

## **Business and Commercial Activities**

The Firm prepares and reviews business organizations, contracts, and security documents and feels that it approaches such drafting, and scrutinizes the documents, with the broad knowledge of lawyers who have litigation experience.

Helping the client choose a business form takes particular legal skills. Such factors as central management, ease of management, duration, income tax treatment, social security obligations, ease in selling all or part of a business, avoidance or application of securities laws, and personal liability, are all factors which the lawyer and client must consider together in deciding the form of entity to create (a corporation, limited liability company, limited liability partnership, general partnership, limited partnership, trust, or sole proprietorship). The Firm will draft the organizational documents based upon input provided by the client. How decision-making for the entity is accomplished and buy-sell agreements may be of particular concern. Typically, in buy-sell agreements, parties determine the value of what each owner of a business has or a method of computing the value, and there may be successive options to sell or buy, or requirements to sell or buy which arise when one party wants to leave the company, or when a person becomes incapacitated or dies.

In the transfer and sale of a business, legal help is beneficial in negotiating and finalizing the transaction to ensure a successful closing. The Firm assists in drafting contracts, security documents, bills of sale, and other documents necessary to close the transaction. The Firm will provide advice concerning which warranties and representations should be given and which liabilities should be assumed. The Firm will also provide guidance on the transfer of goodwill, covenants not to compete, consents from landlords and terms of leases. Other issues to be considered are the protection in disclosure of inventions and trade secrets, allocation of assets where appropriate, effects of delayed payment, and security or personal guaranties that may be given or should be accepted. The effect of bankruptcy must be considered both in drafting and litigation.