



## Practices & Industries

# Private Companies

## Overview

Day Pitney's Private Companies practice group renders services to closely held and family businesses. These services include:

- Formation of corporations, partnerships and limited liability companies
- LLC operating agreements, stockholder agreements and partner agreements
- Employee compensation agreements, benefit plans and stock option plans
- Acquisitions and divestitures of businesses and product lines
- Debt and equity financing
- Commercial contracts
- Trademark, patent and intellectual property advice, including licensing
- Real estate purchases, leases and financing
- Succession planning and related estate planning
- Litigation and alternative means of dispute resolution

### Formation of Entities

Entrepreneurs want the correct legal structure to begin their businesses, knowing the initial documents may provide rules governing their businesses for many years. Whether a business is to be conducted by an individual, friends and family, or a team of colleagues, the formation documents can be critical. Our lawyers bring together skills in entity formation, governance, tax, employee benefits, intellectual property and other areas to help you choose the best rules for your new business.

Limited liability companies are often the preferred structure for new ventures, whereas sometimes corporations (C corps or S corps) or partnerships may be more appropriate. We have standard packages for entity formation, whether under the law of the entrepreneur's home state or of a favored state like Delaware, so new ventures can be created overnight if required.

Entrepreneurs will want to consider the rules that best suit their ventures — management structure, buy-sell restrictions, repurchase rights, tax planning, confidentiality and competition restrictions, and assignment of inventions. Taking the time to choose the right agreements for your new business will increase the likelihood of smooth operations as the business grows.

Raising capital is a critical challenge for new companies. We track the changing rules for seeking new investors, including crowdfunding. We also have deep experience with investors at every level, from friends and family to venture capital to institutional finance.

### Contract Negotiations

Lawyers in the Private Companies practice group prepare and negotiate complex contracts for many industries. Our lawyers have substantive knowledge in such areas as technology, telecommunications, healthcare and energy. Master service

agreements, sales agreements, manufacturing contracts, employment agreements and licenses are also frequently required. We take the time to understand the client's business terms and goals, and then draft agreements to reflect the client's requirements.

Negotiations require not just knowledge of the client's goals, but also insight into the likely goals and concerns of the other contract parties. Our business lawyers are sensitive to the importance of "getting to yes," helping the client complete the transaction on terms that protect his or her interests. We seek creative solutions to the knotty problems that can delay or even end potential deals.

### **Dispute Resolution**

Business disputes disrupt the success of an enterprise. Disputes can arise among the owners and other stakeholders in a business, as well as between contract parties. Our business lawyers often represent the minority owners of a business in enforcement of their rights — both under the entity's organization documents and under applicable law. We also interpret contracts to help clients understand their rights and obligations when disagreements arise.

Of course, if an acceptable solution cannot be negotiated, our firm has the litigation experience and deep bench to help our clients enforce their rights in court, in arbitrations and in mediations.

### **Business Succession Planning**

Entrepreneurs will ultimately seek an exit strategy. The company can be sold, go public or be passed along to the next generation. We can help with each of these strategies.

Mergers and acquisitions involving private companies are a major part of the Private Companies practice. We represent sellers of private companies to strategic buyers, often public companies seeking to expand through acquisitions, and to financial buyers such as private equity firms. Key issues for the seller of a private company will include preserving the purchase price (earnout protections, limits on indemnification obligations, security for deferred payments), determining the seller's ongoing duties (employment and consulting agreements, noncompetition and nonsolicitation agreements) and tax structuring. Some sellers focus on ongoing benefits for the employees who helped build the business.

Taking a company public is often the dream of an entrepreneur. Our securities lawyers understand the complex web of federal and state regulations that impact initial public offerings (IPOs). We can help position a company to move quickly if the market favors an IPO. We also have experience with foreign markets, such as London's AIM.

For clients who wish to transfer ownership to the next generation, we regularly advise privately held businesses on succession planning. This is a key part of estate planning that focuses on maximizing economic and intrinsic value for all generations, including developing tax-efficient strategies for transferring ownership, recognizing competing interests among family members, assessing the advantages and disadvantages of sale vs. retention, minimizing the impact of a transition on key nonfamily-member employees, and most important, ensuring harmonious long-term family relationships. Other goals include minimizing income, capital gains and estate taxes, and satisfying both personal and charitable goals through the use of a variety of charitable entities, including split-interest trusts and private foundations.

## **Experience**

*No aspect of this advertisement has been approved by the highest court of any state. Prior results do not guarantee a similar outcome.*

- Representation of a developer and manufacturer of optical fibers for minimally invasive surgery, based on a unique fiber technology for guiding high-power laser light, in a \$20 million round of private financing.
- Representation of a privately held nanotech company in two venture rounds of financing, raising a total of approximately \$12.6 million.
- Representation of a private lender in a \$2 million subordinated loan (including warrants) to an international medical devices manufacturer.

- Representation of a developer of technology products and services dedicated to enhancing online marketing in a \$22 million first-round private equity financing.
- Representation of a developer of secure, cashless, electronic commerce networking technology, targeted primarily to the fast-food, gasoline and convenience store markets, in multiple rounds of convertible bridge financings.
- Representation of a fuel cell company in two rounds of preferred stock financing totaling \$14.5 million and the subsequent initial public offering of common stock on AIM, a submarket of the London Stock Exchange.