Governance of Corporate Entities

Who is going to run your business and how are they going to do it? It may seem obvious—you are going to run your business. In reality, the various forms of governance structures offer different benefits to your business, for example attracting investors, utilizing a stakeholder's expertise and contacts, and ensuring that the right people have the final say for your business.

Partnerships

Common law Partnerships have the simplest governing structure in theory: each partner is responsible for the governance of the partnership. No governing agreement or document is necessary. While a simple structure sometimes has benefits, the lack of a governing agreement causes a lack of hierarchy and "decisions-by-committee"— both are unnecessary obstacles to any business. Although no governing agreement is required for partnerships, we strongly recommend a partnership agreement that delineates the responsibilities of each partner and provides the appropriate mechanisms for the partnership to make substantial decisions.

In contrast, a limited partnership delineates between general partners, who are responsible for the management of the partnership, and limited partners, who, in addition to having limited liability to the partnership, have limited responsibilities. Partnership agreements can either directly name the partner who will serve as general partner or provide the process for selecting the general partner. Limited Partnerships provide a good option among professionals and partners who have equal contributions to bring to the partnership who benefit from delegating management and administration to one of the partners.

Corporations

Unlike partnerships, governance of a corporation is generally divided between the corporation's employees such as a CEO and the corporation's board. The corporation's employees are responsible for the corporation's day-to-day management. The corporation's board is responsible for major decisions related to the corporation's long-term strategy, for example whether to acquire a major asset, who to hire as CEO, whether to dissolve, etc.

Directors are chosen by the corporation's shareholders based on the corporation's bylaws. Getting legal advice tailored to your business is crucial, as the bylaws can create different classes of shareholders with differing powers. For example, a corporation may provide for two classes of shares: one of which provides for economic benefits, such as dividends, while the other class may also provide the ability to vote on the corporation's directors. This distinction allows a corporation to attract investors interested in the equity without giving up control of the corporation.

Ideal candidates to serve on a board are individuals who have particular expertise or contacts that benefit the corporation. Because serving as director requires less of a time commitment and directors need not delve into the details of a corporation's every day management, a director who provides a limited, though valuable, contribution may nevertheless be a good fit. For example, a food-service business may find that a former restaurateur is the ideal candidate because he or she has experience in the industry and has valuable contacts with distributors and critics.

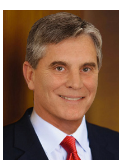
PANNONE LOPES
DEVEREAUX & O'GARA LLC
counselors at law

While the time commitment may not be overly burdensome there are other factors that both the corporation and the director must be aware of. First, there is no requirement that the corporation compensate directors nor must a director own any equity in the business—although compensation may be appropriate depending on the circumstances. Second, directors owe a duty of loyalty to the corporation; the director may not take advantage of a business opportunity that otherwise would have been available to the corporation. Finally, a director may be liable to the corporation (via a suit initiated either by the board or shareholders) for failing to comply with his or her duties. Directors, however, are generally protected from liability so long as their actions on behalf of the corporation are based on good faith and reasonable diligence.

Limited Liability Company (LLC)

LLCs are a cross between partnerships and corporations. They have governance structures similar to corporations with a few wrinkles. An LLC's operating agreement acts the same as a partnership agreement and corporate bylaws by setting forth how the LLC is governed. LLCs are managed either by their members or by "managers" chosen by the members. Managers need not be members of the corporation and may be compensated for the services. The members of an LLC can also choose to have a board of directors, like a corporation, though one is not required.

The appropriate governance structure that is ideal for your business depends on a number of considerations: Who is joining me in this venture? How much control am I willing to give up? How can I benefit from other's experience and contributions? Determining the answers to these questions and consulting an attorney will help you and your business find the ideal fit.



Gary R. Pannone
Managing Principal

Joshua J. Butera
Associate

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PANNONE LOPES DEVEREAUX & O'GARA LLC
counselors at law

Northwoods Office Park, 1301 Atwood Avenue, Suite 215 N Johnston, RI 02919
401-824-5100
pldolaw.com