TOP TAKEAWAYS

Startup Company Corporate Governance

1. **Identification of Director Candidates.** Startup companies should begin to identify potential directors early in the company's life cycle though a formal board with independent directors is not really necessary until the Series A stage. When identifying potential candidates, startup companies should investigate and vet potential directors beyond traditional networking and word-of-mouth hiring. Although a potential director may enhance a company's reputation and credentials, a startup company should ensure that potential director has the relevant business experience and/or significant contacts within the company's vertical. If looking to raise money, a company should identify directors that also have experience in connecting companies to investors or other sources of capital. However, be aware that adding a director solely for the purpose of raising money can easily backfire and may conflict with such director's fiduciary obligations.

2. **Director Compensation.** Generally, directors add more value to startup companies when they have a stake or vested interested in the success of the company, whether it is economical, reputational, or otherwise. Given that startup companies typically have limited cash, granting equity (most typically options) to directors is a generally acceptable method of compensation. Be cautious of a potential director who demands cash for compensation.

3. **Director Roles.** Startup boards should attempt to clearly define the role of its directors. Although directors should be diligent in performing their fiduciary duties, directors are not there to run the company; that is the CEO's job. Directors should devote time to the company's business strategy and management's execution of such strategy. In addition, the board should collaborate and challenge management's creation and execution of the business plan.

4. **Role of the CEO Chairperson.** Generally, venture firms are willing to initially coach and mentor management directors, as needed, despite bumps in the road. However, boards should be willing to, and the CEO Chairperson should not be offended by, adding a non-CEO chairperson to lead the board. A non-CEO chairperson can clear time for the CEO to manage the day to day operations of the Company and better execute the business plan.

5. **Board Chemistry.** Board chemistry is critical as startup company boards tend to be more intimate and less formal than later stage company boards. A key to building board chemistry is to recognize and acknowledge differing interests amongst the various directors. In addition, efficient communication and transparency can build chemistry among the board and management. Periodic discussions among non-management directors only can help identify additional risks and help foster communication and cohesiveness. Building board chemistry is an ongoing effort.

6. **Operation of Meetings.** The CEO and/or other executive management should prepare and circulate materials in advance (no less than 48 hours) of board meetings so that directors have sufficient time to review and digest. It is a very inefficient use of time for directors to come up to speed on key issues and materials during board meetings. The CEO and/or other executive management should facilitate, not dominate, discussion of relevant issues.

7. **Documentation of Board Action.** A startup company board, like any other board, should document and record all key board decisions, even in distressed situations, so there is some record to indicate that the board addressed the relevant issues. Even if a board meets regularly, there can be potential risk of liability for lack of oversight in situations where there were no minutes or other board records. Meeting minutes and other records do not need to be overly detailed, but they do need to be accurate and properly represent board processes and decisions.

For more information

For more information on Startup Company Corporate Governance, please feel free to contact the moderators directly:

Christopher C. Cain
Foley & Lardner LLP
ccain@foley.com

Galen R. Mason
Foley & Lardner LLP
gmason@foley.com