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## LEGAL COUNSEL: CHANGING CHAIRS

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Quick Summary: Legal counsel will shift from providing advice to the entrepreneur to representing the company.

### Abstract:

Legal expertise is an essential element that must be available and used appropriately for every organization. Entrepreneurs, as they begin to engage with an attorney, need to understand the transitory role that an attorney will have. Initially, the attorney will advise the individual entrepreneur, but over time, they will advise the structured company.

The previous article in this chapter, 7.010202, "*Who Should Sit at the Table,*" identified Legal Counsel as one of the chair occupants. If there is one role that fits with the title of this volume, "Governance," it is legal counsel. Complying with local, regional, state, and Federal rules and regulations is mandatory. The need for compliance is even greater for companies dealing with international markets. For example, unintentionally not complying with the Foreign Corrupt Practices Act can result in civil and criminal charges against individuals within a private company. Far more likely is the chance for litigation over contract compliance issues.

Like many others who are sitting at the table, the position is part-time in nature. The risk, as highlighted in article 3.040404, "*Legal Counsel: Necessary or Evil,*" discusses the need to engage legal counsel at the right time for the right tasks. Often, entrepreneurs and small companies, in an effort to minimize expenses, err on the side of not engaging attorneys until the (potential) damage is done. Without a doubt, the most serious common situation arises during money-raising activities in which companies inadvertently move down the investment path without adequate representation.

Unfortunately, many entrepreneurs do not understand the required shift in attorneys' legal obligations. A major shift in those obligations occurs from when an entrepreneur first seeks legal advice to the point in which the company is operating under a legal framework. Initially, the attorney may be providing personal advice to the entrepreneur that is in the entrepreneur's best interest. However, when the attorney becomes the "company counsel" – sometimes a subtle transition – the attorney's obligations shift to protecting the interest of the company's shareholders and NOT the entrepreneur, turned CEO. Although the attorney will understand this transition, the entrepreneur may incorrectly still think of the attorney as their "friend and confidant" working in the entrepreneur's best interest. In "good times" the interest of all parties are in alignment. However, if a dispute between the CEO and the Board of Directors, who represent the interest of the shareholders, the attorney's changed allegiance may become obvious. There is nothing sinister or unethical about this situation; it is simply the way our legal system works.

If this situation occurs, the entrepreneur/CEO is well-advised to seek legal counsel to represent their best interests. This new attorney will not be sitting at the table but will be standing behind the CEO, providing appropriate advice. This situation does not usually arise, but understanding how it could occur is in everyone's best interest.