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Legal Updates for Businesses

Welcome to the spring 2026 edition of our firm's Legal Updates for Businesses.

Understanding and dealing with the ongoing and ever-evolving legal requirements that significantly impact businesses, while also paying attention to long-standing issues, are constants in running today's businesses. In this edition we have reflected those balancing obligations with two articles describing some basic best practices for managing the current AI wave, along with a reminder of good governance practices, a look at some of today's commercial lending issues vs. those existing during the Covid-19 period, and a possible tax opportunity. Our firm is committed to providing you, our clients, with current and accurate guidance to assist you in the wide range of issues that constantly arise in running your businesses. We appreciate working with you all and encourage you to reach out for us whenever we can be of assistance.

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Corporate

Good Governance: Corporate Board Minutes

By: Daniel O. Carroll, Esq.

Whether overlooked or an afterthought, the taking and maintenance of good corporate minutes are an underappreciated aspect of corporate formalities that can be an indicator of a corporation's good governance. After all, the New Jersey Business Corporation Act requires corporations to keep minutes of board meetings, and these board minutes serve as the official record of board deliberation and corporate activity. Good board minutes should help establish that the directors or trustees have properly exercised and fulfilled their fiduciary duties and that any corporate action taken has been duly authorized. On the other hand, failing to maintain well-drafted board minutes or failing to maintain board minutes on a regular basis may open board decisions and corporate activity to collateral attack by potentially aggrieved parties. As a matter of good corporate housekeeping, corporations should keep the minutes together with the related agenda and board materials circulated for board consideration at the meeting. Without a clear record of board deliberations and decision-making, those questioning corporate actions may assert that the board acted improperly, arbitrarily, capriciously or even, without authority (i.e. ultra vires).

At a minimum, a corporation's board minutes should include:
·Date and time of meeting;
·Location of meeting (physical or electronic means (e.g. telephone or video));
·Purpose of meeting (i.e., regular or special);
·Names of board members in attendance and members absent;
·Identify when board members leave or only attend/participate in a portion of a full meeting;
·Names of meeting chair and the individual recording the meeting minutes;
·The topics discussed (in order);
·Identify reports or other materials distributed or presented for discussion;
·Votes taken (whether approval or disapproval) and resolutions adopted;
·Note if any conflicts of interests were identified and discussed, and if any board members abstained from voting;
·Matters carried to future meetings; and
·Time meeting ended.

Board minutes should be summaries of discussions, not merely transcriptions or verbatim recordings of meetings. Such recordings may chill meaningful discussion among board members and invite other unintended risks. While more detailed minutes for certain matters and discussions is appropriate to accurately reflect the board's diligence and deliberation, care must be taken to ensure accuracy and avoid creating a basis for liability of individual members on contentious matters.

Board minutes can help demonstrate the board's due diligence, but the taker of minutes should be careful not to include attorney-client privileged discussions since minutes are frequently shared with third parties and will lose their privilege. The minutes may identify that certain portions of the meeting were dedicated to privileged discussions with legal counsel, but details of such discussions should not be memorialized in the minutes. Similarly, details of confidential discussions had during executive sessions should remain confidential and should not be included in the minutes. While it is appropriate to note that an executive session has taken place, adding any more detail should be carefully considered and should likely be limited to identifying the topics of discussion and actions taken (if any).

With the growing popularity and presence of artificial intelligence (AI) in the workplace, the use of AI to help prepare corporate board minutes should be carefully considered and implemented. It is essential that corporations ensure that their AI vendors maintain the confidentiality of corporate information and do not use corporate information for training the AI. All board members should know and understand that AI software may be recording the meetings, and they should approve how it will be used in preparing and maintaining the official record of board. AI should not be used when the board is discussing sensitive matters like litigation, regulatory compliance or, even, important strategic projects. The concerns regarding attorney-client privileged and other confidential discussions noted above are paramount when using AI to assist with minutes. AI generated summaries should never be considered final and must always be reviewed for accuracy and completeness.AI may fail to accurately reflect the context and/or tone of discussions. If properly implemented in accordance with policies designed to mitigate risk, AI may prove to be a helpful tool to maintain and more quickly adopt board minutes.

Well drafted board minutes that are timely reviewed and approved by the board can be a powerful means of establishing a corporation's good governance and the board's due diligence. Corporations are well advised to set the record straight and tell their own story before someone else tries to tell it for them.

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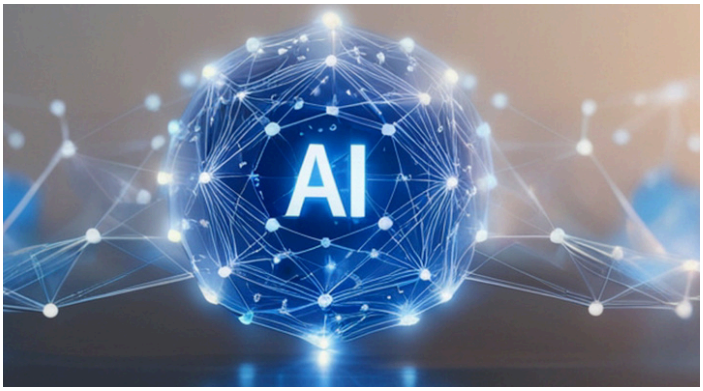
Artificial Intelligence

Navigating AI Adoption: Best Practices and other Key Considerations

By: Noah Shier, Esq.



Artificial Intelligence ("AI") offers unparalleled benefits and has become integrated into many organizations' daily operations. However, the adoption of these AI tools introduces significant risks to an organization, particularly regarding their confidentiality obligations. More specifically, improper use of AI tools and platforms can lead to data breaches, loss of trade secrets, and regulatory fines. This article briefly outlines selected best practices and other key considerations for organizational AI adoption. Note that the following is not intended to be a complete list for such adoption.

1. Confidentiality Imperative: No Public AI

A major risk when using Generative AI (e.g., public ChatGPT, Claude, Gemini) is the accidental disclosure of sensitive information (i.e., trade secrets, confidential information, privileged information, or personally identifiable information. Many consumer-facing public AI platforms typically use inputs to train their models, potentially making such information accessible to third parties. This means that any sensitive information entered into these tools could be exposed to third parties, and such information may no longer enjoy certain protections and rights otherwise afforded.

- **Best Practice**: Prohibit employees from entering sensitive into any consumer-facing public AI tool or platform. If documents containing such information require use of an AI tool or platform, require use of enterprise-grade AI tools and platforms that contractually provide for: an organization specific "closed" or "private" universe where AI inputs are not publicly disclosed; data privacy; zero-data retention; and operate behind information security protocols.

2. Implement Employee Training and AI Policies and Procedures

Organizations should establish and implement written, company-wide, AI policies and procedures to provide employees' clear guidelines relating to such employees approved and prohibited uses for AI tools and platforms. In addition to implementing such policies and procedures, it is imperative to perform regular AI training to guide the staff to recognize, among other items, approved and restricted uses, and suspected data breach protocols. Such policies and procedures include, without limitation,

- **Approved Tools List**: Define which AI tools and platforms are approved for business use and the specific business purposes (i.e., "Research using [Tool X] for non-confidential matters only").
- **Prohibited Uses**: Explicitly outline where use of AI tools and platforms is banned, (i.e., material trade secret matters, witness preparation, or in areas where a court has explicitly forbidden it).
- **Data Usage**: Adhere to sharing the minimum necessary anonymized data required for the AI tool or platform to perform the task and specifically identify data that must never be entered into such AI tool or platform.

- **Human-in-the-Loop (HITL)**: AI is designed to augment, not replace, human judgment. Require mandatory human review of all AI-generated output to check for "hallucinations" (false information) or inaccuracies, especially before sharing internally or externally.

3. Review of Vendor Contracts
Review agreements with AI vendors to ensure they contain strict confidentiality obligations on vendor, data ownership and security provisions. Ensure such agreements do not have the rights to use your data for their own development purposes (i.e., data will not be used to train vendor's model).

Conclusion
As AI capabilities evolve, so does the responsibility to manage these tools responsibly and securely. By isolating certain sensitive information, adopting written policies and procedures, maintaining human oversight, and conducting vendor due diligence, organizations can realize the efficiencies of AI while safeguarding data integrity.
For assistance drafting an AI Usage Policy or evaluating your current data handling procedures, please contact our firm.
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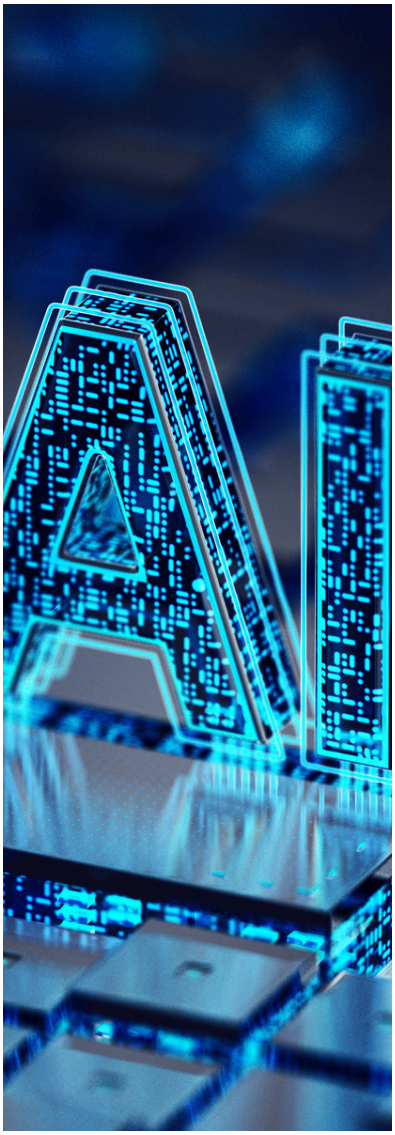
Artificial Intelligence

Ownership Considerations of the Output of Generative Artificial Intelligence (AI) Models

By: Priya Persaud, Esq.



As artificial intelligence ("AI") tools grow increasingly sophisticated, the applicability of such tools to various industries is likely to expand in kind. One such tool that has gained prominence in recent years is the generative AI model, including, for example, ChatGPT, Google Gemini, LexisNexis Protégé, etc. With any generative AI model, the model is fed datasets which are manipulated and studied through a series of complex neural networks. The output of the model is based upon learned patterns, context, and tone of the training data. Therefore, while the building blocks of the output are based on the training data, the composition of the output is uniquely designed by the model itself. This article explores ownership considerations of such output in the context of corporate and business law and intellectual property ("IP") law.

Corporate and Business Law
In an asset purchase transaction, the determination of whether specific IP may be sold/purchased depends on the origin of the IP (e.g., whether the IP was created by a human being or a generative AI model). Per the United States Copyright Office, purely AI-generated output might not be a copyrightable work without meaningful human authorship. Therefore, parties to the asset purchase transaction should first determine authorship rights associated with any IP assets contemplated by the transaction. Where authorship rights are attributed to a human being, such IP assets can be assigned and/or purchased in accordance with traditional assignment methods.

However, where authorship rights are complicated by the use of a generative AI model, the parties to the asset purchase transaction should consider alternative ways in which the buyer can secure access to/use of such IP assets or, in some instances, contemplate removing such IP assets from the transaction altogether. A similar analysis may be needed to determine patent eligibility rights for inventions subject to purchase/sale in an asset purchase transaction.

IP Law

Specific guidelines within IP law may dictate IP ownership rights within the context of corporate transactions. Per the United States Copyright Office, applicants are required to disclose when the use of generative AI to create work is more than de minimis. If it is disclosed and/or determined that a work is not a product of human creativity, the work is not eligible for copyright protection. However, if it disclosed and/or determined that a portion of the work is a product of human creativity, then the human-generated portion of the work may be eligible for copyright protection. Such determinations of copyright eligibility may inform the IP assets that are eligible for sale/purchase via an asset purchase transaction. Further, where generative AI is used to create work(s), owners and/or collaborators of such work(s) should be wary of potential infringement. An infringement claim may arise where the work(s) created by the generative AI model is substantially similar to a protected work. Additionally or alternatively, an infringement claim may arise where the training datasets that are fed to the generative AI model contain protected works, which are then studied, manipulated, and reproduced in the output work(s).

The determination of ownership rights of IP assets in the context of asset purchase transactions is heavily tied to analyses of such IP assets under IP law. Therefore, parties to asset purchase transactions are advised to consult a professional whose expertise covers the intersection of corporate law and IP law.

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Commercial Business Loans

A Commercial Lender's Point Of View On Business Loans In A Post-COVID-19 Lending Environment

By: Jeremy Garlock, Esq.

In a recent interview with Christian Szegda, a relationship-driven banker with 20+ years in commercial banking, Jeremy Garlock, Partner at Schenck Price, sought insights into how today's commercial lending landscape compares with the commercial lending landscape at the height of the COVID-19 pandemic. This article builds upon the insights that Christian, Senior Vice President and Commercial Banking Team Leader at Provident Bank, shared in an earlier exchange published in the February 2023 Schenck Price Legal Updates for Businesses.

What changes have you seen coming out of a post-COVID-19 lending environment?
Coming out of the post-COVID-19 lending environment, banks of all sizes have continued to become more relationship driven and less transactional.This has been particularly true for community banks and smaller regional banks, where deposit gathering and fee revenue generation have taken on increased importance in a financial institution's overall profitability and return to shareholders. Deposits are the primary funding source for a bank's loan portfolio. The more deposits a bank carries on its balance sheet, the cheaper the bank's cost of funds, which causes greater profitability of the bank.

During COVID-19, the deposit levels of the banking industry as a whole grew tremendously as banks experienced a massive influx of liquidity resulting from an unprecedented $5-6 Trillion of government financial assistance pumped into the system designed to stabilize the economy. In addition, banks' overall lending appetites were greatly decreased at this time due to the economic uncertainty brought by the pandemic. Therefore, many banks carried large surpluses of deposits relative to their existing loan portfolios. These banks were forced to invest those surplus deposits in short-term liquid investments like treasuries and bonds instead of putting them "out on the street" in the form of new lending.While safe when done and managed correctly, this strategy is typically not as profitable for a bank.

Consequently, most Banks did not view deposit gathering as a strategic necessity during the period immediately following COVID-19.However, as those deposit excesses have gradually receded to more standard levels in recent years, banks are again faced with an increasing need to focus on and drive core deposit growth to keep pace with loan growth, keeping a bank's cost of funds down and improving net interest income and net interest margin, both key drivers of a bank's operational profitability.

What this model ultimately translates to for potential borrowers is that banks are going to expect to be your primary financial institution from a depository and treasury management relationship standpoint. Additionally, healthy deposit levels and/or multi-product relationships are highly desirable for banks and can help certain would-be borrowers distinguish themselves favorably from others, also competing for a bank's capital. While deposits alone do not provide a credit enhancement to a borrower's risk profile, they can incentivize a lender to be more creative with lending terms or be more aggressive on loan pricing.

How does a bank view a potential Borrower today versus coming out of COVID-19?
During the COVID-19 pandemic, there was a great deal of uncertainty about how businesses would perform and whether those business would survive/rebound, etc. Instability was caused by supply chain issues, increasing operating costs, unemployment rates, etc.Banks found it difficult to predict whether a potential borrower could or would return to pre-COVID-19 revenue levels in the future.

Today, we are six years out from the COVID-19 pandemic, and banks now have better, more representative financial data on their borrowers than they did 3-4 years ago. For the most part, lending has been a return to "normal" across most of the credit landscape - consistent and increasing financials trends, a strong balance sheet and good cash flow are always going to lead the way for banks when considering loan applications from potential borrowers. There will always be socioeconomic and political factors such as tariffs that can potentially impact a potential borrower and need to be considered. However, in general banks are doing a better job anticipating these risks and discussing them with their borrowers ahead of time and not reacting after the impact has been felt.

Equally if not more important, banks also witnessed many of their borrowers successfully navigating unprecedented economic challenges created by COVID-19. In many cases, these companies not only survived, but adapted and evolved to come out stronger than before the pandemic, giving banks an increased level of comfort in their borrower's and management's ability to navigate future disruptive events.

What advice would you give to potential borrowers navigating the post-COVID-19 lending environment?

Banks are open for business. Provident Bank itself had a record year for commercial loan origination in 2025, and we expect more of the same in 2026.While there are, and always will be, questions surrounding the economy, the lending environment is generally favorable, and certainly much more stable compared to the initial years following the COVID-19 pandemic.

The biggest advice I can give to any potential borrower is that in order to maintain a good working relationship with your lender, there needs to be constant communication and full transparency, whether delivering good news or bad.

Banks value consistency and predictability, not surprises. Therefore, being proactive in communicating financial or operational challenges experienced, and collaborating to work through those challenges is always the best approach for a positive outcome.

It is also important to ensure your bank is aligned in partnership with your CPA, so that financial decisions that may be made for accounting or tax reasons do not negatively detract from a borrower's credit profile in a material way or violate any financial covenants or other loan obligations.

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Tax

Tax Free Income

By: John M. Clyne, Jr., Esq.

With the FIFA World Cup around the corner, now is a good time to see if you can use the "Augusta Rule" to accommodate an International Soccer connoisseur with a short-term rental and earn some tax-free income.

The Augusta Rule embodied in Code Section 280A(g) originated when homeowners in Georgia rented out their homes during the Masters Tournament and wanted to avoid paying tax on the short-term rental income. The surge in short-term accommodation demand during the Augusta tournament led local homeowners to open their homes to short-term rentals.Because of the short-term nature of the tournament, the IRS acknowledged that temporary rentals should not be considered a regular business activity, nor should they be subject to traditional documentation requirements.

The Rule, in a nutshell, provides if you rent out your personal residence for less than 14 days during the year, the rental income is excluded from your taxable income. Importantly, New Jersey follows the Augusta Rule.

The Augusta Rule's Key Requirements

- Use Your Personal Residence: This includes your primary or vacation home. Your boat or mobile home may qualify under some circumstances. The Augusta Rule does not work if you already rent out the property.

- Rent for Less Than14 Days Per Year.

Here is an interesting use of the Augusta Rule:

Say, you are the chair of your corporation's Medical Practice Group.You hold occasional strategic planning sessions with your key executive team at your home.

If your corporation rents your home for less than 14 days for the meetings, say, for 12 meetings during the year, and your home's fair rental value is $3,000 per day (comparable to renting an Executive suite), you receive $36,000 in tax-free income. (And your corporation deducts the rental as an ordinary business expense.)

- If your business entity rents from you, it is important to document the rental. You need to prove what a third party would pay. (This can be determined by local short-term comparables per VRBO, Airbnb or from a real estate professional.)

- You lose "deductions" for the 14-day "Tax Free Period." Thus, 14 days of real estate taxes are disallowed, but most New Jersey residents hit the state tax deduction limit so this is of no consequence.

- Beware the Sinopoli Case. In Sinopoli, a group of taxpayers adopted a "plan" of renting their homes to their closely-held Corporation, each taxpayer renting for less than 14 days/year.The Corporation deducted rentals while the executives excluded the rental income from personal tax under Code Section 280A(g).

Over three years, the Corporation claimed $290,000 of deductions for home-based meetings and the executives excluded the rentals.The evidence presented in the Tax Court did not support the frequency of such meetings. And, the Tax Court found no documentation, such as meeting minutes, agendas or calendars.
So, the moral – if you lease your house to your closely-held corporation is to have adequate documentation.

Final Thought: Is the Augusta Rule Right for You?

In addition to FIFA, if you are a high-income householder and own a business, the Augusta Rule may be a sophisticated but legal way to convert taxable dollars into tax-free income. The Augusta Rule works best in S corporations and provides great benefits when your situation accommodates the technical requirements of Code Section 280A(g).Best to consult with your accountant before going in this direction.

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