LAREDO & SMITH, LLP

IN BRIEF

NEWSLETTER • SEPTEMBER 2016

STOCK OR SALARY – A BUSINESS OWNER'S DILEMMA

Clients, particularly those starting new, closely-held businesses, commonly ask whether they should give stock in the company in lieu of or as a supplement to compensation. The answer is: *it depends.*

Sharing ownership in a business is a common and well-accepted practice with significant benefits. If a company has multiple founders, for example, each is likely to want to have an ownership interest. Financial investors – whether they are friends and family members or private investors – often want a reward (stock) for the risk they take in providing a company with money. Witness the popularity of the television show *Shark Tank* where companies attempt to get investors to provide them money and expertise in exchange for a share of ownership.

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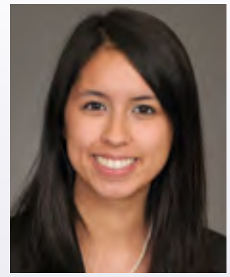
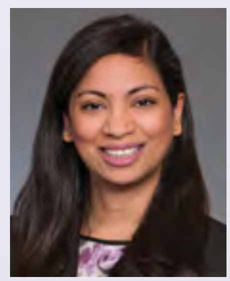


Jessica L. Conklin has been named co-chair of the Practical Skills Committee at the Boston Bar Association. In her role, Jessica will help the BBA introduce new lawyers to topics that often are not taught in law school.



Payal Salsburg has been appointed to the Ethics Committee of the Boston Bar Association. On this committee, Payal will advise BBA members who raise ethical questions and concerns.

Jose Sierra had the honor of welcoming two Havana Law School Deans on their visit to the U.S. as guests of the Massachusetts Association of Hispanic Attorneys, the Massachusetts Bar Association, and Suffolk Law School. Their visit was part of a cultural exchange and offered a unique opportunity to learn about the Cuban legal system.

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The more difficult questions arise when the potential recipients are employees, advisors, independent contractors or service providers to the company. A company owner may see the issuance of stock as a way of limiting a company's out of pocket expenses. But these savings can come at a significant cost. Some questions to ask are:

- Is the company likely to go public or be sold within a few years? If so, that can make a more compelling case for providing ownership.

- Are there ways to provide incentives for loyalty and hard work other than ownership? Bonuses and flexible hours are other possible rewards.

- Are the potential recipients actively seeking ownership? If not, there is less of a case for ownership.

- How complicated will sharing ownership be? Even the simplest ownership plan will involve cost to the company. More complicated structures, such as private placements, stock option plans, and employee stock ownership plans, will require sophisticated planning and added expense.

If, after considering the pros and cons, the owner wants to proceed with sharing ownership, then it is critical to involve the company's accountant and attorney in the process. Owners need to be especially careful not to make promises about ownership which might later form the basis for a claim against the company and/or the owners. Ownership documents need to be carefully crafted, reviewed for tax implications, and tailored to the needs of the particular business. While sharing ownership of a business can be a good path for growth and success, it only should be undertaken with care and planning.

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