

Corporate Maintenance

How to protect yourself and compete more effectively.

BY TERESA SCHILLER

Every day we make business decisions in the face of uncertainty. Texas economists recently predicted increased uncertainty in the marketplace this year.¹ How can we minimize risk in such a climate? One way is to use a business entity. Businesses are structured to grow and compete more effectively than individuals. Consequently, maintaining a properly formed business entity (“company”) is important. Here is some basic information.

Be Aware of the Benefits a Company Provides

One benefit is that doing business as a company can protect your personal assets from creditors and other third parties. If the company has been properly formed, maintained, and operated, a creditor may be limited to collecting funds from the company’s assets. The creditor may not be able to “pierce the corporate veil” and collect funds from the owners’ personal assets. Another benefit a company provides is that the ability to raise capital is enhanced. For example, a bank may require an entrepreneur to form a company before it lends seed money.

Recognize Key Terms

Types of companies include corporations, limited liability companies, and limited partnerships. Is your company one of these or another type? Owners of such companies may be called members, shareholders, or general and limited partners. Leaders may be called managers, directors, and/or officers. Companies should have governing agreements, which may be called company agreements, bylaws, or partnership agreements. Does your company have a governing agreement? A governing agreement and other documents showing the formation and maintenance of the company should be kept together in a corporate records book. Is your corporate records book up to date?

Follow a Governing Agreement

A governing agreement helps to minimize disputes among the company’s owners and leaders, and it helps demonstrate that the company is being properly maintained. Review the agreement. Does it reflect what your company is actually doing? If not, should the company’s practices change, or can the agreement be amended instead? A governing agreement may cover topics such as: (1) powers of the company; (2) limitations on liability; (3) powers of the owners; (4) limitations on the transfer of ownership interests; (5) powers of the leaders, term lengths, compensation, and indemnification; (6) meetings and written consents; (7) capital contributions; (8) allocations of profit and loss; (9) distributions; (10) tax treatment; (11) amending the agreement; and (12) dissolving the business.

Take Actions at Annual Meetings Documented by Minutes or by Written Consent

It is important for owners to take certain actions at least once a year, and for leaders to do so as well. Certain notice requirements for meetings may apply. In lieu of meeting, owners or leaders may opt to take actions by written consent. Examples of actions for owners to take include: (1) election of certain leaders; (2) amendments to the governing agreement; and (3) major actions, such as merging or dissolving the company. Examples of actions for leaders to take include: (1) election of certain leaders; (2) reviewing financial statements; (3) adopting policies; (4) approving major expenses and contracts; and (5) changing certain corporate filing information.

Comply with Corporate Filing and Tax Requirements

When certain types of companies change information on file with the Texas Secretary of State’s Office—such as the company’s name or registered office

address—they are required to file the new information. Additionally, certain types of companies are required to pay franchise taxes and submit related reports to the Texas Comptroller’s Office as a requirement of doing business in the state. Corporate filing and tax requirements imposed by other governmental entities may apply as well.

In sum, this basic information about maintaining a business entity can help you to minimize risk in the face of uncertainty—both in the current climate and the years to come. **TBJ**

Notes

1. See Emily Kerr & Benjamin Meier, *Growth in Texas Economy Downshifts*, Fed. Reserve Bank of Dallas (Feb. 1, 2019) (available at <https://www.dallasfed.org/research/update/reg/2019/1901>) (last visited Feb. 17, 2019).

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