A Guide to Delaware Limited Liability Companies

HONG KONG PANAMA

Why Delaware?

- For over a century, Delaware has been the home for America's premier corporations. More than 66% of Fortune 500 companies are incorporated in Delaware.

- Delaware's laws governing corporations, limited liability companies, limited partnerships and business trusts are amongst the most advanced and flexible laws in the United States and any matters are heard by the Delaware Court of Chancery which hears and settles business disputes. This court only hears business decisions, and its judges have extensive knowledge of Delaware business laws. Compare this with states where the judges are elected or politically appointed, and who may well have absolutely no business knowledge or experience at all. The Court of Chancery has more than 200 years of legal precedent in corporation and business entity law. Also, the Delaware State Legislature regularly update corporation, limited liability company and limited partnership laws to ensure that corporate vehicles remain viable entities and on par with international standards.

Advantages of organizing in Delaware:

- No State income tax for Delaware corporations that operate out of state.

- No business license required for Delaware corporations not operating in Delaware.

- No inheritance tax on shares held by non-residents of Delaware.

- No state sales tax on intangible personal property.

- Shares or stock owned by non-residents or foreigners (non-U.S.A. persons) are not subject to Delaware taxes.

- Delaware is the recognized leader in corporate, limited liability and limited partnership law.

- You can form a Delaware corporation, limited liability company, or business entity without coming to Delaware.

- The owners and operators of a Delaware corporation or limited liability company are not disclosed in the public records of the State.

- Only one director or member is required to form the company and the same person can be its sole member and manager.

- Any corporation that is incorporated in Delaware must file an Annual Franchise Tax Report (must include a brief description of business activity) and pay Franchise Tax. The minimal annual franchise tax is as low as $175.00 per year that is not based upon income.

- Businesses which do not conduct business in Delaware are exempted from income tax in Delaware and in the United States.

What taxes does the corporation pay to Delaware?

Limited Liability companies formed in Delaware do not file an Annual Report. They are required to pay an annual tax of $300. If the limited liability company does not conduct business in Delaware, there are no additional taxes to be paid in Delaware.

Does the limited liability company have to do business in Delaware?

No. The limited liability company's offices may be located anywhere in the world, as long as the limited liability company maintains a registered agent which must be physically in Delaware. Virtual offices or mail forwarding services no longer qualify for Delaware's new registered agent requirements. Non-residents who form LLC's may not have to pay U.S. taxes as long as they don't conduct business in the United States.

What are the tax reporting requirements?

The Foreign Account Tax Compliance Act (FATCA) requires individual US taxpayers residing in the US who hold foreign assets with an aggregate value of at least $50,000 to report on those assets.

Foreign individuals may be subject to 30% tax withholding tax. Form W-8Ben is required to be filled out by the IRS. The form will establish that the individual is the beneficial owner of the income, a foreign person and not a US citizen and that the person may claim exemption from tax. A Tax Identification Number (TIN) is further required for filing tax returns and when claiming tax treaty benefits if applicable.

On January 1, 2024, the Corporate Transparency Act (CTA) came into effect. All entities created in the United States — including those previously known as "domestic reporting companies" — and their beneficial owners are now exempt from the requirement to report beneficial ownership information (BOI) to the Financial Crimes Enforcement Network (FinCEN) under CTA.

Only those foreign entities registered to do business in the US are now required to file a Beneficial Ownership Information Report (BOIR) with the Financial Crimes Enforcement Network (FinCEN) of the US federal government.

What does the registered agent do?

The registered agent accepts service of process for the corporation or limited liability company. The Delaware Secretary of State sends the registered agent the annual statement for the Delaware franchise tax and in like manner, upon receipt of payment from the client, the registered agent forwards payment to the Secretary of State.

The foregoing does not constitute legal advice and it is merely The Aspen Groups' opinion based on use and experience. If you are not a professional service provider, please consult a tax attorney, solicitor, and/or accountant before you pursue any venture in a jurisdiction other than your place of tax domicile. The Aspen Group is available to meet with you and assess your requirements. Legal evaluations in each jurisdiction are available at a time cost fee.

If you would like additional information on this jurisdiction, please contact us at enquiries@aspenoffshore.com or contact our offices below.

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