Understanding Corporate Governance

Sarah Sawyer: Welcome to this week's OK at Work with myself, Sarah Sawyer, and my colleague Russell Berger, both attorneys at Offit Kurman. And today we are talking about corporate governance, and that can mean, a bunch of different types of documents and procedures and policies. It really depends based on the size of the company but obviously a great starting point is what do you have to have in place, kinda what are the things people should be thinking about with the goal, of corporate governance to be how do you have a good functioning organization that there's clear, roles and responsibilities and everything is formalized and user-friendly.

So what are the initial things people should be thinking about on this topic, Russell?

Russell Berger: Yeah. Well, I mean, to form the entity, that's usually pretty straightforward, depending on your state and the type of entity that you're forming. For example, you gotta have an articles of incorporation form a corporation.

Now, that's usually pretty [00:01:00] straightforward and there's not a lot of heavy lifting that typically takes place in those documents. But what you often see is, with a corporation, you see in a stockholder agreement and in an LLC or other entities you might see an operating agreement.

That's where the rubber really meets the road, and it's kind of the roadmap for, how are we getting together? How might we break up if we go our separate ways here? How are we going to operate in between? How are we going to gather, money to fund this enterprise if you need that?

And how are we gonna distribute money when profits come in? What are we gonna do with that? And that's oversimplifying it. There are more details and there's more nuance to it but it's how are we getting together? How are we operating? How would we leave things if we separate? Or how can one person leave, and what does it look like for them?

And I think it's really important to have that level of documentation in place 'cause it really sets up the rules of the road for how your business is going to operate and the relationships between the various owners of the business.

Sarah Sawyer: A big part of that's gonna be [00:02:00] decision-making and being able to know who's making decisions how those decisions are being made.

You see this also when you've got owners that maybe aren't working in the business and they have, a CEO or they have employees or they have owners who are- some owners are involved in the business and some owners are on the outside, maybe not on the day-to-day operations. But obviously a lot of decisions need to be made.

There's the big ones which are starting the business, selling the business, shutting down a business and then obviously what you mentioned, people coming and going within the ownership structure. But there's also a ton of decisions that need to be made around strategy on a daily basis. And depending on the type of organization you have and the level of involvement of the owners and these different roles, there might be even additional things that you need to think about as far as decision-making.

Obviously in those big times when, really big fundamental things are happening with the business and in times everywhere in between, which might be joint ventures, it might be everything as small as, vendor relationships or [00:03:00] direction of the company, those types of things. So having that kind of decision-making structure laid out is important as well.

Russell Berger: Yeah. Really important to be fast and decisive as a business a lot of the time. And so knowing, whose decision is this to make whether that's an operating agreement, stockholder agreement, bylaws, wherever you're looking, has the power been delegated to this group?

Is it an operational decision? Is it a board decision? Is it a ownership decision? Having clarity as to which group makes what decisions allows you to move a lot faster and decisively and to know what you need in order to get a decision implemented.

Sarah Sawyer: Yeah. Yeah, I feel like the term corporate governance can sound really daunting and complex, but definitely important to dig into these things and it's really the practical-

Russell Berger: Yeah.

Sarah Sawyer: The lifeblood of the business.

Russell Berger: Right. Right. Well, and then when you have these guideline, not guidelines, these rules contractual obligations as to how you're going to operate the business you gotta follow them, and you gotta document that you followed them and, you keep the books and while, we know that doesn't always get followed [00:04:00] strictly.

But, if you go to sell, if you go to exit, having those things there are gonna be important. So, you're setting up a set of rules and then you should follow that set of rules moving forward with your operations.

Sarah Sawyer: Yeah, make sure they're actually ... they mean something. Well, thanks Russell.

We'll see you next time.

Russell Berger: Thanks, Sarah.