Comparison of Structures of the PTI

Public Benefit Corporation vs. Limited Liability Company

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<th>Variable</th>
<th>Public Benefit Corporation</th>
<th>Limited Liability Company</th>
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| Composition of Board      | One or more directors. Must meet the “interested person” rule. No more than 49 percent of the directors may be interested persons. The term “interested persons” includes (Corp C §5227):  
  - Any person compensated for services rendered to the corporation (other than as a director) during the previous 12 months; and  
  - Brothers, sisters, spouses, parents, descendants, and in-laws of interested persons. | One or more managers.                                           |
| Fiduciary Duties of Board | Each director is a fiduciary and is obligated to act prudently (duty of care) and in good faith and in the best interests of the corporation (duty of loyalty). In addition, in a non-profit corporation, a “duty of obedience” – a duty to carry out the mission expressed in the articles of incorporation – applies. | LLC Agreements of a Delaware LLCs may eliminate fiduciary duties from managers. |
| Minimal Responsibilities of Board | Directors must:  
  - Adhere to the articles of incorporation and bylaws.  
  - Keep minutes of their proceedings, keep accurate written books and accounting, and keep a membership list if there are members.  
  - Elect officers. Nonprofit corporations must have a chair of the board or a president (and may have both), a secretary, and a chief financial officer or treasurer (and may have both);  
  - Directors must adopt the annual budget.  
  - Directors must act on members’ | Structuring the PTI as a Delaware LLC will result in flexibility; managers will need to adhere to:  
  - The LLC Agreement. |
requests for inspection of records.  
- Directors must issue annual reports and financial statements to members.  
- Directors must designate the corporate depositary and authorized signatories.  
- Directors must bring or defend legal actions on behalf of the corporation.

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<th>Governance Generally</th>
<th>Greater formality, and slightly less flexibility in defining the governance structure.</th>
<th>Great flexibility; the LLC Operating Agreement is a contract and can be structured with more or less formality, as desired.</th>
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| Tax Considerations   | PTI will not be considered part of ICANN for tax purposes. Will require tax exemption from the IRS and California Franchise Tax Board.  
  - Risk that the IRS may view PTI’s activities as commercial, rather than as furthering a tax-exempt purpose, and deny exemption.  
  - Risk that an exemption application for the PTI could cause the IRS to revisit ICANN’s exemption. | PTI will be a “disregarded entity.”  
  - Considered part of ICANN for tax purposes.  
  - No separate tax exemption required. |
| Bankruptcy Protection| PTI may not be forced into involuntary bankruptcy because it is not a “moneyed, business, or commercial” entity under the US Bankruptcy Code (the “Code”). | PTI may be entitled to similar treatment if it is able to show that it is not “moneyed, business, or commercial.” |