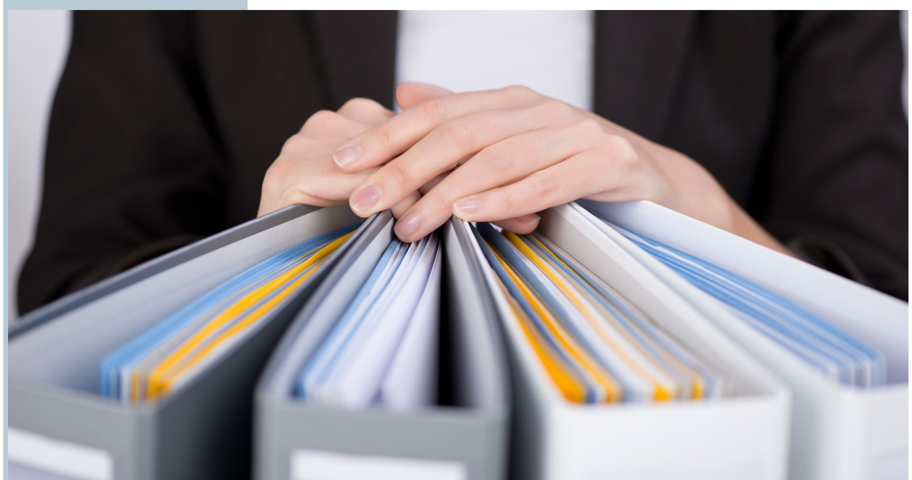
PLDW CORPORATE & BUSINESS

CLIENT ADVISORY:

A PRIMER ON CORPORATE GOVERNANCE FOR BUSINESS OWNERSHIP

The entrepreneurial spirit is alive and well in the U.S. with millions of businesses created each year. Some will survive and others will vanish. Those that flourish and grow are most likely to have established the corporate governance structures that are essential to thrive and survive. These critical keys to success are described below as a primer for start-up business owners and entrepreneurs to consider implementing as best business practices.



Corporate Governance

What is "corporate governance" and what does it mean for my organization?

Corporate governance refers to the manner in which a corporation is directed, and laws and customs affecting that direction. It includes laws governing the formation of firms, by-laws established by the firm itself, and the structure of the firm. A company's corporate governance refers to the relations, distribution of rights and responsibilities by and among four primary groups of participants: the board of directors, managers, employees and shareholders.

Corporate governance includes rules and procedures for making decisions and provides structure through which company objectives are established. Corporate governance also includes the means by which stated goals are achieved and how performance of those objectives is monitored.

In short, the corporate governance system of an organization is the structure by which a company's directors and managers act in the interests of the firm, its shareholders and employees. The corporate governance system is also how the company holds the board of directors, managers and employees accountable to capital providers and third parties who rely upon the value of the company's assets. Fiduciary duty and accountability issues are often discussed within the framework of corporate governance.

Articles of Incorporation

How do I go about forming my corporation and what lays the basic framework for proper corporate governance?

A corporation's Articles of Incorporation, when filed with the Secretary of State, serve as both the formation document and primary source of a corporation's governance system. A corporation's Articles set the par value for the corporation's stock as well as cap the number of shares a corporation is authorized to issue to shareholders. Individuals forming the corporation, called "incorporators," have the option to set forth additional language pertaining to governance structure of the corporation such as the size and manner in which a board of directors may vote in relation to various business decisions, although these provisions are also frequently found in a corporation's by-laws (discussed below). Articles frequently define a corporation's corporate purpose and provide for the indemnification of directors and officers acting in good faith for the benefit of the corporation. Articles of Incorporation are supreme to any other corporate governance documents, and therefore, critically important to corporation's governance.

By-Laws

What are "by-laws" and how do they benefit my corporation?

Only second in supremacy to a corporation's Articles, a corporation's By-Laws are the essential outline of a corporation's governance structure. They define the general authority of corporate shareholders, the election and removal of directors and officers, and the division of authority among these subsets of corporate decision makers. By-Laws define standards for meetings including the constitution of a quorum for purposes of corporate action and set forth instances where actions by decision makers may be had in the absence of formal meetings.

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Other Governance Policies and Procedures

When setting up my corporation, are there any other polices or procedures my corporation should consider adopting?

While there are certainly corporations which operate without supplemental policies and procedures, it is a "best practice" for corporations to adopt additional policies and procedures to supplement the basic governance framework set forth in corporate Articles and By-Laws. Some of the most common supplemental policies are as follows:

- ***Conflict of Interest Policy***
  The purpose of a Conflict Policy is to protect the corporation's interests when it is contemplating entering into a transaction or arrangement that might benefit the private interest of an officer, director or high level manager within the corporation. The Policy defines what constitutes a conflict and provides a framework by which conflicts are identified and addressed in order to facilitate the healthy operations of a corporation and stymie abuse by corporate decision makers.

- ***Whistleblower Policy***
  A Whistleblower Policy is intended to deter corruption and abuse within a corporation by setting forth guidelines for directors, and officers and employees to raise concerns regarding the rogue practices of individuals within a corporation while assuring that such individuals will be safeguarded from harassment, victimization and/or retaliation for reporting. The basic concept is that with assurances and protections afforded to reporters, malfeasance taking place within the corporate setting will diminish.

- ***Document Retention Policy***
  Document Retention policies set forth corporate-wide standards for the retention and destruction of physical and electronic records received, created, and stored by a corporation in connection with its business operations. These policies are intended to remove the guess work of corporate employees in terms of how long to keep records and to comply with various governmental and industry laws and regulations.

In addition to the foregoing, it should be noted that industry specific laws, regulations and practices may require the development of additional policies and procedures.

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Gary R. Pannone is the Managing Partner of Pannone Lopes Devereaux & West LLC and has been representing closely held business owners for thirty years. He is an experienced business lawyer specializing in the areas of business formations, corporate restructuring, mergers, acquisitions, corporate compliance and health care. His practice includes the representation of nonprofit organizations with respect to consolidations, mergers and acquisitions.

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