference to Corp or Inc in it pursuant to the statute. And the name again has to be unique. Can't - it can't be someone else's name, so it's confusing in the state. You can also - we'll talk about this a little later about trademarking or branding your name when we get to that later in the presentation. We'll talk some more about it. Also, ask you for the type of business. Typically what people do is they default and say it's engaging in any lawful business. So when you fill the form out, if you have that in there, the chances are that's not going to be rejected at the state level. It also asks for the number of what's called authorized shares. And in Massachusetts, the minimum authorized shares is 275,000. Those shares basically are in place such that a - what's called a franchise tax can be calculated in Massachusetts on the number of shares that are outstanding. But there is a specific threshold or a minimum number of shares that are acquired at what's called par value, which is nothing more than a minimum value, which can be, you know, a fraction of a penny. It asks for in there as well the rights and limitations of those shares. Typically, you're coming out with common shares and everybody has, for the most part, the same rights and privileges. There's another group of privileges called preferred rights and privileges. But when forming a business, typically you are coming out of the gate with just common shares. And again, most, if not all, have the same rights, at least at the outset. Then it asks for, you know, other lawful provisions, which is a - it's usually just an optional provision that you can provide, but it's not required. The filing date. Again, you can - and you can push this out as much as 90 days. So if you file today, you make it - you could make it effective as far out as 90 days from now, the last for the address of a registered office or registered agent such that person can be accepting service in a lawsuit or is the main contact needs to be the state. And then also, again, that resident agent, which basically, which is the person at that registered office that's going to accept these kinds of documents. It also asks for the name and address of the initial directors and officers. So you'll need to know who they are. And we'll talk a little bit about officers and directors in a few minutes. But you'll need to know, you know, who's going to be, you know, on that slate of both officers and directors. Typically, you require a president, a treasurer and a secretary to be named and then at least one director has to be named as well. It lasts til the end of the fiscal year. You can either do calendar or fiscal. The type of business, again, that would typically be pretty short. In its description, it can be again that, you know, any lawful business. As for the principal office address, the physical location of the records, which is probably the same as that principal. And then the name and address of the incorporator. The incorporator is the person that actually files the articles of organization, does not

necessarily have to be either an employee, an officer, a director or anybody that's associated. Could be the attorney, for example, that is filing as the incorporator. The other thing you want to keep in mind are the bylaws. Bylaws are not filed with the Commonwealth. They are a - essentially just that. They're bylaws of the organization that list a number of different items, including things like the shares, share certificates, meetings of the directors and the shareholders. Goes into a lot of detail, you know, about basically about the governance of the business. And while you can list a lot of that stuff in the articles of organization, you have to remember that the articles are in fact a public document. And some clients, maybe most clients, would not want a lot of that information necessarily published as a public document. So the bylaws can act as that guide, if you will, for folks in the company, certainly management, the board and the officers. And again, it covers - so the generalities of the company, much like the articles do, but also covers shares and shareholders, officers and directors, the ability to appoint officers and directors and who they been identifying, what types they are and their duties, talks about amending those articles. So there's a number of different, different provisions in there that can be helpful to the company. I have different forms. If folks after this, you know, have my contact information, want to get a hold of me, I can provide different forms either in Massachusetts or in Delaware or, you know, other states that I may have in my possession. Then once those - again, once those articles are filed, you now are officially doing business in Massachusetts. But as more the cleanup, in addition to the bylaws, you want to - you definitely want to have an incorporator's consent which provides the - you know, provides the authority for the incorporator to actually file those articles. And then initial board consent, the incorporated will get out of the picture and pivot into the initial board. And the board will start its first consent where it does things like authorizes and ratifies the articles, ratifies the bylaws, authorizes opening of a bank account, authorizes the stock certificate, authorizes and ratifies any issuance of shares, etc. And that's all part of what's called a minute book that the company will keep either in hardcopy or electronically. So those are kind of the fundamental pieces of actually forming the corporation. Some of the fundamental benefits of incorporation, some of you may be aware, is that there is full liability protection in most circumstances. And I say that because if there is any kind of fraud that's involved in the corporation, then people get to what's called pierce the corporate veil and get through to those that may be perpetrators of that fraud, whether it's any of the officers or directors. And so that liability protection protects in most, but not necessarily in all cases. In a C Corp, there is what's called a two-tiered tax structure. And I'm not a tax lawyer, but I know enough to be able to comment that in a C corporation there are - again, there are two levels of tax. You are taxed at both the corporation level, and then when there's a dividend or distribution made to the shareholder, the shareholder is taxed at its own, at its own level, its own tax rate. And so that can be a deterrent for a lot of businesses that are making, you know - they're making a profit, and they're having to pay those two levels of tax. It could be more beneficial depending on the circumstances and situation for a company to be electing an S Corp, which we'll get to in a minute. You'll understand why. Very little restrictions in a C Corp as far as the type of shareholder, the type of shares that are issued. Most C Corps are, you know, if there's a public company either through an IPO or, you know, companies that are on Nasdaq or New York Stock Exchange, most, if not all of them are C Corp, right? So they have very little restrictions. Anybody can be a shareholder essentially as opposed to those which are in the S Corp. So a S Corp has the same filing requirements at the state level as a C Corp, has the same type of bylaws, has the same requirement to file a federal employee identification number. And it has the same corporate formalities. The filing of again - filing of the articles, the corporate is consent, the initial board consent,

etc. But in order to be considered or to be characterized or classified as a S Corp, you need to make that election at the IRS. And what that provides is the ability for that to be a pass through. Much like - and we'll talk about this in a few minutes partnership with an LLC where there is no two-tiered tax structure. The tax is passed down through to each of the individual shareholders at their own rate. So what's attractive about that is that the corporate rate can be significantly higher than perhaps an individual's rate. And so you're saving that much from an income tax perspective, again, has the same liability protection as a C Corp. But the major difference is that is the pass through of the tax structure, which again, can be very attractive. However, with that benefit, there are some costs, there are certain restrictions on the type and the number of shareholders in a S Corp in class of stock. You can have no more than a hundred shareholders in a S Corp, and there can be only one class of stock. And, you know, those are sort of the two major limitations, if you will, on a S Corp. So, you know, the reason why one might choose a C Corp over an S-Corp is if they're going to get, you know, venture capital investment, for example, at the early stages. They may as well choose a C-Corp or fail - or not elect as an S-Corp because chances are that venture investor is going to want a - what's called a preferred class of stock, which is going to be a second class of stock, which would disqualify the company when it elects for, you know, for S-treatment. So, you know, again, this is part of talking with your client, figuring out what they're trying to accomplish early on and whether or not it makes sense to just go ahead and make the S-selection now or, you know, do we just come out of the gate with a C-Corp - again, depending on what their plans are. It doesn't really harm anything to come out as an S-Corp and elect - make that election at the beginning. If you disqualify the company as an S-Corp because you do issue another class of stock, it's an automatic disqualification. There's no real penalty to that. But again, if you don't have to go through that election, you don't need to go through the election or you can't go to that election because you know you're going to be limited going forward then, you know, you don't have to - again, you don't have to make that. But it is a nice nuance and it treats it essentially from a tax perspective, like a partnership. The next business entity is called, you know, is called a partnership, right? So there are different types of partnerships. There is the general, there's a limited and then limited liability. And in chapters 108A and 109 of Mass. general law is going to go through statutorily what each one of those looks like. For a General Partnership under Chapter 108A, there is no Secretary of State filing that's required. You can find yourself in a partnership, kind of in a de facto - in a de facto manner if there are two people that are involved and are under a common business enterprise - that can be characterized as a partnership. You don't need an agreement, but one is certainly recommended because if you don't have an agreement as a partnership, then you would - if there was a dispute or if there was an issue with respect to the - if one partner was expecting, for example, to receive a greater profit than another partner's percentage - from a percentage point of view. If there is no agreement and there's a dispute about that, then typically you would default to the statute and the statute provides for 50-50. So if your intent is that one partner is going to be in control of the business or one partner is going to get - is going to be provided a greater benefit as compared to another partner or with greater rights or less rights or greater obligations or less obligations, then you would be well advised to have an agreement in place for that. With a General Partnership, there is no liability protection amongst the general partners. They all take on personal liability. And that's - again, if that's - if it's made up of all general partners, and one partner's acts are imputed to the other. A Limited Partnership under Chapter 109 - there is a filing that's required at the state level called a Limited Partnership certificate. Again, an agreement is not required, but it is recommended for the reasons I outlined earlier. In a Limited Partnership, you need at least one

general partner and one limited partner. You can have more than one of each, but you need at least one of each. And in that scenario, the general partner has full liability for the partnership and all the acts of the partnership. The limited partner has limited liability. They are - they're usually a silent - what we call a silent partner. They may have put money in and they're going to be, you know, extracting some kind of profit. But they don't have responsibilities or obligations from a day-to-day perspective. That's really the general partner's responsibility, and they take on those obligations. The next one is called a Limited Liability Partnership. Those of you that are in law firms understand that - well, certainly I think - most of you should understand how a Limited Liability Partnership works. Again, there is a filing that's required at the state level, a Limited Liability Partnership certificate, much like a Limited Partnership certificate. Again, the agreement is recommended, but all partners have limited liability. It's mainly utilized and reserved for, like I said earlier, law firms or accounting firms. Those are typically the professionals that use that because they usually have - so their own sets of clients. And one partner doesn't necessarily want to be responsible for the acts of another. And they want to limit that liability as much as possible. And then the Limited Liability Company itself, which these days with a lot of my clients and probably with a lot of yours and a lot of your colleagues clients, that's becoming more and more the norm. The Limited Liability Company Act was passed back in the mid-90s, and at first was - did not - was not that popular at first. But it became more and more popular, you know, over the years. Under Chapter 156C, there is a statute, the Lim Liability Company Act in Massachusetts. Again, there is a filing required at the secretary of the commonwealth's level called the Certificate of Organization. The limited liability company has, again, much like a normal, or traditional corporation, it requires a filing for their federal employer identification number. There is recommended - there are different types of LLCs. You can have a single member LLC and then you can have multiple members. Either one is beneficial. But if you have multiple members in your LLC, then an operating agreement, which essentially is the combination of a shareholder agreement, bylaws and the articles kind of all in one that's all in one place in this operating agreement. And all the member - what they call members, not shareholders, but members of the LLC, sign up to the operating agreement and their rights and privileges, their percentages are all laid out in that one document, sort of that Bible document that - the go-to document. All members, much like a limited liability partnership, have limited liability. And they have a liability shield, much like a corporation. So it's a good combination of a partnership and a corporation from that perspective. This maximum flexibility, when it comes to who the members are of an LLC, if you recall, an S corp, while it has some of the same benefits as an LLC, the shareholder profile and the number of shareholders in S corp is very limited. I said earlier you can only have 100 members. They're usually individuals and it's only one class of stock. Here, you can have - really anybody can be a member of an LLC for the most part. There are some - certain nuance exclusions to that, but for the most part, anybody can be. And the governance is not as tight as it would be in a corporation. For example, you don't need to have annual meetings in an LLC. Are they recommended? Sure, they are. But you don't need to have those. And while there is filing of annual reports and there is the FEIN requirement, the other indicia of a corporation and formal governance per statute of a corporation doesn't apply to an LLC, which is why it's an attractive vehicle because it allows for such - so much flexibility. The one thing I will say about an LLC versus a corp, a lot of times clients will start out with an LLC and then convert to a corp later because either the investors refer - require or prefer that because the corp is just a more recognizable vehicle. It's something in which, you know, going public, most investors think of a corporation versus an LLC providing things like stock options in a corporation is a little bit more streamlined than it would be in

an LLC. An LLC doesn't have stock. An LLC has what's called membership interests. It doesn't have options, it has - it can have options, but those get a little bit more dicey than they would in a normal or traditional corporation. And a limited liability company have what's called profits interests. And those have a number of rules and nuances to them that you have to be careful of in being able to navigate those. But, you know, given all that and, again, depending on what your client's plans are for the future with the company in the business, a lot of times my go-to is the LLC. And unless there are reasons that are countervailing to that, that are compelling, they usually would start out with an LLC. And again, if you wanted to convert from an LLC to just a typical C corp, it's a conversion that's done, for the most part, is done as a paper transaction. Not a lot of cost to doing so. There's filing fees, much like - and one thing I meant to mention with respect to filing articles, there is - there are filing fees and you would have to, you know, look at what those minimum filing fees are. But there would be some filing fees with respect to converting an LLC to a corp, and. But, you know, again, it's pretty much run of the mill and, you know, most folks can do that, most companies can do that without much of a hitch. The problem you have is if you start with a corp and then you want to convert to an LLC, so the reverse of what I just said. In doing so, if there's money that's made at the corporation and the corporation's making a profit and their balance sheet is healthy and they convert to an LLC, that's tantamount to liquidating the company. And then you're subject to that two-tiered tax structure I talked about earlier, and that could get quite expensive depending on the numbers. And again, the LLC, much like a partnership, has that pass through, and much like the S corp, has that pass-through ability to each of the members. They are taxed at the - at their own individual rates and not at that probably more expensive corporate rate. So that's - that sort of gives an idea of the different types of entities, or the more popular, or what a majority of folks are choosing in Massachusetts. There are a lot of other nuances and more detail we can drill in. I can probably spend two, three, four hours on just, you know, choice of business entity, in and of itself. And each one of those has its own, you know, its own costs and benefits. And again, depending on what your client's trying to accomplish, both short term and long term, would really dictate which one you really should use or which one's recommended that they use. A lot of times, I provide clients with a canned questionnaire, and that questionnaire gives me enough information to be able to say to them, you know, given the facts and circumstances here of what you're trying to accomplish, I would recommend, you know, the corp versus an LLC, or vice versa. I have those different types of lists and I'm happy to share with people, you know, they're form lists that I'm happy to email people that, if they want those, it's a good way to kind of get your head around what you're - you know, and get to know your client, what they're trying to accomplish, and then informs you, as their advisor, you know, to give them, hopefully, a better result. So now moving from that into the next subject that, when organizing a business, I like to talk with and advise my clients on is the intellectual property and confidentiality matters. Again, depending on what the business is, and I deal a lot in the high tech space, so this becomes very near and dear. But there are other businesses that still have intellectual property by way of, whether it's patents, trademarks or copyrights. And, you know, you want to get the client to be thinking about those matters and those issues early and often, because the longer they wait to essentially take ownership or stake their rights in their intellectual property, there is a jeopardy, or they're - you're jeopardizing the fact that someone else could come in, or swoop in, and get ahead of them on some of these things. So when I talk about intellectual property protection, I'm talking about patents and filing patents, trademarks, filing trademarks. Both of those are at the United States Patent and Trademark Office. And then if the client has copyrights, or if they're in the art business, or if they're

in the publishing business or, you know, things that would be subject to copyrights, you want to consider that and give them some recommendations in that respect. I also deal (inaudible) those part of that in trade secrets. So trade secrets are a little bit different. We'll talk a little bit about those, but they're a little bit different than filing, statutorily filing, patents and trademarks at the PTO - and copyrights. And there's different nuances of trade secrets that you want to be careful of and make sure your client's careful of. And then finally, non-disclosure agreements. Again, part of what you're advising your client is, you know, you've got a great business, you've got a great product or a technology, and there's probably some really good potential for that, for it to grow and for it to attract people that want to, that perhaps want to invest in the business. You want to make sure that everybody you're dealing with is on the up and up and that whatever you're telling them, you have the ability to fully disclose and make sure that they are - that the other party is obligated not to tell anybody and not to use it for their own benefit. Because, you know, as you can imagine, it's going to chill your client's, you know, ability or their desire, to try and evangelize what they're doing, if they don't have any protection. So I like to talk to them early and often about that and what that entails. So with IP protection, patents you don't want to - you want to consider - and again, this - you know, I typically have specialized counsel in these areas, certainly in IP and employment, which we'll talk about in a few minutes. You know, and, you know, SEC and FDA, I mean there's always different disciplines that you want to make sure that you're getting the right, you know, you're getting the right information and the right substantive knowledge from any one of your colleagues that you might have the benefit of dealing with on this. But with respect to IP protection, you know, from a patent perspective, you want to make sure that whatever they have is actually patentable and that there is a real cost-benefit analysis that you're discussing with your client. You know, for example, you're not going to go out and try and patent something that's already well known to have been patented. Or you may not want to necessarily go through the patent process if you don't think that, commercially, it's going to be a huge benefit to you. Because the costs behind filing those patents and working with intellectual property lawyers and the PTO itself can be quite expensive. And you want to make sure that - be your client wants to make sure that that investment is something that's prudent for what they're trying to accomplish. And again, I think you - you know, I typically do this - from a first blush, I can determine whether or not it makes sense for me to bring in IP counsel and at least have an initial discussion with my client when they're considering organizing the business - trademark - same thing. And trademarks speaks more to, maybe, branding or protecting - whether they're logos or whether they're phrases. But is it something that you think you have the ability to generate revenue on? You know, in the early stages of the business and then building on that brand. Again, you're going to - you want to run the same cost-benefit analysis for doing something like that, because that can get into, again, further filing fees and legal fees that, you know, if you're not - if you don't think you're going to get the commercial benefit of those trademarks, then you want to think long and hard as to whether or not it makes sense to actually - to file. And then copyrights - same thing. Copyrights don't require a filing of the PTO. Copyrights are - when they are generated, they become - they're automatically owned by the copyright - the copyright person - the person that actually makes the make, itself, or designs the art or design - or publishes the publication, they automatically get those rights. But if you want to pledge those rights, for example, you would have to file and go through a number of steps in order to do that. And so, you know, there's a number of issues involved there that you want to make sure you get, again, specialized counsel involved. They understand, you know, the nuances you want to see your client understands the nuances of whether or not it makes sense to

pursue. A pretty popular topic in, usually, in the high-tech industry, and it's in other industries too. For example, Coca-Cola is a trade secret - you know, the recipe behind that. But as a nonpublic, you're not filing anything in a patent or trademark office, where it's a public filing - recognizing what a trade secret is and then the ways to protect it. The main way to protect a trade secret is to not tell folks - right? - not to give people that inside information, because the minute you do that, it has the ability of violating that trade secret. So you want to - you know, you want to understand - again, this goes to getting intel on exactly what your client's business is, what their ideas are, what they're trying to do in order to organize this business, and, you know, these are some pitfalls the clients can run into that you want to make sure that they're keeping an eye on beyond just the formation of the company. And then non-disclosure agreements - those are, in my view, extremely important because it provides you or your client - actually it provides your client the ability and the comfort to be able to talk freely to people about their business, their ideas, their ability to enter into agreements or arrangements with business partners or folks that want to help them in the business, whether it's with their technology or with their product or with the business overall, you don't want to - because folks are helping you and you're contracting with them, you don't want to give away - give them the ability to take your idea and run away with it. So things like potential customers and business partners - you know, you want to have a pretty ironclad nondisclosure agreement called an NDA. And then with employees and independent contractors and folks that are actually inside the business, you want to make sure that they are tied up with these as well, because you don't, you know, you don't want them separating from the company and being able to run off with your idea or your information and use it with someone else or for their own benefit. Getting into some key contracts that you want to consider when organizing the business. So we talked about, you know, forming a corporation or forming an LLC or having a partnership. You know, having the operating agreement in place or a shareholder agreement in place for a corporation is very important because, you know - do you have a number of shareholders or a number of members in the LLC? - if a dispute arises, having that agreement, sort of, guide you or having - what I call, being auto-excretory that allows for, essentially, a roadmap, in the event there is a dispute, and folks know exactly what they can expect. If someone wants to withdraw from the business, someone wants to sell their shares, someone dies, gets divorced, has another, sort of, life event - what happens to those interests that they hold? It's a - typically, it's a closed corporation, and corporations want to hold that tightly. They don't want to open it up. They don't want to open up the equity or the membership interests or shares to strangers - right? - which is the reason why they brought in, you know, they brought in closer-knit folks to the business. It's not in their best interest to open it up to the public for a number of reasons, and they're also limited by the SEC, in a lot of respects, but the intent of the business is to keep it as a closely-held business, and so you want an agreement that kind of - that sets forth what those rights and obligations are of those shareholders and members, so that you don't run into a dispute later. And that can get very messy and honestly, very expensive. Key employees is another thing. If you have founders in the business, if you have key employees that you want to keep in the business that are going to be able to, you know, commercialize or cultivate that business further, you want to consider having them into some sort of agreement, which would include things like, you know, the nondisclosure we talked about, nonsolicitation. They would also include non-competition, that they can't go out and just take the ideas and compete against you after having inside information. And then, you know, your business partners and customers, you want to make sure that, you know, you have an ironclad commercial form of contract that can be used that protects the company's interests and, you know, lays out, you know, at

least the most salient points that you as a business or your business is going to be either providing and that you're making sure that, you know, you're getting the benefit of that arrangement. And the best way to do that is to do your best to have a, you know, at least a form of commercial contract that you can use. And again, it depends on what type of business you have. But most businesses are dealing with outside individuals or outside companies. And you want to have that protection lined up and ready. Finally, some of the more miscellaneous considerations that I like to weave into my discussion when organizing a business in Massachusetts. We talked earlier about the entity name. You want to make sure that again, that entity name is something that is, you know, relatively connected to the business but unique in some respects, that it follows the statutory requirements, that it has corporate inc. in the name or LLC if it's an LLC. Since your entity or your business is going to be a separate individual, a non-natural person, it's going to have its own bank account. If money's coming into the business, if you're operating the company, you want to have some sort of, you know, way to do that. And a bank account, having the ability to run the business is one of the germane functions of that. And so you want to make sure you have a bank account, you're opening up one in the company name as well as they'll need that FEIN we talked about as well. Insurance, you know, want to protect the business to a great extent or protect some of the people, so property and casualty insurance and then maybe key man life insurance depending on who's part of the business and who's needed. Again, those are considerations you want to think about. Employees are always a very much a hot button. There are a number of - and we could do, you know, all day session on just employees, employment and how that affects your business. There are a number of things to consider, from, you know, whether they're considered W-2 full-time employees, whether they're independent contractors. And there's a whole body of law on that and how you differentiate between the two and the costs and benefits of that. Onboarding employees, what you need to consider, certainly with the pandemic and how that's affected businesses and how that affects employees, understanding and having a really good working understanding and knowledge of employees and how they affect your business - I always say that employees are the biggest asset to the business, but they can also be the biggest liability. You have to be very careful. And then considering applicable, relevant licenses and permits for the business - you know, is it a particular esoteric business that you're running that requires certain permits and licenses? Is it a restaurant or a bar? Or is it another business that requires, you know, certain real estate licenses? Or is it, you know, professional licenses that are required for the members or the employees of the company or the company itself? So you want to give those, you know, some consideration when you're considering, you know, putting the company together and as one of the kind of the main topics that should be on your clients' minds, because you don't want to find out when it's too late that you didn't have that proper license. And then you're subject to fines and maybe worse. So that's, again, that's a very, it's a high level view and review, I guess, of what clients need to consider when organizing a business. And again, each one of those topics we can have, you know, several hours of instruction and guidance on you as an advisor are going to hit upon many of those issues and topics. If you're advising your client with respect to organizing in Massachusetts or in Delaware, you know, again, the jurisdiction is not necessarily dispositive of how you're going to advise. There are some nuances to each one. But for the most part, what you've seen today are the high points. And each one of those high points has a number of levels that you can dig into to make sure that your client is putting its best foot forward, protecting itself, and hopefully in the end, making some good money at what they're trying to accomplish in the business. So I want to thank everybody for joining me. As you can see on the slide here, my name and contact information. Happy to

address further the questions, share different war stories if that's a help. Hopefully people can avoid some of the pitfalls. And if there are questions on even more the, of some of the nuances with respect to business entities themselves and what you have to watch out for and what clients should be thinking about when they're thinking about organizing in Mass, I'm happy to entertain those. So thanks again, everybody, and good luck.