

New year, new rules

The game changes for Texas corporations, partnerships, limited liability companies

After the Texas Legislature's changes to the business laws for late-2005 and 2006, any business operating in Texas must revisit its operating agreement, by-laws, regulations, etc., to ensure that it complies with the new rules, and/or addresses areas that the business does not want to "default" to the new state rules.

Failure to address these changes may result in unintended consequences for businesses and, in certain cases, may result in loss of the ability to operate in Texas. A few of these changes are discussed below.

Corporations

Registered Office and Agent: A corporation changing its registered office or agent can no longer use a P.O. box and must provide the state with a street address. Caution: all information filed with the Texas Secretary of State is available to the general public under the Texas Public Information Act; be mindful of this when choosing the new address.

Merger: All parties to a merger must provide the state with, among other identifying information, the organizational documents of all new and surviving entities (be mindful of the public nature of filings); the surviving or new entity after the merger is now legally responsible for buying a dissenting shareholder's shares.

Shareholders: It now is harder for a shareholder to order an annual meeting. If a corpo-



FRONT LINES

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ration fails to hold its annual meeting without written consent, a shareholder now must first submit a written request to the corporation before he or she may order an annual meeting.

Foreign Corporations: A change in corporate name or business other than that stated in the

*It now is **harder for a shareholder to order an annual meeting.***

current certificate of authority requires a new filing with the state to avoid the possible loss of ability to transact business in Texas.

Limited liability companies

Articles of Organization: Want to amend your articles of organization? If your L.L.C. has members, unanimous consent of all members of the L.L.C. is required to amend, unless otherwise stated in the articles of organization or regulations. **Tip:** make an amendment now if you do not want later amendments subject to unanimous vote.

Limited partnerships

General Ledgers: General ledgers are now subject to examination by all partners or permitted assignees. **Tip:** visit with your

CFO/CPA to decide if you need to maintain general ledgers.

Revoking the Voluntary Cancellation of Partnership: What happens when the L.P. decides that filing a certificate revoking its existence was a bad idea? The Legislature has provided new rules that require, among others: all partners to consent to the revocation of cancellation in writing, and an additional filing fee paid to the state — it is now guaranteed that failure to plan will cost time and money.

Registered Agent: The state may now (for L.P.s formed or registered after Jan. 1) terminate an L.P. for failure to maintain a registered agent and registered office address in Texas.

Miscellaneous rule changes

Other amendments include changes to: (1) filing fees (an increase for most entities); (2) termination of existence (continued until you file a certificate of termination with the state); (3) the penalty for filing false documents (increased to a state jail felony if intent was to defraud or harm); (4) meeting and notice rules; (5) indemnification of "governing persons" and employees for participation in a proceeding, i.e., lawsuit, in connection with the business; (6) the creation of holding companies; (7) the ability to revoke a merger, exchange or conversion; (8) the ability to transfer a corporation's security; and (9) shareholders' ability to sue the corporation.

The best planning? Dust off the governing documents of your business for review with your attorney!

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