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The Definitive Guide to Starting and Maintaining
Your Delaware Company

Delaware Incorporation Handbook

Fifteenth Edition



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Telephone: 302-996-5819 | 1-800-423-2993
Email: support@dbiglobal.com
Website: www.DelawareBusinessIncorporators.com

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3422 Old Capitol Trail, Suite 700
Wilmington, Delaware 19808-6124 USA
Telephone: 302-996-5819 | Toll-Free USA: 1-800-423-2993
Fax: 302-996-5818 | Fax Toll-Free: 1-800-423-0423
Email: support@dbiglobal.com

Websites: www.delawarebusinessincorporators.com

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*SECTION ONE:
UNDERSTANDING NEW
COMPANY FORMATION, MADE
EASY*

Understanding New Company Formation, Made Easy

Disclaimer: The following article is intended to provide general information about how to incorporate in Delaware or form a new Delaware LLC and is intended for informational purposes only. It is not intended to replace the advice of an attorney or tax accountant and does not constitute individualized legal advice, legal service, or tax advice.

Introduction:

Forming a new company requires some advanced preparation, but that doesn't mean it has to be difficult! This information is intended to familiarize you with the process of chartering a new company, in other words, how to incorporate a business or how to form an LLC. When we say "chartering a new company" "incorporating a business" or "forming a new company" we are referring to the process of filing the required documents and registering the name of the company with the state authority which controls and oversees corporations. When this process is complete, the new company is granted an official charter authorizing it to operate as a business in the state where it registered, enabling it to transact interstate business in the US, and to be recognized as a business entity in foreign countries. You could think of the "charter" as being like a license. DBI can help with every step of this process; in fact, we'll do most of it for you!

In this section of the [Delaware Incorporation Handbook](#), we will discuss how to create and register a new Delaware LLC or Delaware Corporation in general terms. This information will be divided into Topical Sections. Each section will begin with an introduction to the basics in easy-to-understand language. Frequently Asked Questions (FAQs) also appear at the end of each section. Most of this information applies to both US-based clients and clients located outside the US; we have tried to identify information which may be of particular interest to International clients and information which may be primarily of interest to US-based clients.



Q: Is it necessary to hire an attorney to Incorporate in the State of Delaware?

A: The services of an attorney are not required to Incorporate in Delaware or form an LLC in Delaware. DBI will complete and file the documents necessary to register the new company in the State of Delaware (and/or other desired states) and offers kits for By-Laws and Operating Agreements. Please familiarize yourself with the process by reading this handbook and asking our Incorporation Specialists any questions you may have. If you feel you need legal advice, we suggest you contact an attorney; please contact an Incorporation Specialist if you would like a referral.

How to Select the Best State to be Your Company's Legal Home

When you decide to form a new company, you have a lot of options to choose from. One of the first decisions you will make is what state you want to be the "legal home" of your company charter. You could form (charter) your company in the state where your headquarters or home office will be located, or you could form your company in a state with a reputation for being more advantageous. The deciding factors are usually what corporate laws and taxes apply for a given state.

You have most likely already heard about the advantages of forming your business or holding company in Delaware. As of December 1, 2022, more than 1,200,000 US-based and offshore companies had chosen Delaware as their corporate home. Over 60% of the Fortune 500 firms and more than 50% of the companies traded on the New York Stock Exchange and NASDAQ are Chartered as Delaware Corporations.



If you would like to learn more about the advantages of forming in Delaware, please see the "25 Reasons to Form a Delaware Company" section and the publication Why Corporations Choose Delaware.

Privacy

This section applies to both US-based businesses and International/Offshore Companies but may be of particular interest to International/Offshore Companies.

One factor which is strongly influential in selecting the state in which to base your company's Charter is privacy. Many of our clients are very concerned about the protection of their sensitive information and wish to keep information such as ownership details and home addresses out of the public record. Whether you are a client of DBI or a prospective client discussing your plans for the organization of a new company, all your information is completely confidential. The possibility of total privacy is a powerful motivator and moves many of our clients to select Delaware as the legal home of their company. A Delaware LLC or Delaware Corporation is not required to name the Directors, Officers, Owners, Shareholders, Members, or Managers when it is Incorporated or Organized.

Privacy in Delaware starts with drafting the Certificate of Formation (or Certificate of Incorporation). All DBI New Company Registration packages include the drafting of the Certificate of Incorporation or Certificate of Formation. Next, the Certificate is filed with the Delaware Secretary of State and the new LLC or Corporation is registered in the Division of Corporations Information System. The names of the shareholders, Directors, Members and Managers are not required to appear on the Certificate of Formation of an LLC or Certificate of Incorporation of a for-profit Corporation and therefore do not enter the public record at incorporation. DBI has a direct computer connection to the registration system; when we enter the new LLC or Corporation into the registration system the only information, we give will be our own, as Registered Agent and Incorporator (Organizer).

If you elect not to have the names of the principals appear in the public record, we will furnish you with a **private** document which names the Initial Directors or Initial Members, and which can be used for purposes such as opening bank accounts and entering contracts. This document will be given to you directly and will only be seen by those you personally show the document to. Other details regarding Owners, Shareholders, Members, and Managers will be recorded by you in your own private company records and will not be filed with any Delaware agency or made public in any way.

If you form a Delaware Stock Corporation or Not-for-Profit, you will be required to name the Directors and one Officer of the Corporation when the Annual Report is due. You will **not** be required to name the Shareholders (owners) of the Corporation. Bear in mind, a director is not required to be an owner or employee of the Corporation.

If you form a Delaware LLC, you will **not** be required to file an Annual Report in Delaware and the names of the Members (owners) and Managers of the company will not enter the public record.

If you attempt to Qualify your Delaware LLC or Delaware Corporation to transact business in an additional state, the Foreign state may require you record ownership or management details in the public records of that state. Some states which require disclosure by Domestic (local) companies do not require disclosure if the applicant is a Delaware LLC or Corporation.

If you would prefer to have the name and address of the Initial Member or Initial Director printed on the Certificate of Incorporation or Certificate of Formation, you may select this option when you place your order.



Q: Does DBI offer Nominee Directors?

A: No, DBI no longer offers this service. You may contact an Incorporation Specialist for a referral.

Q: If my name isn't printed on the Certificate of Incorporation, how do I prove that I own the company?

A: DBI will provide a "Resolution by Incorporator" naming the person(s) authorized to open bank accounts and enter into contracts as the Initial Director or Initial Member, but this document should be supplemented by properly maintained company records. Proof of ownership is recorded in the private corporate records maintained by the company in the form of Stock Certificates or Membership Interest Certificates plus the Share Transfer Ledger or Register of Members.

Multiple-State Registration

This section applies to clients who will have business activities within the United States

When you decide to Incorporate or form a new LLC you have a lot of options to choose from; the state you select as the home of your Charter will control which options you have. If

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you are in the US, one of the first decisions you will make is what state you want to be the “legal home” of your Corporate Charter or LLC Charter. You could Incorporate in the state your business is in, or you could form your new LLC or Corporation in a state with a reputation for being more advantageous, such as Delaware.

A Delaware LLC or Corporation in Good Standing with the Secretary of State of Delaware has the Constitutional right to transact Interstate Commerce; meaning commerce that occurs between parties in two or more states. A Kentucky resident with a Delaware LLC selling his product to a customer in New York is an example of Interstate Commerce. If you are regularly conducting business transactions between yourself and another party within the borders of the same state, you may be required to obtain the permission of that state to do business there. This does not mean you have to create a new company in every state you do business in. You can choose Delaware to be the legal home of your company Charter, and can then apply for permission for your Delaware LLC or Delaware Corporation to do business in additional states.

The process of applying for permission to do business in an additional state is called Foreign Qualification. Foreign qualification in an additional state may not be required in every case; in addition to the exemption for Interstate commerce, there are other activities which are often exempt from requiring Qualification in a particular state.

Of all the advantageous reasons to form your LLC or Corporation in Delaware, if your young US-based business has limited cash flow and capital, you may be considering forming your company in another state. This option is popular with those who feel that they would benefit more from the economy of single state registration than from the protections and benefits of registering as a Delaware company. Although we specialize in registering Delaware Charters, our Incorporation Specialists are experienced in performing registrations and business filings all over the US. We would be happy to provide you with a quote if you are thinking of forming in another state.



Q: Don't I have to have an address in Delaware to have a Delaware LLC or Delaware Corporation?

A: No, you only need to have a Delaware Registered Agent. DBI will be your Delaware Registered Agent and your headquarters can be located anywhere, even outside of the state or outside of the country. If you wish to purchase a Delaware address which you may use for routine business correspondence, we offer Mail Forwarding Service packages.

Selecting Entity Type

The next options to consider are the available options for “Entity Type”. Stock Corporations, LLC’s, Limited Partnerships and Sole Proprietorships are all examples of different Entity Types. Let’s substitute the word “company” for “Entity” to make it easier. Different rules, laws and taxes may apply to each type of company. When we create your new company, we will identify what type of company we are forming when we register with the state; so we will need to decide which type of company is the best fit for you before we attempt to register. The deciding

factors are usually: the type of liability protection, the method of taxation, and the complexity of administration.

LLC's (Briefly)

This section applies to both US-based and International/Offshore Companies.

The company type our clients select most often is the Limited Liability Company (LLC). Here are some features of the Limited Liability Company:

- A Delaware LLC is not required to file an Annual Report or hold annual meetings.
- Delaware LLC's offer multiple options for management structure and distribution of profits and losses.
- An LLC may be eligible to elect to be taxed by the IRS as an Individual, Partnership, S-Corporation or C-Corporation. This does not change the entity (company) type. An LLC which has elected to be taxed as an "Individual" or as a "C-Corporation" is still an LLC.
- The liability of all Members (owners) is limited to their investments in the LLC (unless they personally guarantee other debt incurred by the LLC).
- Non-resident, Non-citizens **are** eligible to form an LLC in Delaware.
- The Delaware LLC Tax is currently \$250 a year and is a flat rate **not** dependent income, assets, or activity.

Stock Corporations (Briefly)

This section applies to both US-based and International/Offshore Companies.

The second most popular type of company selected by our customers is the Stock Corporation. Here are some features of a Stock Corporation:

- Stock Corporations provide the means to limit an owner's personal liability to the money they have invested in the company.
- Our customers often select this type when they plan to have multiple investors or to raise money from the public by the sale of stock shares.
- Non-resident non-citizens **are** eligible to form stock Corporations in Delaware (but are not eligible to elect "S-Corporation" tax status).
- The "Delaware Franchise Tax" is currently a minimum of \$175 for Corporations authorizing less than 5,000 shares plus a \$50 Annual Report filing fee.



Q : I am not a franchise, why should I pay a franchise tax?

A: The word “Franchise” as used here in “Delaware Franchise Tax” means “a special privilege granted to an individual or group; *especially the right to be and exercise the powers of a Corporation*” and **does not** mean “a chain of businesses licensed by the original store and operated per the original store’s pattern under the original store’s trade name”.

Before You Order

Now that you have decided what state(s) to register in and what entity type you would like to form, you are almost ready to place your order. There are only three things left for you to do and two of them are discussed in this Topic.

Selecting a Name

This section applies to both US-based and International/Offshore Companies.

Wait! Don’t register that domain name yet! Before we register, DBI will check to see if the name you would like for your new company is available in Delaware (or any other state). There is no charge for this service. We strongly caution you against registering a domain name, applying for a Tax ID or submitting an application for a business license before it has been determined that the name you desire is available in the state(s) in which you intend to register.

The company name consists of two parts: the Title part and the Suffix part. For example, in “DBI Global, Inc.” the underlined “DBI Global” is the Title part and “Inc.” is the Suffix. The Suffix identifies what type of Entity (company) this is. “Inc.” and “Corp.” are two well-known Suffixes for Corporations; Limited Liability Companies usually use the Suffix “LLC”. The Suffix part is not considered when determining if a name is available. Try to think of two or three names you would like to check the availability of, bearing in mind that the only part that makes a difference in the availability is the Title part.

Opening a Bank Account and the Federal Employer Identification Number (EIN)

This section applies to both US-based businesses and International/Offshore Companies but may be of particular interest to International/Offshore Companies.

We would love to be able to tell you exactly what documentation your bank will request when you go to open an account in the name of your business, but it varies from bank branch to bank branch. Some branches even leave this decision to the discretion of the individual bank representatives. If you plan on opening a bank account in the name of your new Delaware LLC or Delaware Corporation, it is a good idea to contact the bank you wish to use to find out what documentation they require before you place your order for new LLC formation or Incorporation.

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We *can* tell you it would be typical to be asked for a copy of your Certificate of Incorporation (or Certificate of Formation), a Certificate of Good Standing and photo identification. And all US banks will require an LLC or Corporation to have a Federal Employer Identification Number (EIN) to open a bank account. This is required for US bank accounts regardless of whether the company will have any employees or not. DBI can obtain an EIN for you at the same time we are registering your new company.

New Company Registration

The following section pertains to Delaware formation, other processes and timeframes may apply for other states. If you are interested in forming in a state other than Delaware, contact an Incorporation Specialist for more details.

Registered Agent Services

This section applies to both US-based and International/Offshore Companies.

Delaware law requires both LLC's and Corporations to maintain a Registered Agent in Delaware. The Registered Agent receives any legal notices delivered by Service of Process on your company. DBI will be your Delaware Registered Agent and the first twelve months of Delaware Registered Agent service are free with your purchase of a New Company Registration package. This is how you can be permitted to have a Delaware LLC or Corporation without having a business location in Delaware.

After the first year you will be charged an Annual Registered Agent Renewal fee of \$100 for US clients and \$120 for clients outside the US. Failure to maintain a Registered Agent will result in your company Charter being declared FORFEIT by the Delaware Secretary of State; this means your company would be invalid and would lose its right to function as an LLC or Corporation.

Corporate Kits and Operating Agreement Kits

This section applies to both US-based and International/Offshore Companies.

If you recall the section on Privacy, then you already understand how important it is to maintain company records with appropriate documentation. In some cases, the company records you maintain are the **only** source of proof available to satisfy the requirements of banks, agencies and others who wish to verify the legitimacy or ownership of your company before entering into a relationship with you. These documents are also crucial when bringing, settling or defending lawsuits and in some cases in satisfying IRS inquiries into elected tax status.

But don't be intimidated, we offer kits which satisfy Delaware laws and appropriately record the ownership and leadership structure of your new company. Inside your kit you will find Stock Certificates or Membership Interest Certificates, your Corporate Seal, and a model Operating Agreement or By-Laws in your choice of a Word template or fill-in-the-blank document.

Delaware Virtual Office

This section applies to both US-based businesses and International/Offshore Companies but may be of particular interest to International/Offshore Companies.

By serving as your Registered Agent in Delaware your Delaware LLC or Delaware Corporation is exempt from being required to maintain any other presence in Delaware for the purposes of obtaining and retaining a Delaware Charter; but your Registered Agent's functions are limited to receiving Service of Process and Tax Notices. Many of our clients desire a Delaware address they can use for business purposes. DBI offers multiple levels of service for those companies which desire a business office or mail forwarding service in Delaware as well as utility bill proof for Delaware and other parts of the USA.

Low Volume Mail Forwarding

DBI offers low volume mail forwarding for companies which do not anticipate receiving more than three pieces of mail per month. This is often sufficient for a bank statement and incidental mail.

Basic Mail Forwarding

For companies that desire a Delaware Street Address with mail forwarding which can be used as the company's business address on websites, letterhead, business cards, sales orders plus routine business correspondence, basic mail forwarding is appropriate for those who expect up to 25 pieces per month.

Package Forwarding

This service is used primarily by customers without a US address who wish to purchase from vendors who will not ship outside the US.

Delaware Virtual Office

Includes the Low Volume Mail Forwarding service with Delaware Street Address plus a Unique Suite Number and 8-page lease. Optional: Delaware Phone Number with Utility Bill Proof.

Utility Bills for Proof of Address

We offer several different services including Delaware Phone Number with Utility Bill Proof, Delaware Internet Line with Utility Bill Proof, and a USA Phone Number with Utility Bill Proof. These are actual utility companies that will produce a utility bill to serve as proof of address.

DBI cannot forward mail without a completed, notarized and signed "USPS Form 1583: Appointment of Mail Forwarding Agent". The form will be provided to you at time of purchase. Please contact an Incorporation Specialist for more information. Contact us if you would like a quote for high volume mail forwarding service.

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Selecting a Package

This section applies to both US-based and International/Offshore Companies.

We offer separate packages for US-based clients and for clients outside the US. If you have offices both in the US and outside the US, you may contact an Incorporation Specialist and we will help you put together the best options for a custom package. If you are not sure which features would be best for you, contact one of our Incorporation Specialists by phone, chat, or email for help. We will be happy to review the available options with you.

In selecting a package there are several criteria to consider:

1. Do you need an **Operating Agreement Kit (or Corporate Compliance Kit)**?
The only reason you should decline this option is if you already plan on making your own arrangements to document your company ownership and structure.
2. Do you need to register your Delaware LLC or Delaware Corporation in an **additional US State**?
This only applies to companies that will do business inside the US. This service is available as an add-on feature for all packages. State Foreign Qualification Filing Fees are additional.
3. Do you need a **Delaware Mailing Address**?
This option is available as an add-on to all packages.
4. Do you need an **Apostille or Gold Seal Certified Copy** for your Certificate?
This only applies to companies that will do business, banking, or investments outside the US.
5. Do you need **Business License Application Service**?
This applies only to companies that have a physical business location or home office within the US.
6. Do you need to apply for an **EIN (Federal Tax ID)**?
If you are opening a bank account in the US, or employing wage earning employees in the US, you will need an EIN. The application service is included in the some of our packages. You may also add the service to your order separately.

Placing Your Order

This section applies to both US-based and International/Offshore Companies.

For your convenience, you may place your order through our website, by phone, or by email.

To help you prepare, below you will find a list of the information we will collect when you place your order. If you are able, you are welcome to complete this information on the order form and send it in. If you need assistance, Incorporation Specialists are available to answer your questions and help you place your order.

1. Which Entity Type have you decided to form: LLC, Inc., etc.?
2. Have you decided to Incorporate in Delaware or form a Delaware LLC? Do you need to register your Delaware company in any additional states?
3. If you have not already contacted us to check name availability, be ready to suggest 2-3 names for your company.
4. Did you decide to have the name of the Initial Director or Initial Member printed on the Certificate, or do you prefer for the names of the principals not to appear on the Certificate?
5. You will be asked to provide the name and address of the Initial Member or Initial Director of the company. If you elected not to have the name of the principal appear on the Certificate, this information will go on a private resolution naming the person with the authority to open bank accounts and enter contracts. You may provide any address for this purpose, although we suggest providing the address on the Initial Member or Director's photo identification. If you wish, you can purchase one of our Delaware Virtual Office packages which include a Delaware Street address and a unique suite number that can be used for this purpose.
6. We will need the name, phone number, alternate phone number (if any), email address and/or fax number, and mailing address of the person we may contact questions about your order. If you are ordering a package which comes with a compliance kit, we will need your shipping address if it is different from that of your contact person. We cannot ship a compliance kit to a PO Box. If you want your renewal billing to go to the attention of someone other than the contact person or to a different mailing address, please be ready with your billing contact's information as well. Likewise, if there is a specific person or address to which we should forward tax notices or legal documents delivered by Service of Process, please let us know the full contact details.
7. Delaware Business Incorporators will be your Registered Agent in Delaware unless you instruct otherwise.
8. LLC's will be formed with Perpetual Existence (no expiration date) unless you specify that you want the LLC to expire on a specific date.
9. Stock Corporations will be formed with the General-Purpose Statement unless you instruct otherwise. The General-Purpose Statement is: "The purpose of the Corporation is to engage in any lawful act or activity for which Corporations may be organized under the General Corporation Law of Delaware." If you wish to use a specific Purpose Statement,

you will need to provide us with the exact language of the statement you wish to substitute.

10. Stock Corporations will authorize 1,500 shares of common stock without par value unless you instruct otherwise. Authorizing more than 1,500 shares of stock may increase your Annual Franchise Tax due and may result in an increased filing fee. Authorizing more than 1,500 shares at zero par value will result in an increased filing fee. Please contact an Incorporation Specialist to calculate the filing fee if you will authorize more than 1,500 shares.
11. You will be asked to select a New Company Registration package. If you are Incorporating or forming a new LLC in a state other than Delaware, please contact an Incorporation Specialist for a quote as price varies by state.
12. You will have the opportunity to select additional services such as a Certificate of Good Standing, Business License Application Service, EIN Application Service, Certified Copies, Mail Forwarding and Apostilles at the time when you place your order for a New Company Registration Package. Some of these services will require the provision of additional information.



Q: How many officers and directors are required for my Delaware Corporation?

A: One person can be both an officer and a director. Delaware corporate law facilitates setting up a one-person Corporation. Neither Officers nor Directors need to be listed in the Certificate of Incorporation, but the names and addresses of all Directors must be listed in the Delaware Annual Report. Delaware LLC's need a minimum of one Member or one Manager. Delaware LLCs are not required to file an Annual Report.



Q: Must an officer of the company sign the Certificate of Incorporation or Certificate of Formation?

A: No; DBI will designate a member of its staff as temporary Incorporator or Organizer, whose duties and functions are automatically terminated following the filing of your Incorporation documents. There is no extra charge for this service. If you prefer to have an Officer, Director or Member of the company sign the Certificate, please advise us of your preference when you place your order.

Payment Options

This section applies to both US-based and International/Offshore Companies.

If you are ordering online, you will have the option to pay by Credit Card or e-check. For your convenience, we accept Visa, MasterCard, Discover and American Express. Alternately, you may enclose a personal or company check, or a money order by mail or courier. If you wish to make payment by Western Union or bank wire transfer (include an additional \$45 fee), please forward the transmittal advice from the money transfer agent with your order form and allow 3-

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3422 Old Capitol Trail, Suite 700, Wilmington DE 19808 | 1-800-423-2993 or 1-302-996-5819 |
support@dbiglobal.com

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10 days for the money to be deposited in our account. Payment in full is required before your order can be fulfilled.

Registering your New Company

Once we receive payment for your order, we will be taking care of all the documentation required to form and register your new Delaware LLC or Corporation. It will not be necessary for you to sign or prepare the Delaware incorporation documents. If you order qualification in an additional state, it may be necessary for you to sign and return an application form after we prepare it for you; we will let you know if this is required for your state. If you order mail forwarding service, you will be required to sign and return a US Postal Service 1583 form which we will partially prepare for you. If you are a non-resident non-citizen and you order EIN obtainment service, we will prepare an application for you to sign and return by email or fax.

Processing Time

This section applies to both US-based and International/Offshore Companies.

Our hours of operation are Monday through Friday, 08:30AM -05:00PM US Eastern Standard Time. You are welcome to place your order whenever it is convenient for you. Any information you submit will be kept strictly confidential.

If your order for a new Delaware LLC or Delaware Corporation is received during normal business hours, we will register your company in the Delaware Corporate Information System (DCIS) as soon as we receive your payment and review your order. Your new company legally exists the moment we type your registration into the Delaware Corporate Information System. This process is often complete within less than an hour, but even in the case of extremely high order volume, we guarantee that your new Delaware LLC or Corporation will be registered within 24 hours (excluding weekends, holidays and declared emergencies).

We don't advertise that your new company will be registered within three minutes because at DBI your order will be reviewed by a trained Incorporation Specialist before your credit card is charged. If one of our experienced Incorporation Specialists sees a potential problem, you will be notified right away by phone or email.

After we register your new Delaware LLC or Corporation in the Delaware registration system, the Division of Corporations will return a copy of the Certificate of Incorporation or Certificate of Formation bearing a stamp stating the filing date and time plus the file number assigned; this is known as a "plain copy" and is included with your purchase of a New Delaware registration package at no additional charge.

For US orders we typically receive the stamped Certificate of Incorporation or Certificate of Formation from the Corporations Division within approximately 24 hours. If your order was received before 12:00PM EST we will often receive your stamped Certificate back from the Corporations Division the next morning, but these time frames are subject to the Corporations Division's work volume, so we advise you to allow 1-3 business days. If you need guaranteed 24-

hour processing or same day service your order can be upgraded to expedited service for an additional fee.

For international orders we typically receive the Apostille or Gold Seal Certified Copy within 3-5 business days. If you need the document faster, contact us for a quote on expedited service.

We will email the stamped Certificate of Incorporation or Certificate of Formation to you as soon as we receive it from the State. Because Corporations and LLCs are registered electronically in Delaware, the scanned image we email you is legitimate for use. Scanned images of Certified Copies and Certificates of Good Standing are also legitimate and bear authentication numbers which the requestor may verify by contacting the Delaware Corporations Division verification section of their public website.

For US customers the hard copy of your documents will also be sent by US First Class Mail at no additional charge; look for your documents to arrive in a DBI envelope. Your documents may be enclosed in a plastic sleeve behind a cover letter, don't throw them away! Corporate Kits and Operating Agreement kits are shipped separately to US addresses by UPS and are usually received within three to five business days or less. Shipping to US addresses is free!

Corporate Kits shipped outside the US are typically ready for shipment by FedEx International or UPS within 5-7 days and time in transit and shipping cost vary by destination. Shipping fee must be paid in advance for shipping to non-US destinations. All documents included with the Delaware International Incorporation or LLC Packages will be enclosed in the same shipment to reduce shipping cost, unless you instruct otherwise.



Q: Do I have to wait for the original documents before my new company signs a contract or opens a bank account?

A: The state of Delaware does not return "original" documents after filing. Scanned documents are as legitimate as an "original" document, so you can open a bank account or enter a contract as soon as you receive your scanned documents by email. If the party you are working with refuses to accept your scanned document it is possible to order a "Certified Copy" from the State which will bear an authentication number. Various expedited service levels are available. Contact in Incorporation Specialist for assistance.

What to do with the documents you receive

This section applies to both US-based and International/Offshore Companies.

If you order the Gold or Platinum, your compliance kit will arrive assembled. It will only be necessary for you to print your Operating Agreement or By-Laws and your Minutes of First Meeting and file them in the appropriate tabs of the records binder.

Otherwise, you will receive your Certificate of Incorporation or Certificate of Formation, together with the resolution naming the Initial Director or Initial Member, plus any additional documents you order, via email. File these documents in your Corporate Compliance Kit or

Operating Agreement Kit behind the provided section dividers. Complete instructions are provided with the cover letter.

Your compliance kit is important! If you did not order a kit, please contact an Incorporation Specialist to learn about the risks of not properly documenting the organization and ownership of your company.



The State of Delaware does not keep records of who the Members or Shareholders of your company are (not ever, not anywhere). This preserves your privacy, but it also requires your vigilant upkeep of your own company records. Although DBI will have an indication of who the Initial Director or Initial Member of your company is, this is not proof of ownership! If a dispute were to arise regarding the ownership or distribution rights of the owner of your company, your own company records may be the only source of evidence to support your claim. We strongly suggest that you store your Corporate Kit or Operating Agreement Kit in a safe or safety deposit box and observe the same precautions that you would in defending against personal identity theft.



Q: I presented the document you gave me which names me as the Initial Director, but the bank wants additional documentation.

A: If you are working with a bank or agency which does not accept the evidence of your company records, DBI can prepare a “Statement by Incorporator” (also known as a “Business Statement” or “Certificate of Incumbency”) which is a notarized statement attesting to the organization of your company and is usually accepted by most authorities who have requested additional information. Please contact an Incorporation Specialist for an Estimate.

Administration of your new company

Delaware companies are amongst the easiest in the world to administer. The Delaware State Legislature strives to give you as much flexibility as possible and DBI makes it even easier! Please take a moment to familiarize yourself with the few responsibilities you will have after Incorporating or Organizing an LLC in Delaware.

Annual Responsibilities

This section applies to both US-based and International/Offshore Companies.

Corporations

- File Annual Report with the Division of Corporations before March 1st each year.
- Pay Delaware Franchise Tax to Div. of Corporations before March 1st each year.

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- Pay DBI Annual Registered Agent Service Renewal fee on anniversary of formation.
- Pay State and Federal Corporate Income Tax, if any.
- If your corporation is registered in additional states, you may have additional reports and or taxes due each year.
- Hold annual shareholders meeting*. Meetings may be held online or by phone.
 - Schedule the Meeting
 - Set the Agenda
 - Resignation and/or Appointment of Directors if any
 - Approval of audited accounts
 - Approval of the annual budget
 - Major business items to be considered.
 - Send out Annual Meeting Notices and Proxy Cards to all shareholders.
 - Have the Secretary keep the Minutes of the Meeting. File the minutes in the corporate records binder and distribute copies to shareholders.

*Excluding Close Corporations and Sole Shareholder/Sole Director Corporations



There are unscrupulous companies in several states that send out solicitations which look like official notices instructing you to file the Minutes of your Annual Meeting with a state agency. Your Annual Meeting Notices and Minutes are **not** filed with the Secretary of State or any other agency. They are maintained by you in your private corporate records. (Corporations do have to file an Annual Report each year, this is not the same as Minutes. If you receive something that looks like an official notice and you have questions about its authenticity, please fax or email it to your Incorporation Specialist. We will advise you if the notice is legitimate and if you need to comply with it.

LLCs

- Pay annual Delaware LLC Tax before June 1st each year.
- Pay DBI Annual Registered Agent Service Renewal fee on anniversary of formation.
- Pay State and Federal Corporate Income Tax or Personal Income Tax, if any.
- If your LLC is registered in additional states, you may have additional reports and or taxes due each year.



DBI offers a service called Tax Compliance Service to both LLC's and Corporations, so you won't have to worry about filing your tax on time or missing a Registered Agent Renewal.



Q I haven't started doing business yet; do I still have to file a report and pay taxes?

:

A Yes. You are paying for the privilege of having a company chartered in Delaware. The Delaware Franchise Tax (or Delaware LLC Tax) is not an income tax. If you don't want your Delaware charter to be cancelled, you will have to pay the

Franchise Tax or LLC Tax whether your company is actively conducting business or not. The tax is due every year until you file a Certificate of Dissolution or a Certificate of Cancellation.

Amendments and Other Changes

If you need to make a change to your Certificate of Incorporation or Certificate of Formation, an Amendment must be filed with the Division of Corporations. DBI offers this service. You may amend your By-Laws or Operating Agreement yourself and are not required to file that amendment with the State.

Changes that require an Amendment to be filed with the State:

- Name Change
- Authorize more or less shares of stock (for Corporations only)
- Authorize a new Class of Stock (for Corporations only)
- Any change to the words printed on the Certificate of Formation or Incorporation.
- Change of Registered Agent (for LLCs)

Changes that do not require an Amendment to be filed with the State:

- Changes to the Operating Agreement or By-Laws
- Changes to the Officers, Directors, Shareholders, Members or Managers
- Authorize more or less LLC Membership units.



Q: Our Certificate of Incorporation names someone who is no longer a Director: do we have to file an Amendment?

A: It is not necessary to amend the certificate to change a director or Member; although, if you wish to do so, you may amend the document for a fee. Contact an Incorporation Specialist for more information.

Q: Do I have to notify you or the state of Delaware when there is a change in the officers, directors, members, or managers of the company?

A: The Directors and principal officer of a Delaware Corporation are reported on an Annual Report filed annually with the Delaware Secretary of State; it is not necessary to report the change until the next Annual Report is due. The Delaware Secretary of State is not notified of changes to the Members or Managers of an LLC. All changes to the principals and Officers should be recorded in the records the company maintains. If a change of ownership will result in a change of contact information, it is necessary to notify DBI ASAP so that the transmission of your tax notices and Service of Process is not interrupted. The best way to notify us of a change in contact information is by email.

FORFEIT & VOID Status and Renewal & Revival

FORFEIT and VOID Status

aka Administrative Dissolution, Involuntary Withdrawal

If a company fails to pay for Registered Agent Service renewal, DBI will resign as Registered Agent in Delaware. If a Delaware Corporation or LLC failed to maintain a Registered Agent in Delaware, the company Charter will be declared FORFEIT by the Secretary of State.

If a Delaware LLC or Delaware Corporation fails to pay Delaware Franchise Tax or Delaware LLC Tax in consecutive years, the company Charter will be declared VOID by the Secretary of State.

If a company is declared VOID or FORFEIT, the company will become invalid and will lose the right to transact business as an LLC or Corporation. The LLC or Corporation will **also** lose the right to Exclusive Use of the company name. If another company registers with your name while your company is VOID or FORFEIT, you cannot have the name back even if you file for Renewal and Revival. If another company has taken your name while your company was VOID or FORFEIT DBI can help you Renew with a new name; you will be permitted to keep your original Incorporation Date. Please contact your Incorporation Specialists if you have questions about this.

Renewal and Revival

aka Restoration

If your company is declared VOID or FORFEIT, the company Charter can be restored to Good Standing by filing a Certificate of Renewal and Revival together with any delinquent Delaware LLC Taxes or Franchise Taxes (and Annual Reports for Corporations). Contact an Incorporation Specialist for a calculation of delinquent tax due and/or unpaid Registered Agent Service Renewal fees. DBI will draft the Certificate of Renewal and Revival and prepare the necessary Annual Reports for Corporations using the Authorized Shares Method of Franchise Tax Calculation at no additional charge. Corporations that file using the Assumed Par Value Capital method may either prepare their own delinquent Annual Reports or pay for DBI's Tax Compliance Service. LLC's do not file annual reports.



If your company was Incorporated in Delaware or your LLC was formed in Delaware and your business is in another state in which you Qualified as a Foreign Corporation, you cannot allow your Delaware Corporation or Delaware LLC to go VOID or FORFEIT. If your corporation or LLC is VOID or FORFEIT in Delaware then your company has no right to do business in any state until it is restored. If you no longer wish to be registered in Delaware, contact an Incorporation Specialist about the possibility of Converting your Delaware LLC or Corporation to another state.

Dissolution & Cancellation

Aka Winding Up Business, Closing

If you no longer intend to conduct activity with your corporation, it is necessary to legally dissolve the Corporation by filing the appropriate documents with the Delaware Secretary of State; this procedure is known as “Dissolution”. Shareholders are not legally entitled to their share of the Corporation's remaining assets after close of business until it has been legally dissolved by filing the Certificate of Dissolution with the Secretary of State. Furthermore, you do not want tax liability to continue to accrue on a company you do not plan to use anymore. For Limited Liability Companies the process is the same but is referred to as Cancellation.

The final tax liability for any previous outstanding years plus the current year must be paid while the company files its Certificate of Dissolution or Certificate of Cancellation. Tax will not be prorated. Contact an Incorporation Specialist for a calculation of final tax due. DBI will draft the Certificate and prepare Annual Reports for Corporations using the Authorized Shares Method of Franchise Tax Calculation at no additional charge. Annual Reports must be specially ordered for current year's filing; your Incorporation Specialist will do this for you. Corporations that file using the Assumed Par Value Capital method may either prepare their own final Annual Report or use DBI's Tax Compliance Service for an additional fee. LLC's do not file annual reports.



To avoid additional tax liability, you must contact DBI to file your Certificate of Dissolution (or Certificate of Cancellation) by no later than the last business day of December of the calendar year in which your company resolved to close, regardless of your Fiscal Year end.

Disclaimer: This article is intended to provide general information about how to incorporate in Delaware or form a new Delaware LLC and is intended for informational purposes only. It is not intended to replace the advice of an attorney or tax accountant and does not constitute individualized legal advice, legal service, or tax advice. No representations or warranties, express or implied, are given regarding the legal, tax or other consequences resulting from the use of our services, including but not limited to information and/or forms.

*SECTION TWO:
INFORMATION FOR
INTERNATIONAL AND OFFSHORE
COMPANIES*

Information for International and Offshore Companies

DBI has a special relationship with the international community. We've been helping international and offshore investors and entrepreneurs with their special needs since 1986. DBI's experience in this area greatly exceeds that of many Delaware Service Companies and unlike most Service Companies, we offer special packages for International and Offshore clients.

Why is Delaware so popular with offshore entrepreneurs and investors?

There are many advantages to forming a Delaware LLC or Corporation. Here are just a few:

- With the help of DBI, you can form a Delaware USA LLC or Corporation without ever coming to the United States even if you are not a resident, and even if you are not a citizen.
- If you are a non-resident non-citizen, and have no Operations (business activity, employees) in the US and no US Source of Income (such as rental property) you can legally avoid all US Federal Income Taxes and Delaware State Income Taxes. See below for more information.
- There is no State Sales Tax in Delaware.
- There are no Delaware State real property taxes.
- Delaware has no ad-valorem or value-added taxes (VATs), and no taxes on business transactions (TBTs). Delaware has no use tax, inventory, or unitary tax.
- The contractual flexibility of a Delaware LLC is unmatched by any other U.S. states' LLC statute, and offers benefits typical of many offshore jurisdictions, i.e., the German "GmbH".
- Delaware LLC's do not require the name of the Members or Managers to be disclosed on the Certificate of Formation and are not required to file an Annual Report. The owners of the LLC will not be recorded on the public record.
- Delaware's Court of Chancery is a world leader in US and International business law.
- Delaware's corporate legal system strives to provide a corporate legal climate conducive to the growth and profitability of the over 1,200,000 companies Chartered as Delaware Corporations and LLCs. Our state legislative philosophy is to give companies freedom to

define their own practices of operations whenever possible, with sensitivity to the priorities of company owners and officers.

How to determine if you have US Source Income

Item of Income	Factor Determining Source
Salaries, wages, other compensation	Where services performed
Business income: Personal services	Where services performed
Business income: Sale of inventory -purchased	Where sold
Business income: Sale of inventory -produced	Where produced (Allocation may be necessary)
Interest	Residence of payer
Dividends	Whether a U.S. or foreign corporation*
Rents	Location of property
Royalties: natural resources	Location of property
Royalties: patents, copyrights, etc.	Where property is used
Sale of real property	Location of property
Sale of personal property	Seller's tax home (but see <i>Personal Property</i> , in Chapter 2 of Publication 519, for exceptions)
Pensions	Where services were performed that earned the pension
Scholarships - fellowships	Generally, the residence of the payer
Sale of natural resources	Allocation based on fair market value of product at export terminal. For more information, see section 1.863-1(b) of the regulations.

*Exception: Part of a dividend paid by a foreign corporation is U.S. source if at least 25% of the corporation's gross income is effectively connected with a U.S. trade or business for the 3 tax years before the year in which the dividends are declared.



You will find a great deal of information about how to form a new Delaware LLC or Corporation in the section of the Handbook titled “*Understanding New Company Formation Made Easy*”.



Q: How is it possible for a non-resident (alien) non-citizen to form a USA company?

A: Delaware law permits non-resident non-citizens to form Delaware Limited Liability Companies (LLC’s) and C-Corporations. You do not need to show us your passport and you do not have to come to the USA.

Q: Don’t I need to have a business location in Delaware USA?

A: No, you only need to have a Registered Agent in the State of Delaware. DBI will be your Registered Agent in Delaware and the first 12 months of our Delaware Registered Agent Service is free with the purchase of one of our New Company Registration Packages.

Q: Can you provide me with a Delaware address, telephone number and Fax number that I can put on my website?

A: Yes, we can provide you with a Delaware address, a suite number at the Capitol Office Center in Wilmington Delaware USA, which you can put on your website, order forms and business cards, and which you can use in your routine business correspondence. This service is not the same as Registered Agent Service. Our Virtual Office is available for purchase separately and Basic Mail Forwarding is included with the Platinum New Company Registration Package. We cannot forward mail until the applicant returns the USPS form 1583 authorizing us to serve as your Mail Forwarding Agent. Our “Legal Office Identity” package also includes a Delaware telephone number and fax number which can be forwarded to you anywhere in the world. Please see Mail Forwarding Services/Virtual Office for more information.

25 REASONS TO FORM A DELAWARE COMPANY

- 1. You can form a Delaware LLC or Corporation by internet, phone or email WITHOUT EVER COMING TO DELAWARE.** DBI can electronically register your new Corporation or LLC in Delaware within as little as an hour from receipt of your order (on orders received during business hours).
- 2. Delaware's corporate legal system strives to provide a corporate legal climate conducive to the growth and profitability of the over 1,200,000 companies chartered as Delaware corporations.** Delaware's Court of Chancery is an equity court of limited jurisdiction which exists solely to adjudicate corporate litigation. For more than 220 years the Chancery Court has been deciding corporate disputes involving many of the largest corporations in the world and has developed a fully established corpus of case law and legal precedent which are cited by business scholars and attorneys all over the country and around the world. Delaware's Court of Chancery is one of the most important corporate law courts, second only to the Supreme Court of the United States in its impact on corporate law. In addition to the influential role the Delaware Court of Chancery plays in shaping the corporate legal landscape, Delaware's corporate laws are regularly reviewed, revised, and simplified by the Delaware State Bar Association and the Delaware Legislature. Known as "The First State" for its role as the first state to ratify the U.S. Constitution, Delaware remains on the vanguard of legal innovation being among the first states to adopt legislation allowing for the creation of Limited Liability Companies (LLCs) and Series LLCs and the convenience of electronic signatures.
- 3. Delaware companies may be registered without disclosing the names or addresses of the owners in the public record;** Corporations are not required to identify Shareholders on the Certificate of Incorporation and Delaware LLCs are not required to identify Members on the Certificate of Formation. Delaware Corporations are required to identify Directors on an Annual Report, Delaware LLCs are not required to file an Annual Report.
- 4. A Delaware director shield law permits Delaware corporations to shelter their directors liberally from personal liability in connection with their actions as board members.**
- 5. Delaware is widely regarded by international entrepreneurs and investors as a favorable tax climate:**

There is **no sales tax** in Delaware.

There is **no state corporate income tax in Delaware on goods or services provided by Delaware corporations operating outside of Delaware.**

There is **no state corporate tax on interest or other investment income in Delaware, when earned by a Delaware Holding Company.**

Delaware has **no personal property tax**. There are **no State real property taxes**, and the local real property taxes are very low.

Delaware has **no ad-valorem or value-added taxes (VATs)**.

Delaware has **no taxes on business transactions (TBTs)**. Delaware has **no use tax, inventory, or unitary tax**.

There is **no State of Delaware inheritance tax on stock of Delaware corporations operating outside of Delaware held by non-residents of Delaware**.

Delaware **does not tax income from intangible property**.

- 6. The director(s) of a Delaware corporation are permitted to set the sales price on any stock the corporation issues and desires to sell.**
- 7. Delaware corporations may purchase shares of their own stock, hold, sell, and transfer them.**
- 8. There is no minimum capital investment required to form a Delaware Corporation or LLC. Your investment may be as low as zero.**
- 9. The liability of a shareholder of a Delaware corporation is limited by the amount of his investment in the corporation plus the corporate tax liability – provided that the corporation has conducted its business according to all applicable state and federal laws.**
- 10. The director(s) of Delaware corporations may determine what percentage of the consideration received from the issue of their stock is to be considered capital.** This is important because it gives the directors greater flexibility regarding the use of funds obtained in a public offering, so that large amounts are not tied up in the capital account.
- 11. The By-Laws or Operating Agreement of your Delaware Corporation or LLC may be formulated or altered anytime by its directors or Members.**
- 12. Your Delaware corporation may own—without limitations as to amount or value—stocks, bonds or securities of other corporations located in Delaware or outside of Delaware as well as real and personal property.** This means that your new Delaware Corporation can be set up as, or later become, a corporate holding company or real estate holding company.
- 13. Your Delaware corporation can be set up to be an all-purpose corporation—to conduct multiple types of business, to manufacture and/or market any products, to offer all kinds of services, simultaneously or sequentially.** All you have to do is include a broad “statement of purpose” in your Delaware Certificate of Incorporation (Corporate Charter)

such as: “The purpose of this corporation is to engage in any lawful act or activity for which Corporations may be organized under the General Corporation Law of Delaware.” This permits your Delaware corporation, for example, to start out as a real estate holding company, add your spouse’s retail business to its activities and later become a manufacturer of packaged goods – all without having to alter your original documentation or file new corporate documents.

- 14. Quarterly or annual meetings may be held anywhere or if you prefer, meetings may be held entirely online, at the option of the board.** In lieu of such formal meetings, director(s) and/or shareholders may act “by unanimous consent.” **Delaware Limited Liability Companies are not required to hold annual meetings.**
- 15. Your Delaware corporation stock can be privately owned or publicly traded on any stock exchange anywhere in the world, when properly registered.**
- 16. You do not have to maintain a Delaware business office address aside from the address of your Delaware Registered Agent which is required for service of process.** However, if you would like to have a Delaware business address where you can receive business mail (other than service of process), DELAWARE BUSINESS INCORPORATORS, INC. offers a Virtual Office package which includes a Delaware Mailing Address with mail forwarding plus a private Delaware phone line and fax service.
- 17. Delaware has a highly specialized and expert corporate bar** that is very familiar with Delaware corporate law, and which appears regularly before judges of the Court of Chancery. Students in law schools nationwide typically study Delaware corporation law statutes and Delaware corporate case law in their corporate law courses.
- 18. Non-Citizen Non-Residents of the USA may form Delaware C-Corporations and LLC’s.** Non-citizen *residents* of the U.S. may also form S-Corporations.
- 19. Delaware permits S-Corporations, which, with the federal tax laws of 1986, can be very advantageous.**
- 20. With DBI as your Delaware Registered Agent, your Delaware Corporation or LLC may be headquartered in any state or territory of the United States – or in any country in the world.**
- 21. One single individual may simultaneously hold all the executive offices and titles of a Delaware company,** such as President, CEO, Director, etc. Delaware permits you to be a one-person Corporation or one member LLC.
- 22. The Delaware Division of Corporations is the “leader” in providing service based on its many years’ experience and its philosophy of delivering customer service on par with the best private firms.**

- 23. Delaware corporations are permitted, under appropriate circumstances, to pay dividends out of net profits if there is no surplus.**

- 24. The Delaware corporate franchise tax is minimal and quite competitive with other states (only \$175/year for Delaware corporations with 5,000 shares or less).** There is an additional \$50 filing fee. All fees charged by the State of Delaware to corporations are kept deliberately low to attract incorporation business – a major source of revenue for the State.

- 25. 50% of all U.S. publicly traded companies and 63% of the Fortune 500 are chartered in Delaware.**

SECTION THREE: REFERENCE INFORMATION

Limited Liability Companies (LLC's)

A “Limited Liability Company,” or “LLC,” is a Type of Entity (company) which is often described as a hybrid between a corporation and a Partnership. The LLC features the liability protection of a corporation, in that the liability of all members is limited to their investments in the LLC (unless they personally guarantee other debt incurred by the LLC) but is more flexible in respect to management structure and is usually considered to offer greater ease of administration.

How are LLC's Managed?

The management of a Delaware LLC is almost unlimitedly flexible. Delaware LLC's can be managed by the Members (owners) or by Managers (employees or agents who do not hold an ownership stake in the company). Members can be divided into classes or can all hold the same voting rights or entitlements. Any degree of restrictions or rights can be assigned to a member, Manager or Class of Members. Here are some examples: All Members can be given equal voting rights and issues are required to be determined by majority vote; or one person can be given absolute control while the other Members have no voting rights and are “silent partners”; or a Single Member LLC automatically passes all decisions by “unanimous consent”. Other arrangements are also possible and can be defined in the Operating Agreement. If the members of the LLC desire, they can even form a Board of Directors and appoint Officers, although this is neither traditional nor necessary.

How are LLC's Taxed by the IRS?

The LLC is the most flexible entity (company type) currently in existence. LLC's can be taxed in several ways. A one-Member LLC is, by default (unless the LLC elects otherwise), taxed by the IRS as a “Disregarded Entity”; which means the profits and losses of the LLC are reported on the Member's personal income tax return and no Corporate Income Tax return is filed. An LLC with two or more members is taxed, by default, as a Partnership, which is also taxed as a Disregarded Entity: taxable income and losses “Pass Through” to its members. Although the income and losses are reported on each partner's personal income tax return, a partnership must also file an informational report, form 1065 and Schedule K-1. An LLC may also be eligible to elect to be taxed as an S-Corporation, see our article about S-Corporations for more information. The advantages of being taxed in this manner are the avoidance of double taxation that would occur if the company were a C-Corporation plus the possibility of being taxed at a lower rate. An LLC may even be eligible to elect to be taxed as a C-Corporation if it desires. A C-Corporation may be taxed at a higher rate, but some Members prefer to fully deduct Health Insurance and Life Insurance Benefits as the Owner-Employee of a C-Corporation may do.

How are LLC's Taxed by the Secretary of State of Delaware?

LLC's pay a flat tax of \$300 annually to the Secretary of State of Delaware to maintain their Delaware Charter. This tax has no relation to assets, income, or activity level. The Delaware LLC tax is due before June 1st each year and is never pro-rated for any reason. If the Delaware LLC Tax is not received by the Secretary of State by the last day of March, a \$200 penalty is assessed with 1.5% interest per month. If the LLC Tax is not paid for consecutive years, the Delaware Charter is declared VOID; the company becomes invalid and has no right to transact business or investments as an LLC.

Advantages of Delaware LLC's

As of December 1997, all states, plus the District of Columbia, have passed laws governing the administration and operation of LLCs within their jurisdiction. But Delaware LLC's do possess some unique benefits:

- One person LLCs are permitted by Delaware statute.
- Delaware LLC's may have perpetual life, this means the company's Charter does not "expire".
- Delaware LLC's may be registered without including the names of the Members/Managers and are not required to file an Annual Report.

What are the advantages of operating as an LLC for non-resident non-citizens?

- A Non-Resident Alien (NRA) usually is only subject to U.S. Income Tax on U.S. Source Income. Generally foreign source income received by a nonresident alien is not subject to U.S. taxation. Therefore, a non-resident non-citizen with no Operations (no business activity, no employees) within the US, and no property in the US, pays no US Federal Income Tax. Furthermore, if your only U.S. business activity is trading in stocks, securities, or commodities (including hedging transactions) through a U.S. resident broker or other agent, you are **not** considered engaged in a trade or business in the United States.
- A Delaware LLC is not required to disclose the names of the Members on the Certificate of Formation and does not file an Annual Report in Delaware. The identity of the Members is not public record.
- The Delaware Limited Liability Company Act does not require that a limited liability company agreement be in English.

The LLC as an alternative to a Partnership

An LLC is very similar to a Partnership: a multi-member LLC is taxed as a Partnership by default (although it may elect otherwise), and it is governed by an Operating Agreement which

is similar in many ways to a Partnership Agreement; but there are distinct reasons to consider an LLC as an alternative to a Partnership:

- Each member enjoys *Limited Liability*, as compared to the risk of *unlimited liability* that general partners must face in a partnership.
- Unlike limited partners, LLC owners may participate in company management without fear of losing their protected, limited liability status.
- LLC members may be able to avoid the I.R.S. passive-loss limitations and take federal income tax deductions for losses caused by the business – a benefit often unavailable to limited partners.
- An LLC owner may obtain additional tax advantages from a special “step-up” option, previously available only to partnerships, under Section 754 of the Internal Revenue Code.

The LLC as an alternative to an “S-Corporation”

In Delaware, “S-Corporation” is a tax status, not an Entity Type. In fact, an LLC can be taxed as an “S-Corporation”. For the purposes of this discussion, we will focus on the differences between an LLC taxed as a Disregarded Entity and a Stock Corporation which elects S-Corporation status. See our article about S-Corporations for a detailed description of the S-Corporation. Because an LLC is by default a “Pass Through” entity for tax purposes, the Members of an LLC automatically enjoy the liability protection of a Corporation, with the avoidance of double taxation that a Sole Proprietor or Partnership enjoys, without having to elect S-Corporation status as a Corporation seeking Pass Through status would have to do. Furthermore, the LLC can enjoy Pass-Through status without having to continuously pass the “tests” that a corporation electing S-Corporation status must pass to qualify. This is one reason the LLC is a popular alternative to Corporations electing S-Corporation status; here are some others:

- Membership is not limited to Natural Persons as is the case with S-Corporations. Corporations, Limited or General Partnerships, estates, charitable organizations, and pension plans are all permitted to be Members of an LLC.
- Unlike an S-Corporation, an LLC does not limit the number of Members to 100.
- Unlike an S-Corporation, an LLC does not bar foreign persons from Membership.
- The law allows the inclusion of liabilities of the LLC to increase basis for tax purposes (as in the case of a partnership).
- Payment to a retiring Member may be structured to allow part of the payment to be deducted as an expense to the LLC.

- An LLC may own 100 percent of the shares of Stock of another Corporation, whereas the S-Corporation is limited to owning 80 percent (with the exception that one S-Corporation may own 100 percent of a subsidiary S-Corporation).
- An S-Corporation is limited to one share class, while an LLC may form separate and multiple classes of Members with dissimilar voting or distribution rights.
- LLC owners may obtain additional tax losses from their allowable individual percentages of certain company liabilities, rather than solely through direct loans, as required in the case of S-Corporations.

Is there a downside?

- The benefits for owner-employees, such as health care or life insurance, are only partially deductible from these Members' individual federal income tax returns, if the LLC is taxed as a Pass-Through entity or S-Corporation. This is typically not a primary concern for entrepreneurs who are considering an LLC.
- Unlike shares of Stock, Membership units of an LLC cannot be publicly traded.
- If you are trying to raise Capital, some potential investors may be less familiar with LLC's and the LLC's Membership Interest Share versus the Corporation's Stock Share.

Certificate of Formation

Limited Liability Companies will be created by filing the Certificate of Formation. This document is sometimes called the Articles of Organization or Articles of Formation. DBI will draft this document for you. Any information needed from you will be obtained from your internet order or order form.

The following information will be included on the Certificate of Formation:

1. The name of the LLC
2. The name and address of the Registered Agent
3. If the name of the Member is to be printed on the Certificate it will appear as the Third article; if not, the powers of the Member will be Article Three and so on
4. The powers of the Initial Member are outlined.
5. The duration of the LLC is given to be perpetual.
6. The signature of the Organizer

DBI will act as the Organizer of your LLC. The Organizer has the power to represent the company as an agent during the process of creation. The Organizer has the authority to prepare, sign and file the Certificate of Formation and any other needed documents. The Organizer's authority ends when the LLC is registered and the Initial Member or Manager is appointed. An Organizer is not an owner or officer.

Our goal is to include the minimum amount of information necessary on the Certificate of Formation. Any additional provisions can be indicated in the Operating Agreement; by including additional provisions in the Operating Agreement rather than the Certificate of Formation, we can avoid the necessity of filing an Amendment to the Certificate of formation if any of the additional provisions change. We can also avoid costly per-page charges which add up when you file a multiple page Certificate of Formation. Filing the minimum provisions allows maximum flexibility and economy. If you want additional provisions included on your Certificate, we would be happy to accommodate you if you supply the exact language of the additional articles.

What is the Operating Agreement?

Most “Articles of Organization”, also known as a “Certificate of Formation”, are deliberately spare in detail, defining only the minimum traits required to establish the LLC. The reason for this is to allow the LLC to define its own provisions in its Operating Agreement; which saves the LLC from having to file an Amendment with the State if a change is needed, and keeps the organizational details of the company private.

An Operating Agreement is similar to the “By-Laws” of a Corporation in that it defines the specifics of the regulation of the of the company’s business and is similar to a Limited Partnership Agreement in that it defines the terms that the Members will adhere to regarding admission of new members, assignment of interest, appointment of voting rights and dissolution of the association.

Your purchase of a New LLC Registration Package (excluding the Basic package) includes an Operating Agreement Kit which comes with your choice of a model template (Microsoft Word .doc), or a fill-in-the-blanks form.

The following standard Articles are included in the model Operating Agreement:

1. Definitions
2. Organization of the Company
3. Members (Status, Rights and Duties of)
4. Management of the Company
5. Managers (Status, Rights and Duties of)
6. Officers
7. Capital
8. Distributions to Members
9. Profits and Losses
10. Admission and Withdrawal of a Member; Transfer of Member’s Interest
11. Conversion and Merger with Other Entities
12. Dissociation, Dissolution, Winding Up & Termination
13. Books and Reports
14. Miscellaneous

You are free to alter, add or delete any material you wish. DBI does not alter, add, or delete provisions from the model template, if you wish to alter the template and you do not feel competent to do so without assistance, please consult an attorney; you may contact an Incorporation Specialist if you would like a referral.



Please note that alterations to provisions regarding Continuity of Life, Centralization of Management, Free Transferability of Interest, or Limited Liability may result in the IRS taxing your LLC as a Corporation. Please contact a qualified tax professional and/or attorney if you have questions regarding these provisions.

Series LLC

A Series LLC is a Limited Liability Company that allows for multiple “sub-companies” under one “umbrella”. These “sub-companies” are sometimes called “mini-LLC’s” or “units”, but the technical term would be “Separate Series”. We’ll continue to use “sub-companies”; it’s a little less confusing.

Each sub-company or “Separate Series”, properly formed, has all the features of a regular LLC, and each is independent of the other. The debts, liabilities, and obligations of one sub-company are enforceable only against the assets of that sub-company, and not against the “umbrella LLC” or any other sub-company in the Series. Let’s review that in plain English, we’ll use an example while we’re at it:



Tom Jones plans to purchase three apartment buildings. He registers a Series LLC we’ll call “TJ Properties LLC”. His Certificate of Formation contains the necessary clauses to invoke separate liability protection. Tom completes an Operating Agreement for TJ Properties LLC and a Separate Series Agreement for each of the three sub-companies. The sub-companies are “Cloverleaf Apartments, Series A of TJ Properties LLC” “Lamplighter Patio Homes, Series B of TJ Properties LLC” and “Main Street Efficiencies, Series C of TJ Properties LLC”. Each property is titled in the name of its corresponding sub-company.

After a flood, the first-floor units of Main Street Efficiencies develop a dangerous mold problem, and several sick tenants sue. The judge finds against Main Street Efficiencies and the ruling exceeds the assets of the Main Street sub-company. Fortunately for Tom, he properly set up a Separate Series Agreement for each sub-company, each company’s assets were separately held, and he maintained separate and distinct records for each sub-company. The assets of Lamplighter Patio Homes and Cloverleaf Apartments are safe, as are the assets of TJ Properties LLC; they are protected from the liability of Main Street Efficiencies.

If Tom Jones had held all the rental properties together in one traditional LLC, his personal assets would be protected from the mold judgment, but the assets of the other two rental properties would be enforceable to satisfy the judgment. Tom could form three traditional LLC's, one to hold each property; but then he would have the expense of registering and maintaining three LLC's instead of one.

Which brings us to an important point, the sub-companies under your Series LLC umbrella will not be individually registered in Delaware. This offers tremendous savings because set-up and maintenance fees are paid only for the "Umbrella LLC" and not each sub-company. However, this also means you do not have exclusive right to the names of the sub-companies unless you register them as trademarks or register them as an alternate name in a jurisdiction which grants exclusive rights to use of a registered alternate name. Many jurisdictions do not grant exclusive rights to alternate names. This is not typically an issue of concern for a property holding Series LLC, but if your intention is to hold business enterprises in your Series, it is a subject for consideration.

Series LLCs are relatively new legal creatures. Some US states and foreign countries do not recognize the Delaware Series LLC, while other States, such as California, recognize each sub-company as a separate LLC and thus subject to separate registration and state taxation. Because they are a more recent type of entity, the Delaware Series LLC does not have the vast body of case law a Delaware Corporation or Traditional LLC enjoys. This means that there are potentially areas of law which remain undefined; the court will rule on these situations as they occur. Consequently, while they offer tremendous opportunity, they may not be the appropriate vehicle for all entrepreneurs and investors. For questions bearing on federal and state tax liability, bankruptcy, creditor's rights and environmental liability you should consult a qualified tax professional and/or attorney and be as specific as possible when describing the particulars of your business or investments. Please contact an Incorporation Specialist if you would like a referral.

How are Series LLC's Managed?

Each sub-company can have its own Members and/or Managers and may pursue its own business objectives. As with all Delaware LLCs, Delaware law allows tremendous freedom of contract between Members; each sub-company may opt from an almost unlimited number of management structures and may define its own rules respecting the voting rights of Members and how Distributions will be taken. As with the traditional Delaware LLC's, corporate formalities such as minutes and annual meetings are not required.

The following information will be included on the Certificate of Formation of a Series LLC

1. The name of the Umbrella LLC
2. The address of the Registered Office
3. The name and address of the Registered Agent in Delaware
4. The notice that the LLC is a Series LLC and the clause invoking separate liability.
5. The signature of the Authorized Person (Organizer)

Series Agreement

Like the traditional LLC, a Series LLC is defined by an Operating Agreement and each sub-company has its own “Separate Series Agreement”.

A Separate Series Agreement is the Operating Agreement of the sub-company, and each sub-company must have its own. The Separate Series Agreement contains the following:

1. The name of the Umbrella LLC and of the sub-company
2. The names of the Members of the sub-company
3. Statement that the new sub-company is created.
4. Separate liability clause
5. The individual traits of the sub-company such as Business Purpose and Investment Guidelines, and any distinct Management guidelines or any other item found in a traditional LLC Operating Agreement which is unique to this sub-company.
6. The signatures of all the members of this sub-company

If the following criteria are not met, the LLC will not be recognized as a Series LLC and the sub-companies will not be recognized as separate entities and will not have separate liability protection:



1. The Certificate of Formation must identify the LLC as a Series LLC and must invoke a separate liability clause or must be amended to do so.
2. The Operating Agreement must identify the LLC as a Series LLC and must define the provisions of limited liability and separate organization to be enjoyed by each “Separate Series” (sub-company). The Operating Agreement of the Umbrella LLC must be signed by the members of the Umbrella LLC.
3. Each sub-company must have its own Separate Series Agreement which must be signed by the members of that sub-company.
4. Each sub-company must maintain its own separate and distinct records.
5. The assets of each sub-company must be held separately in the name of the sub-company and in the sub-company’s own account.



Q: Can I get an EIN for each Separate Series in my Series LLC?

A: IRS Private Letter Ruling 200803004 established that each Separate Series in a Series LLC may obtain its own separate EIN. It is best practice for each Separate Series to have its own bank account or brokerage account to satisfy the below criteria for establishing separate liability:

1. Each Separate Series must maintain its own separate and distinct records.
2. The assets of each Separate Series must be held separately in the name of the sub-company and in the sub-company's own account.

Therefore, if a Separate Series will hold assets in a bank account or brokerage account it will be necessary to obtain an EIN for that Series.

Corporations

A Corporation is a business entity (type of company) which is registered with a state government and entitled to treatment as an artificial person, by which right it may sue or be sued in a court of law with protection for the shareholders and officers from personal claims, unless they commit fraud. This means that, unless a shareholder personally guarantees a debt of the Corporation, or commits fraud, her risk of loss is limited to the amount of money she invested in the Corporation; her personal assets are protected from liability. Corporations and LLCs are similar in the liability protection offered to owners and officers.

A Corporation which is not a Close Corporation and is not an S-Corporation may be called a C-Corporation or a General Corporation when it is necessary to distinguish it. To distinguish between a for-profit Corporation and a not-for-profit Corporation, a for-profit Corporation may also be called a "Stock Corporation". The following section will focus on For-Profit C-Corporations.

How are Corporations managed?

In smaller companies the owner tends to wear many hats and in Delaware this is perfectly legal; the owner may be a sole shareholder and Director as well as serving as the titular President, Secretary and Treasurer all at the same time! That said, the organization of the Corporation is more rigid than that of the LLC. In the case of a new corporation, the expected series of events would be as follows:

A person representing a new company that wishes to incorporate contacts DBI. Upon purchasing DBI's services, DBI becomes the Incorporator. DBI drafts, signs and files the Incorporation documents acting as an agent on behalf of the new corporation. When the Incorporation is complete, DBI's services as Incorporator are automatically terminated. The last thing DBI does in its role as Incorporator is officially appoint the Initial Director. The person who will serve as Initial Director will be indicated by the person placing the order for Incorporation services.

The Initial Director is often the founder of the Corporation, although, the Initial Director does not have to be an owner or officer; the Initial Director could be a manager, CPA or attorney for example. It is the Initial Director's duty to finish setting up the organization of the new corporation after it has been Incorporated. The Initial Director has the authority issue stock certificates to the owners to record their ownership share and to call a meeting of the shareholders to elect the Board of Directors. The Initial Director may remain a director or his services may end after other Directors are appointed. In many cases the Initial Director stays on and becomes the Chairman of the Board of Directors.

Once the Board of Directors is appointed, the Board ratifies the By-Laws and appoints the Officers of the Corporation. Most routine operational oversight is delegated to the Officers, but major policy must be decided by a resolution of the Board which is either approved by most of

the voting shareholders, or in the case of a Sole Owner/Sole Director by “Unanimous Decision”. A Close Corporation is exempt from formal Board Meeting and Resolutions as are LLC’s.

How is a Corporation Taxed?

A C-Corporation, that is, a Corporation which does not elect “S-Corporation” status and is not a “Not-For-Profit”, is taxed as its own “entity”; that is to say, the Corporation is taxed separately from and in addition to the personal income of the Shareholders (owners), and is taxed at a Corporate rate. A C-Corporation must file its own income tax return every year on form 1120. In addition to the income tax the C-Corporation must pay, any distributions made to the stockholders (also known as dividends) are taxed on the personal income tax returns of the shareholders at the shareholders’ personal income tax rate. This is what is commonly known as “Double Taxation”. Because the Corporation may deduct reasonable salaries before calculating income tax, a large portion of the income paid to Owner-employees is not subject to double federal income tax, however, both the Corporation and the Employee must pay FICA tax on these wages earned. Aside from liability protection, lower corporate rates of income taxation are one of the benefits to Incorporating a Sole Proprietorship or Partnership. Another difference to bear in mind between corporate taxation and “pass through” taxation is that undistributed profits of a corporation may be accumulated untaxed if they are related to the reasonable needs of the business. ***The Federal corporate income tax rate for 2022 is 21%.***



If your corporation is profitable but pays no dividends and pays salaries significantly higher than industry standards, the IRS may determine that your corporation is “disguising” dividends as salaries; and will consequently disallow a portion of eligible salary deductions and apply penalties with interest.

What is the benefit of forming a Delaware Corporation for non-resident non-citizens?

A C-Corporation with no employees, owners, property or operations in the United States, and no US-source income will pay no Federal US Corporate Income Tax.

How is a Corporation Taxed by the Secretary of State of Delaware?

The annual tax due to the Secretary of State of Delaware for the purpose of maintaining a Delaware Charter is known as the Delaware Franchise Tax. The word “Franchise”, as used in this case, means “a special privilege granted to an individual or group ; *especially : the right to be and exercise the powers of a Corporation*” and does **not** mean “a chain of businesses licensed by the original store and operated per the original store’s pattern under the original store’s trade name”. Delaware Corporations authorizing 5,000 shares or of stock or less may use the

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3422 Old Capitol Trail, Suite 700, Wilmington DE 19808 | 1-800-423-2993 or 1-302-996-5819 |
support@dbiglobal.com

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Authorized Shares method and will pay the minimum \$175 franchise tax regardless of income or activity. The Franchise Tax rates for companies authorizing 5,001 shares or more are discussed below.

It is also necessary for Corporations to file an Annual Report. There is a \$50 Annual Report filing fee for Profit-Corporations and a \$25 Annual Report Filing Fee for Non-Profits. The Delaware Annual Report is filed online at www.corp.delaware.gov. The following information must be included on the Annual Report:

1. The physical location of the headquarters of the Corporation. This address may be anywhere in the US or in the world; it is **not** required to be a Delaware address. If your corporation has no headquarters, you may give your home address. You are **not** permitted to give a P.O. Box or the address of a mail forwarding service.
2. The phone number of any company representative.
3. The names and addresses of **all** Directors. All Corporations have at least one initial director, if that person has resigned and has not been replaced; a statement that there are no current directors may be given. It is permissible to give a business address or home address.
4. The name and address of the Officer who is authorizing the filing of the Annual Report. This is usually the President or CEO, but other offices are acceptable. If there are no officers currently serving a Sole Director or the Chairman of the Board of Directors may sign. If there are no Officers or Directors, please contact an Incorporation Specialist for assistance.
5. The signature of the authorizing Officer. This is usually an electronic signature: if you are filing yourself online you will simply type the name, if DBI is filing for you the electronic signature will appear as “/s/FirstName LastName” for example “/s/John Doe”.

The Franchise Tax and Annual Report are due every year before June 1st. This means payment must be received by the Secretary of State of Delaware no later than the last day of February of any given year. Late Annual Reports and Franchise Tax are penalized \$200 and subject to 1.5% interest. DBI offers a Tax Compliance Service for an additional fee per tax year which offers an automatic renewal and tax payment.

There are two methods of calculating the Franchise Tax. Companies authorizing 5,000 shares of stock or less may use the Authorized Shares method and will pay the minimum \$175 franchise tax regardless of income or activity.

Delaware Franchise Tax: Authorized Shares Method	
Authorized Shares	Annual Franchise Tax Due
1-5,000 shares	\$175.00
5,001-10,000 shares	\$250.00
Each additional 10,000 shares or portion thereof	Add \$85.00
Maximum annual tax	\$200,000.00

Assumed Par Value Capital Method

Companies authorizing more than 10,000 shares may wish to use the Assumed Par Value Capital Method.

To use this method, you must give figures for all issued shares (including treasury shares). For this purpose, it is important to understand the difference between Issued Shares and Authorized Shares. The Authorized Shares are the shares authorized to be issued by the company at the time the Charter was registered or upon amendment of the Charter. This is the number of shares a company may *potentially* issue. A stock is "Issued" when it is sold, transferred, or assigned to an owner, a shareholder. Issued Shares include Treasury Shares. Treasury Shares are any shares of stock which were previously issued to a shareholder and subsequently bought back from the shareholder by the Corporation itself. While it is not necessary to report income for either method of Franchise Tax calculation, it is necessary to report the Total Gross Assets if you wish to file using the Assumed Par Value Capital Method. Total Gross Assets shall be those "total assets" reported on the U.S. Form 1120, Schedule L (Federal Return) relative to the company's fiscal year ending the calendar year of the report. The tax rate under the Assumed Par Value Capital Method is \$350 per million or portion of a million. If the assumed par value capital is less than \$1,000,000, the tax is calculated by dividing the assumed par value capital by \$1,000,000 then multiplying that result by \$350. If your company has authorized shares at zero par value, it will be necessary to contact the Delaware Secretary of State Corporations Division Franchise Tax Department for a calculation of Franchise Tax due if you wish to employ the Assumed Par Value Capital Method.

Regulated Investment Companies Franchise Tax

Regulated Investment Companies pay on a different scale prescribed under Section 503(h), the General Corporation Law of the State of Delaware.

Estimated Franchise Tax

Corporations which pay franchise taxes more than \$5,000 annually must make quarterly payments,
due and payable June 1st, September 1st, December 1st, and March 1st.

Foreign Corporations Franchise Tax

Corporations Chartered in another state that are qualified in Delaware as Foreign Corporations must file an annual report before the 30th day of June each year; the annual report filing fee for Foreign Corporations is \$125. If the annual report is not filed before the due date a penalty of \$125 is assessed.



- Franchise tax is pro-rated ONLY in the case of 1) An amendment being filed within that tax year which increases or decreases the number of Authorized Shares or 2) A Corporation, which owes more than the minimum franchise tax, dissolves, transfers out of state or country, or converts to a different entity type. If your corporation owes the minimum Franchise Tax, your annual tax will not be pro-rated for any reason.
- **Franchise tax is due regardless of whether your company was actively transacting business.**
- Your Delaware Franchise Tax and Annual Report are due every year before March 1st. Although DBI will send you a notice each year, like Federal Income tax, this tax is due every year at the same time, and you are responsible for filing on time regardless of circumstances. We strongly suggest you mark your calendar accordingly. It is not necessary to have a copy of your tax notice to pay your Delaware Franchise Tax or to file your Delaware Annual report, but if you have not received your notice, or have lost your notice, you may contact DBI before March 1st for a replacement. It is very important that you notify DBI if your address or contact information changes.
- If your company fails to pay Delaware Franchise Tax for two consecutive years, your company Charter will be declared VOID for failure to pay taxes. This means that your company Charter is invalid, and you do **not** have the right to transact business as a Corporation.
- Note that, under Delaware law, the shares of any person in any Corporation with all the rights thereto belonging or any person's option to acquire the shares or his/her right or interest in the shares may be attached for debt or other demands. So many of the shares, or so much of the option, right or interest therein may be sold at public sale to the highest bidder as shall be sufficient to satisfy the debt or other demand, interest, and costs, upon an order issued therefore by the court from which the attachment process issued, and after such notice as is required for sales upon execution process. While your personal liability is limited to your investment in the company; you can lose your investment in the company.

Other Delaware State Taxes

Many entrepreneurs and Investors are already aware of the many tax benefits of a Delaware LLC or a Delaware Corporation. Following are some facts regarding taxes on Delaware C-Corporations:

Delaware State Taxes you will *not* owe:

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support@dbiglobal.com

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- No Delaware State Personal Income Tax for shareholders who reside outside the state.
- No State Sales Tax on goods and services purchased inside the state.
- No Delaware State Corporate Income Tax for Delaware Corporations *headquartered and operating outside Delaware*.

Delaware State Taxes you may owe:

If you have a physical office, store, factory, or other center of operations located *within* Delaware, you may owe Delaware State Corporate Income Tax. As a rule of thumb, if your corporation *produces a product or service within the state of Delaware*, you may owe Delaware Corporate Income Tax on those revenues, even if they are sold out of state. *If* you have operations in Delaware, you may also owe Delaware Corporate Income Tax on revenue from *products and services sold within the state of Delaware*, even if those products and services were produced outside the state.

Delaware evaluates three types of activity in determining what portion of income tax will be subject to Delaware Corporate Income Tax:

1. Corporate sales attributable to Delaware
2. Property located in Delaware and
3. Payroll in Delaware.

Q: What is the difference between “Par Value” and “No Par Value” stock?

A: “Par Value” stock certificates carry a stated money value on their face. In Delaware, par value stock may be issued only in return for “considerations” such as money, property, or services of value at least equal to the value of the shares issued. If par value shares are purchased with property, the value of the property must be established by an independent licensed appraiser and the value of the shares exchanged for the property may not exceed the amount of the appraisal. If the par value shares are exchanged in return for services, such services must already have been performed, and they must be valued at the going rate for such services. Such value must then be treated as service income by the service provider. “No Par Value” stock has no stated value. Such shares may be sold for whatever the investor is willing to pay. “No Par Value” may also be expressed as “Zero Par” (\$0.00) and “Without Par Value”. The actual market value of an established corporation that has been operating for some time has, of course, no relation to the face amount of the stock, whether it is par value or no-par value stock. The more profitable the company and the more assets it accumulates and the better its prospects, the more each share of common stock tends to be worth in the marketplace.

Q: Does one stock certificate equal one share of stock?

A: No; One stock certificate can represent any number of shares up to the amount authorized, as stated on the Certificate of Incorporation. The Certificate has a blank space to be filled in with the number of shares it represents by the corporate officer issuing the stock. If you purchase one of our New Company Registration Packages that comes with a Corporate Kit, you will receive Stock Certificates with the name of your company printed on them. The kit comes with a template so you can print the name of the shareholder and the number of shares on the Stock Certificate using your printer.

Certificate of Incorporation

Stock Corporations and Not-for-Profit Corporations will be created by filing the Certificate of Incorporation. This document is sometimes called the Articles of Incorporation. DBI will draft this document for you. Any information needed from you will be obtained from your internet order or order form.

The following information will be included on the Certificate of Incorporation of a General Stock Corporation

1. The name of the Corporation
2. The name and complete address of the Delaware Registered Agent
3. The General Purpose of the proposed corporation
4. A statement regarding the Authorized Shares, stating the number of shares authorized and par value or stating no par value.
5. The name and address of the Incorporator and optionally, the name and the address of the Initial Director; if the name of the Director will not be included then the fifth article will only feature the name and address of the Incorporator.
6. A statement affording the Directors of the company the broadest liability protection allowable under Delaware law.
7. The signature of the Incorporator

DBI will be your Incorporator. An Incorporator has the power to represent the company as an agent during the process of creation. The Incorporator has the authority to prepare, sign and file the Certificate of Incorporation and any other needed documents. The Incorporator's authority ends when the Corporation is registered and the Initial Director is appointed. An Incorporator is not an owner or officer.

Our goal is to include the minimum amount of information necessary on the Certificate of Incorporation. Any additional provisions can be indicated in the By-Laws. By including additional provisions in the By-Laws rather than the Certificate of Incorporation, we can avoid the necessity of filing an Amendment to the Certificate of Incorporation if any of the additional provisions change. We can also avoid costly per-page charges which add up when you file a multiple page Certificate of Incorporation. And finally, by including most of the information in the By-Laws rather than the publicly filed Certificate of Incorporation, the information regarding the organization of your corporation remains private. Filing the minimum provisions allows maximum flexibility, privacy, and economy.

Although most Delaware Corporations prefer to follow the minimum provisions model, it is possible to include additional provisions on the Certificate of Incorporation. If you want additional provisions included on your Certificate, please supply the exact language of the additional articles to be included. Following are the additional provisions which can be included on the Certificate of Incorporation:

8. The period of its duration, which is usually stated as “perpetual.”
9. Whether or not cumulative voting of shares is authorized.
10. Provisions regarding By-Laws.
11. Provisions regarding the sale or purchase of the Corporation’s stock.
12. Provisions specifying special voting rights and preferences.
13. Provisions limiting or denying to shareholders the preemptive right to acquire additional or treasury shares of the Corporation.
14. Provisions for the regulation of the internal affairs of the Corporation.
15. Any other provisions required to define or place parameters on the internal or external organization, financial structure, or activities of the Corporation.



If you are drafting your own Certificate of Incorporation and wish for DBI to serve as your Delaware Registered Agent, you must contact us before the Certificate of Incorporation is filed.

What are the By-Laws?

The By-Laws are a document which sets forth the rules adopted by the Directors for the operation, organization and conduct of the Corporation. By-Laws specify how the Corporation will conduct its meetings, how Directors and Officers will be elected or appointed, how it will handle resignations, and will elaborate on the duties of officers and the voting rights of shareholders, amongst other information. The By-Laws of a Corporation are not registered or filed with the State of Delaware; they should be properly maintained by the Corporation and filed safely with the Corporation’s other private corporate records such as the Shares Transfer Register. Your Corporation’s By-Laws may someday be crucial to resolving unforeseen problems such as absentee Officers or Directors; to resolving shareholder disputes; defending or applying for tax status; and bringing, settling, or defending lawsuits. DBI offers model By-Laws templates or fill-in-the-blank forms as part of the Corporate Kit available separately or as part of your purchase of a New Company Registration Package.

The following topics are addressed in the By-Laws template available with the purchase of your New Company Registration Package:

1. Meeting of Shareholders
2. Board of Directors
3. Officers
4. Shares of Stock
5. Dividends
6. Fiscal Year
7. Corporate Seal

8. Amendments
9. Waiver of Notice
10. Interested Directors
11. Form of Records

If you wish to include additional provisions, please indicate that you want the Word .doc template. You are free to alter, add or delete any material you wish. Please contact a qualified tax professional and/or attorney if you have questions regarding these provisions. DBI does not alter, add, or delete provisions from the standard template, if you wish to alter the template and you do not feel competent to do so without assistance, please consult an attorney; you may contact an Incorporation Specialist if you would like a referral.

Close Corporations

A Close Corporation is a corporation which sets certain limitations on the sale, holding and transfer of its shares of stock. In Delaware, a Close Corporation is limited to thirty shareholders. Two common reasons to form a Close Corporation are to seek and maintain "S-Corporation" tax status from the IRS and/or to ease administration for a small business, frequently a family business. Restrictions on the transfer of stock are frequently employed as a way of maintaining S-Corporation tax status; for example: A typical restriction prohibits the transfer of restricted securities to non-resident aliens. Another typical restriction, known as "First Refusal," requires a potential seller to offer the stock shares to the Corporation and its existing shareholders before offering the stock shares for sale to anyone else. First Refusal can potentially protect shares of a family business from being sold to someone outside the family or shares of an S-Corporation from being sold to a party that would cause the Corporation to lose its "S" status.

How are Close Corporations Managed?

Close Corporations are not required to hold an annual meeting of the Board of Directors; decisions effecting shareholders can be governed by a "Shareholder Agreement" rather than a Board of Directors. A Shareholder Agreement is like an Operating Agreement or a Limited Partnership Agreement and defines the specifics of the regulation of the of the company's business.

The following information will be included on the Certificate of Incorporation of a Close Corporation:

1. The name of the Corporation
2. The name and complete address of the Delaware Registered Agent
3. The General Purpose of the proposed corporation
4. A statement regarding the Authorized Shares, stating the number of shares authorized with or without par value.
5. The name and address of the Incorporator and optionally, the name and address of the Initial Director; if the Director is not named the fifth article will only feature the name and address of the Incorporator.
6. A statement limiting the number of shareholders to 30.
7. A statement that the shares of stock are subject to one or more restrictions on the transfer of stock.
8. A statement that the Corporation will not make public stock offerings.

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9. The signature of the Incorporator

The specific limitations on the transfer of stock may be made in the By-Laws.

Not-for-Profit Corporations

Also known as: "Non-Profit", "Non-Stock Corporation" or "501(c)3"

When we use the term "Not-for-Profit Corporation" we are typically referring to a Chartered Charitable or Religious Organization. A Not-for-Profit Corporation is not "tax-exempt" until it has been granted Tax Exempt status by the IRS after filing form 1023. To be Tax Exempt, the Corporation must meet specific requirements:

1. Typically, the Corporation does not authorize or issue shares of stock.
2. The Corporation is organized and operated exclusively for Religious, Educational, Charitable, Scientific or Literary purposes, or for Testing for Public Safety, to Foster National or International Amateur Sports Competition, or for the Prevention of Cruelty to Children or Animals
3. No part of the net earnings of a section 501(c)(3) organization may, by practice or custom, benefit a person having a personal and private interest in the activities of the organization, such as the creator of the Corporation or the creator's family.
4. The organization is restricted in how many political and legislative (**lobbying**) activities they may conduct. Political Organizations usually file under an exemption other than 501(c)3.

DBI will draft your Certificate of Incorporation with the appropriate language (see below) and file your Certificate of Incorporation in the same manner that a For-Profit Stock Corporation is filed. After the Not-for-Profit Corporation is registered by us, you will then need to apply to the IRS for Tax Exempt Status. Contact an Incorporation Specialist if you would like a referral for a qualified tax professional.

How are Not-for-Profit Corporations Managed?

The managers of a Not-for-Profit Corporation are typically known as the Board of Trustees. The powers and responsibilities of the Board of Trustees are outlined in the Not-for-Profit Corporation's By-Laws together with specifications on how the Trustees will be elected and how long they will serve. The duties of the Trustees will typically include overseeing the operation of the organization to ensure that the purpose of the Charitable Organization is upheld; managing the receipt of donations; investment and management of assets and operating funds; budgeting; and project planning.

How are Not-for-Profit Corporations Taxed in Delaware?

Not-for-Profit Corporations are exempt from paying Delaware Franchise Tax and pay a reduced annual report filing fee of \$25. Annual Reports are due before March 1st of each year and are filed online at www.corp.delaware.gov.

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Certificate of Incorporation

The following information will be included on the Certificate of Incorporation of a Not-for-Profit Corporation:

1. The name of the Corporation
2. The name and complete address of the Delaware Registered Agent
3. The Purpose Statement setting forth purposes in keeping with those listed as eligible by 501(c)3 and barring those activities or practices restricted under 501(c)3.
4. A statement that the Corporation shall have no shares of stock
5. The name and address of the Incorporator and the name and address of the Initial Director. Not-for-Profit Corporations are required to include the name and address of at least one Director; they do not have the option of omitting this information.
6. The signature of the Incorporator



For more information about the Organization and Administration of Not-for-Profits see <http://www.idealists.org/info/Nonprofits>

S-Corporations

An “S-Corporation” is an entity that makes a valid election to be taxed under Subchapter S of Chapter 1 of the Internal Revenue Code by filing form 2553 with the IRS within the time afforded and by passing the eligibility “tests”. Although we commonly refer to them as “S-Corporations” not all such companies are Corporations; LLC’s can elect “S-Status” too! In Delaware, an “S-Corporation” is not an entity type, it is a tax status (in some states an “S-Corporation” is both an entity type and a tax status). A company typically elects S-Status to avoid the penalty of Double Taxation that would occur if the company were taxed as a regular corporation (C-Corporation).

“Double Taxation” occurs when C-Corporation income is subjected, first, to corporate income tax, and is then taxed a second time, as personal income, when corporate earnings which have already been taxed are returned to the shareholders in the form of dividends.

How is an S-Corporation taxed by the IRS?

If S-Status is granted, company earnings are not taxed at the corporate level by the IRS; and are not subject to the corporate alternative minimum tax. All corporate income passes directly through to the shareholders in proportion to their individual ownership of shares in the Corporation; this income is then taxed *only once*—at personal rates. When we say “Pass Through” we mean that the income or losses of an S-Corporation are deemed to be the personal income or personal losses of its shareholders, reported on their personal tax returns.

Capital losses of the S-Corporation can be used by the shareholders to offset other personal income, providing that they do not deduct as a loss any amount exceeding their individual

investments in, or loans to the Corporation tax basis. Such losses may be carried forward indefinitely for possible later use if not currently usable.

How is an S-Corporation taxed by the Secretary of State of Delaware?

Respecting the annual tax paid by an entity to the Delaware Secretary of State for the purpose of maintaining a valid Charter issued by the State of Delaware, an S-Corporation is taxed in the same manner as a Corporation if it is registered as a Corporation and is taxed in the same manner as an LLC if it is registered as an LLC.

Who may elect "S" Status?

A Corporation or LLC is only eligible to elect "S" Status if it passes all of the following "tests":

1. The Corporation or LLC must be Chartered in a US State or Territory, such as Delaware.
2. The Corporation or LLC must file Form 2553 on time. (For more information about the filing deadlines see IRS Publication i2553 "Instructions Filing Form 2553" at <http://www.irs.ustreas.gov/pub/irs-pdf/i2553.pdf>)
3. All its shareholders must either be natural persons or estates of deceased persons in the process of administration. Other Corporations and partnerships are not permitted to be shareholders unless they are exempt under provisions such as 501(c)3 for Charitable Organizations; or unless they are an S-Corporation holding a 100% share of a subsidiary S-Corporation.
4. All its shareholders must either be US Citizens or US-Resident Aliens. US-Resident Aliens must reside in a US state; Aliens resident in a US territory are not eligible. A non-resident alien cannot be a shareholder of an S-Corporation. An "alien" is also known as a "foreign national" or "non-citizen".
5. The Corporation must have only one class of stock, although that class may be divided into Voting and Non-Voting shares. In the case of an LLC, all owner-members must have identical rights to distribution and liquidation proceeds.
6. The Corporation must not be a Section 585 bank, a subchapter L insurance company, a section 936 possession S-Corporation, nor a Domestic International SaleS-Corporation or former DISC.
7. The Corporation must follow a calendar tax year unless it can justify a reason to do otherwise, such as seasonal business.
8. Each shareholder must consent to the S-Status election.
9. The Corporation must have less than 100 shareholders or LLC Members. In this case, a married couple who hold stock as "Tenants in Common", "Joint Tenants", or

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“Community Property” are counted as one shareholder; unless both spouses also hold shares of stock individually in addition to jointly, in which case they are counted as two shareholders; if only one spouse holds additional shares individually they are only counted as one shareholder. Two unmarried shareholders holding stock jointly are counted as two shareholders.

An existing S-Corporation will lose its tax status if any of the above rules are broken. Following are some examples of actions that could result in a company losing its S-Corporation status; this is not intended to be a complete or comprehensive list.

An S-Corporation may lose its S-Corporation status if:

- Stock is sold or transferred to a non-resident alien.
- Another Corporation purchases shares of the S-Corporation, except for one S-Corporation holding 100 percent of a subsidiary S-Corporation.
- The number of shareholders exceeds 100.
- A second class of stock is issued. Note that if your S-Corporation’s shareholders lend too much money to the Corporation, rather than investing the money in stock as capital at risk, the IRS may nevertheless deem the loan to be an investment in stock and rule that stock to be of a different class than the one originally issued.



A Close Corporation is formed with stipulations in the Certificate of Incorporation and By-Laws which may prevent unintentional loss of “S” status due to sale or transfer of stock, see the close corporation section for more information.

The S-Corporation as an alternative to the C-Corporation

What are the advantages of an S-Corporation?

While LLC’s and “C-Corporations” may each be eligible to elect “S-Status”, for the purposes of this discussion, we are focusing on the S-Corporation as an alternative to the C-Corporation. Below are some features of the S-Corporation eligible entrepreneurs may consider advantageous:

- You can pay yourself as high a salary as you wish without running the risk that the IRS will consider it “out of line with comparable salaries in your industry.”
1. If you have a one-person S-Corporation, you need not be concerned about the IRS deciding that you are “a personal holding company” and subject, therefore, to additional taxation. (This is a distinct hazard for one-person operators of some types of enterprises.)

- Avoidance of double taxation of capital gains, should the Corporation or any of its assets be sold.
- Stockholder employees of S-Corporations may participate along with other employees (or individually in the case of a one-person Corporation) in qualified retirement plans set up by the S-Corporation. Under the Tax Equity and Fiscal Responsibility Act (TEFRA), S-Corporations, C-Corporations and partnerships are treated with few significant differences with respect to qualified retirement plans. The S-Corporation can take a tax deduction for the full amount of its contribution to the plan. In the case of shareholder employees, the contribution made on their behalf must be reasonable when compared to compensation they receive. The employee (shareholder or not) is not required to include as income either the S-Corporation's contributions or the subsequent earnings from the invested contributions until such time as he/she receives a distribution from the qualified plan.
- S-Corporations are usually permitted to use the cash accounting system, which is the simplest. More than half of all small firms in the USA are taxed as S-Corporations.

What are the limitations of S-Corporation status?

Below are some features of S-Corporations that eligible entrepreneurs should be aware of when making the decision between an S-Corporation and a C-Corporation:

- S-Corporations may own subsidiaries, but they must not own more than 80 percent of a non S-Corporation subsidiary's stock. They are permitted to own 100 percent of another S-Corporation.
- Fringe benefits paid to shareholders who own two percent or more of the S-Corporation's stock —such as medical reimbursement plans and group term life insurance—are not deductible corporate expenses under the latest federal tax laws, unless such expenses are reclassified as wage income to the greater than two percent owners.
- While S-Corporation income is exempt from corporate tax at the federal level, not all states and territories exempt such Corporations from *state* (or territorial) corporate taxes. States and territories that do not recognize S-Corporation tax status of S-Corporations incorporated in and/or operating in their jurisdiction include: The District of Columbia (Washington, DC), New Hampshire, and Tennessee. These jurisdictions require S-Corporations to pay state taxes at C-Corporation rates. Some states tax S-Corporations on part of their income, on capital gains and/or on "excess passive income", such states include Massachusetts, Indiana, Kentucky, Idaho, Maine, and Wisconsin. Michigan, California, New Jersey, and New York tax both the S-Corporation's profit and the shareholder's proportional shares of the S-Corporation's profits. In these states the S-Corporation is double-taxed in a manner like a C-Corporation that distributes all of its profits as dividends. The majority of the states impose state income taxes on the shares of income of S-Corporations operating in their state which pass through to shareholders who reside out-of-state. Some states, including Delaware,

require that an S-Corporation *withhold* state income taxes from distributions to nonresident shareholders. (In addition to adding to the accounting/bookkeeping workload, this might result in non-pro rate distributions which in turn could lead to an I.R.S. finding that your Corporation has more than one class of stock, in which case it could cause a retroactive termination of your federal S-Corporation election.)

- With an S-Corporation, shareholders are taxed on their shares of corporate earnings *whether they take these earnings as dividend distributions or retain the earnings in the Corporation. All earnings (profits) must pass through to shareholders, at least on paper.* In other words, even though the corporate profits for a given year remain physically in the corporate bank account – to build up working capital, for example – and are never transferred to the shareholder(s), each shareholder must nevertheless pay personal income tax on his/her share of those profits, which will be considered by the IRS to be: (1) individual income and (2) paid-in capital.



Q: I'm probably not going to make any money my first couple of years in business due to start-up costs, do I still have to pay taxes?

A: A company registered in Delaware must pay an annual tax to the Secretary of State of Delaware maintains its Charter issued by this state; this tax is not dependent on your activity level or profits. If you registered in any additional states, you may owe a similar tax and/or annual filing fee in those states. If your LLC or Corporation is being taxed as a "Disregarded Entity", Partnership or S-Corporation then your losses will "pass through" and may be claimed on your personal income tax return as an offset to other sources of income you may have. These losses may even be carried forward to future returns.

Q: In what circumstances is it particularly desirable to consider electing S-Corporation status?

A: If you already have or plan to start a one person or closely held business or professional activity, with probable losses during the first-year / second-year start-up period resulting from initial investments in equipment, doing business materials or inventory, heavy operating expenses, low sales, or other income, etc. The S-election permits the pass-through of operating losses to shareholders who may have income to offset such losses. If you already have a business with a high taxable income that distributes most of its earnings as dividends and that has low capital spending requirements. Note: Any company that changes its corporate status generally is prevented by Federal tax law from switching back for five years.

Holding Companies

When we say “Holding Company” we are usually referring to a company which does not produce goods or services itself, rather its *only* purpose is owning shares of other companies or certain assets such as Yachts and Private Aircraft.

How are holding companies taxed in Delaware?

Corporations whose activities within Delaware are confined to the maintenance and management of their intangible investments or of the intangible investments of Corporations or business trusts registered as investment companies under the Investment Company Act of 1940, as amended (15 U.S.C. 80a-1 *et seq.*), and the collection and distribution of the income from such investments or from tangible property physically located outside of Delaware *are exempt from corporate taxation by the State of Delaware*. For the purposes of this statute, intangible investments are deemed to include – *without limitation* – investments in stocks, bonds, notes and other debt obligations (including debt obligations of affiliated Corporations), patents, patent applications, trademarks, trade names and similar types of intangible assets.

In certain situations, flow-through income deriving from a limited partnership interest may qualify as income from an intangible investment. There are also special situations that can provide Delaware State Corporate Tax savings when forming a leasing company or liquidating a company. A Holding Company organized in Delaware as an LLC, to maintain a valid Delaware Charter, will owe the Delaware Secretary of State an annual LLC Tax of \$250 which is a flat fee **not** related to assets, capital gains, profits, or activities. A Holding Company registered as a corporation in Delaware, to maintain its company Charter, will owe the Secretary of State of Delaware a minimum of \$125 in Franchise Tax and Annual Report filing fees.

Marine Holding Companies

A Marine Holding Company is an LLC or Corporation primarily created for the purpose of holding a yacht, boat, or other marine vessel. There are several reasons to consider this option.

1. Limited Liability

If the vessel is registered in the name of the holding company, it limits your personal liability to that of a stockholder of the Corporation (or Member of an LLC). Delaware law permits directors (and Members) to avoid personal liability to the company for negligent acts.

2. Time Share and other group ownership arrangements.

Registering a vessel to a Marine Holding Company greatly simplifies arrangements whereby a group of individuals or organizations share ownership and use of the vessel. The terms of use are defined in the Operating Agreement or By-Laws of the Marine Holding Company and those persons or organizations entitled to use or ownership share of the vessel become Shareholders (if a Corporation) or Members (if an LLC).

Participants may withdraw or enter the arrangement simply by selling or buying a stock share or membership interest. This transaction is private and does not alter the registration of the Holding Company.

3. Selling the vessel

If the Marine Holding Company holds only one vessel, the vessel may be sold to a new owner by selling the Marine Holding Company in its entirety. This is accomplished by simply transferring the stock shares or membership interest over to the new owner(s). This form of sale may be very attractive to a prospective purchaser because title to the yacht has not changed hands – it is still registered to the Corporation. You should consult with a Delaware corporate lawyer and a certified public accountant to determine if a tax on your yacht will be due in the state where your yacht is principally used. In some cases, no sales tax may be assessable on the transfer, and no re-registration costs are incurred. If your Marine Holding Company holds multiple vessels and will only sell one, the new owner will need to re-register the vessel. A sales/use tax may be due, under certain circumstances, to the state of principal use, but the tax due upon sale will be due in the name of the Marine Holding Company, rather than in your personal name.

4. Tax Deductions

Your yacht may be used for tax deductible business entertainment. As with other income tax matters, the application of tax laws varies depending on an individual's facts and circumstances.

Where should the vessel be registered?

A vessel may be an asset of a Delaware Marine Holding Company regardless of where the vessel is numbered and registered. Federal and Delaware law requires that boats be registered in the State of principal use. The key is *waters of principal use*. Should you use your boat on another State's water more times than it is used in Delaware waters, you should register your boat in that State. Delaware's Port of Wilmington is a deep-water port which has been in use by Atlantic-Ocean faring vessels for over 200 years. If you will be registering your vessel in Delaware, DBI can complete this process for you; in fact, our New Marine Holding Company Registration packages include a 1- or 3-year vessel registration with the Delaware Division of Fish & Wildlife (the authority which numbers and registers all Delaware marine vessels including ocean-going vessels).



An excellent reference that provides comprehensive guidance for the business use of yachts, including the general rules for entertainment facilities, personal use, depreciation and recordkeeping for yachts, are two manuals, entitled *Tax Guide for the Business Use of Yachts, Volume I and Volume II: Charter Operations*, by Mike Kimball, CPA, Roger A. Smith, CPA, Dr. Karen S. Lee, J.D., CPA, which are available from Delaware Business Incorporators, Inc.

Aircraft Holding Companies

An Aircraft Holding Company is an LLC or Corporation primarily created for the purpose of holding an airplane for personal or commercial use. There are several reasons to consider this option.

1. Limited Liability

Registering an aircraft in the name of a Delaware Corporation or LLC limits the personal liability of the Directors, Shareholders or Members of the Aircraft Holding Company.

2. Tax Deductions

When operating your aircraft as a business, and when certain procedures are followed, the owner is entitled to write off maintenance, fuel, hangar expense and depreciation (aircraft can be depreciated over a five-year life) and offer certain tax saving advantages. While all but depreciation is an out-of-pocket expense, the tax reduction that can be obtained is a real cost savings from federal income tax. Please consult your tax advisor about the tax ramifications of owning a personal or commercial aircraft.

3. Time Share and other group ownership arrangements.

Registering a plane to an Aircraft Holding Company greatly simplifies arrangements whereby a group of individuals or organizations share ownership and use of the plane. The terms of use are defined in the Operating Agreement or By-Laws of the Aircraft Holding Company and those persons or organizations entitled to use or ownership share of the plane become Shareholders (if a Corporation) or Members (if an LLC). Participants may withdraw or enter the arrangement simply by selling or buying a stock share or membership interest. This transaction is private and does not alter the registration of the Holding Company.

4. Selling the airplane

If the Aircraft Holding Company holds only one plane, the plane may be sold to a new owner by selling the Aircraft Holding Company in its entirety. This is accomplished by simply transferring the stock shares or membership interest over to the new owner(s). This form of sale may be very attractive to a prospective purchaser because title to the plane has not changed hands – it is still registered to the Corporation. In some cases, no sales tax may be assessable on the transfer, and re-registration costs may not be incurred, consult a qualified tax advisor and/or the FAA for details.

DBI does not offer Aircraft registration service with the FAA, but our New Aircraft Holding Registration Package does come with a virtual Delaware Address with limited mail forwarding. Please contact an Incorporation Specialist if you have any questions.

Personal Holding Company

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In the United States, a personal holding company is defined in section 542 of the Internal Revenue Code. A Corporation is a personal holding company if both of the following requirements are met:

1. **Personal Holding Company Income Test.** At least 60% of the Corporation's adjusted ordinary gross income for the tax year is from dividends, interest, rent, and royalties.
2. **Stock Ownership Requirement.** At any time during the last half of the tax year, more than 50% in value of the Corporation's outstanding stock is owned, directly or indirectly, by five or fewer individuals.

Naming Your Company

Naming Conventions

When registering a company, you will come up with a name that combines the title of your company with an ending suffix. The ending suffix informs people what kind of company this is. For example, “DBI Global, Inc.” has the suffix “Inc.” which is an abbreviation of Incorporated. The Incorporated suffix means this company is a corporation. Likewise, “DBI Global, LLC” has the suffix “LLC” which is an abbreviation of Limited Liability Company. An LLC is a different type of entity than a corporation. You are required to use a suffix at the end of your company name (title). It is not possible to register your company without a suffix.

The following suffixes are available for use by LLCs in Delaware:

- Limited Liability Company, LLC, L.L.C.

The following suffixes are available for use by Delaware Corporations:

- Inc., Incorporated, Corp., Corporation, Co., Company, Ltd., Limited, Association, Assoc.

A Not-for-Profit may use any of the suffixes listed above for a corporation, or it may use one of the following suffixes traditionally used by Non-Stock and Non-Profit Organizations:

- Club, Foundation, Fund, Institute, Society, Union, Syndicate.



You cannot use the words “Bank” or “Trust” in the name of your company without prior written approval of the Delaware State Banking Commissioner. You cannot use the words “University” or “College” without the prior written approval of the Delaware State Education Commissioner. Most other states have similar laws. Contact an Incorporation Specialist for details regarding obtaining approval.

If you are interested in registering a name that may be like the name of a company that already exists in Delaware (or your home state) you may make the name unique by adding a distinguishing word. In Delaware the distinguishing word may be added to the beginning or end of the name.



John Smith owns a street sweeper manufacturing plant in Florida. He is interested in registering his company in Delaware...His first choice, “Smith Sweepers, Inc.” is already registered in Delaware by another company. John can add words to “Smith Sweepers” to

make his company name unique.

For example, he may be able to register his company as “Smith Street Sweepers, Inc.” or “Smith Sweepers of Florida, Inc.”



Changing the suffix will not make a name available if it is already taken. For example, if there is already a company registered as “Smith Sweepers, Ltd.” John will not be able to register the company as “Smith Sweepers, Inc.”

Contact an Incorporation Specialist if you need help naming your company.

Reserving a Name

The office of the Delaware Secretary of State maintains records of the names of all Corporations, LLCs and other entities, which have been reserved or registered as a domestic or foreign entity under the laws of Delaware. The name you select must be checked against these records to be certain that it is distinguishable from them. DBI will check your name availability in Delaware or other states for free. The Secretary of State of Delaware now charges a name reservation which is valid for 120 days. If the desired name is available, DBI can place the name reservation for you through our direct connection to the Delaware Corporations Information System.

If you reserve a company name yourself on the state’s website, it will cause DBI to be UNABLE to register your corporation or LLC through our direct connection to the state information system. If you file the name reservation yourself DBI will be UNABLE to offer 1-3 business day service. Processing time will take approximately 3 weeks unless you pay an additional fee for expedited service.



This issue can be avoided by one of two methods: 1.) DBI can file the name reservation for you through our direct computer connection to the state information system. 2.) You can save expense and hassle by simply allowing DBI to register your new company instead of making a name reservation. This way your company name will be protected from use by others, but you will not have to pay an additional \$75. DBI can act in the capacity of Incorporator or Organizer and hold your company in an unused state until you are ready to name your officers or start your business activities. When you are ready to begin using the company DBI’s duties as Incorporator or Organizer will end and DBI will issue the resolution naming your Initial Director or Initial Member.

DBAs – “Doing Business As” Names

Aka Trade Name, Fictitious Name, Alternate Name, Assumed Name

In many jurisdictions it is permissible for your company to conduct business under a different name, without filing a name change amendment, if you register the additional name with the appropriate authority for that jurisdiction. The registration may be filed with the State, County or City, depending on where you intend to do business with the different name. The process is usually inexpensive and quick. In most cases after registering, you will have the right to give your other name on your business cards, building and vehicle signage, order forms, advertisements, and even accept checks and made payable in your other name. Ideally your bank account and legal contracts should include both your legal name and your permissible other name.



If Delaware Business Incorporators, Inc. wanted to do business in Wilmington Delaware under the name “Del Bus Inc Global”, we would register a “Fictitious Name” with the Clerk of Courts of New Castle County. Our checks would read “Delaware Business Incorporators, Inc. DBA Del Bus Inc Global”.

Aside from the desire to use another name for your own reasons, your company may be required to do business in another state by a different name in a few circumstances:

- If your name is not permissible in that state because it breaks the established company naming laws. For example: If “Del Bus Inc LLC” wanted to qualify to transact business in New Jersey, we would have to apply for authority in NJ under an alternate name because New Jersey law does not allow LLCs to use the abbreviation “Inc” in their name. So, our Application for Authority would read: “Del Bus Inc LLC DBA in New Jersey as Del Bus Incorporators LLC”
- If your name is already registered in that state by someone else who has Exclusive Use rights to that name. “Exclusive Use” means no one else in that jurisdiction may use your name. For example, If “DBI, Inc.” wanted to register as a Foreign Corporation with Authority to Transact Business in Ohio, and there was already a company registered in Ohio as “DBI, Inc”, we might register in Ohio as “DBI, Inc. DBA in Ohio as ‘DBI, Inc. of Delaware” or perhaps, “DBI, Inc. (USA)” or any other name that isn’t taken in Ohio.

Some states require you to include the appropriate suffix after your other permissible name (Del Bus Inc DBA DBI Inc) and others require that you do not include a suffix (Del Bus Inc DBA DBI)! An Incorporation Specialist will help you with the details if you wish to use or are required to use another name.



In many Jurisdictions your other permissible name is not afforded Exclusive Use rights, unlike the legal name you registered under when the new corporation was Incorporated or LLC was formed. Following our above example, this would mean that, while no other company could do business in Delaware with the name “Delaware Business Incorporators, Inc.” another company could do business in New Castle County Delaware under the name “Del Bus Inc Global”. If we wanted to protect that name from use, our options would include registering Del Bus Inc Global as a new Delaware Corporation, or possible applying for Trademark rights.

Registered Agent

Aka Resident Agent

Delaware law requires that your company “maintain in this state a Registered Agent” and Registered Office. Most other states have similar laws. DBI is one of Delaware’s leading Corporation service companies, with a direct computer link to the Delaware Division of Corporations. Twelve Months of free Delaware Registered Agent service comes with any purchase of a New Company Registration Package.

A “Registered Agent” is a person or company who acts as your agent to receive any legal documents that may be delivered on your company by Service of Process. The “Registered Office” is the address where the Registered Agent is located. The Registered Office must be open during normal business hours to receive Service of Process and must be located within the state of Delaware.

“Service of Process” means the delivery of legal notice of an action of the court. For example, if your company is being sued, a “Process Server” will come to our office and deliver a “Summons”. This document is issued by the court and contains the case number, the names of the Defendant(s) and Plaintiff(s) and the date and location at which you are summoned to appear before the court. It would then be our responsibility to accept the document on your behalf and then forward this document to you. If we receive a document by Service of Process on your behalf, and your Registered Agent Service is current, we will try to contact you immediately by phone, email or fax before we forward the document to you.

It is also the Registered Agent’s duty to forward state tax notices, but the Secretary of State will not waive the penalty if your notice was lost in the mail; so we suggest that you mark your calendar accordingly.

Because your Registered Agent has such crucial responsibilities, you don’t want a “fly-by-night” Registered Agent. You need an agent you can count on to be available if your company remains in business, which will hopefully be many years to come! DBI has served as Registered Agent for thousands of Delaware LLCs and Corporations since 1986. We own the Capitol Office Center in Wilmington Delaware and business has never been better! You can count on us to handle your company’s needs reliably, confidentially, efficiently and with genuine enthusiasm. We’re constantly looking for new ways to offer innovative services our client’s want, like the “Good Standing Protection Service” program that we developed in 2009 in response to customer feedback and the “Customer Alert!” program to notify you immediately if a legal notice is served to your company.

DBI offers Registered Agent service in all 50 United States.



Q: How do I change my current Registered Agent to Delaware Business Incorporators?

A: Order online at www.dbiglobal.com or contact an Incorporation Specialist. We’ll collect your contact information and payment and send you a Change of

Agent form to sign. Just return the signed form by mail, fax or email and we'll take care of the rest.



Q: Does the address of DELAWARE BUSINESS INCORPORATORS, INC. (3422 Old Capitol Trail, Suite 700) become the legal address or headquarters of my new Delaware company?

A: No; without a Mail Forwarding Agent appointment form from the United States Postal Service, the only documents we can legally receive on your behalf at our address are legal notices from the court delivered by Service of Process and tax notices from the Secretary of State of Delaware. If you want a business address in Delaware which you can put on your website and business cards as your company's mailing address and to which you can receive sales orders and routine business correspondence, we offer Virtual Office packages which include a Delaware Mailing Address with Mail Forwarding. If you purchase one of our Delaware Virtual Office packages it will not be legal for us to forward your mail until you return the Mail Forwarding Agent appointment form, which we will provide to you at the time you purchase the service.

Failing to respond to a notice from the court within the required amount of time could have disastrous legal consequences. It is extremely important that you contact us immediately if your address, phone number, fax number or email address changes so that we can get any legal notices to you as soon as possible.



If you fail to pay your Registered Agent Renewal Fee your company Charter will be declared FORFEIT by the Delaware Secretary of State. Your company would become invalid, and you would lose the right to do business as an LLC or Corporation. Don't let this happen to you! Mark your calendar: Your Registered Agent Renewal fee is due the first day of the month your company was formed in.

Many of our clients every year call us to say that their tax is late because they misplaced their tax notice or mistook it for a Registered Agent Renewal Fee that they already paid. Don't let this happen to you! If you need to pay your tax, you can call us to request a replacement notice, or we can give you the instructions on how to pay online without your notice, or you can order our Tax Preparation and Payment service by phone, internet, fax, mail or email.

Tax Compliance Service

The Tax Compliance Service was developed at the request of our clients to make maintaining your company's Delaware Charter in "Good Standing" as easy as possible.

Corporations

To maintain your Delaware Corporate Charter you must do three things every year:

1. File an Annual Report every year before March 1st.
2. Pay Franchise Tax every year before March 1st.
3. Pay Registered Agent Service Renewal fee every year on the anniversary of your company's formation (Incorporation Date).

LLCs

To maintain your Delaware LLC Charter you must do two things every year:

1. Pay LLC Tax every year before June 1st.
2. Pay Registered Agent Service Renewal fee every year on the anniversary of your company's formation.

If you enroll in the Tax Compliance Service will charge your annual tax and Registered Agent Renewal fee to your credit card automatically. If your company is a corporation, we will also file your Annual Report for you every year referencing the corporate data we store on file for you.

If you are interested in enrolling, please visit our website.

Foreign Qualification

Qualification is the process of applying for permission to do business in a state that is not the home of your company Charter. A Delaware Corporation or LLC is considered a “foreign” company in other US states and is considered a “domestic” company inside Delaware.

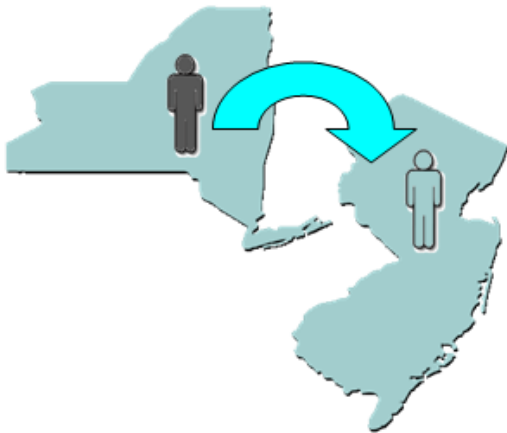
How do I know if I need to Qualify in a state I do business in?

The answer is not cut-and-dry, but as a rule, if you employ W-2 wage earning employees within a state, or if you have an office, home office, store or other physical location within a state, it is most likely that you will be required to Qualify your company to transact business within that state. There are exceptions: if you sell through *independent* distributors, manufacturer’s representatives, wholesalers, or retailers; or if your activity in a state is conducted through independent contractors or mail order; or if your activity within a state is only occasional, and incidental to your interstate or international business, you may not be required to Qualify in that state.

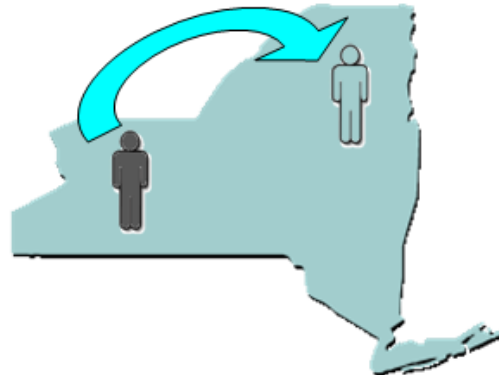
Qualification

The US Constitution does not permit individual states to regulate Inter-State Commerce.

Inter-State Commerce occurs between parties in 2 or more states



Intra-State Commerce occurs between parties within one state.



The Commerce Clause of the U.S. Constitution prohibits US States from regulating Corporations involved in interstate commerce. “Interstate” means between parties located in two or more states. “Intrastate” means within one state. Much of today’s internet driven business activity is interstate or international commerce. In the case of a multiple step business process in which one stage in the process consistently occurs within a particular state, a

company must determine if it needs to register in that state. In determining if the business being transacted is interstate or intrastate, the court would typically consider the frequency of the business being transacted, and the level of involvement.

The laws vary by state, but most states provide a list of activities which do not require Qualification. The following list is not intended to be complete or comprehensive, and is not intended to replace the advice of an attorney, but for your general information, most states **would not** require Qualification for the following activities: Engaging in Litigation, Holding Board Meetings and other Internal Corporate Activities, **Maintaining Bank Accounts**, Maintaining Offices for the Transfer of Securities, **Selling through Independent Contractors, Soliciting Orders by Mail or other Channels**, Creating or Acquiring Indebtedness and Securing or Collecting Debts, **Owning Real or Personal Property, and Isolated Transactions**. Some states do require Qualification for some of these activities, so it is necessary to review on a case-by-case basis.

In most cases, a company would not be required to register as a foreign entity in a state solely because an owner or investor lives within that state, if that owner or investor is not transacting business with parties within that state.



ABC Cotton, LLC has two Members (owners). Bob owns a 60% membership interest in the company. Bob lives in Mississippi and directs the operation of the company within Mississippi and nationwide. Jane owns a 40% share and is a silent partner living in Florida. Jane contributed start-up capital to the LLC but is not involved in directing the operation of the company and she does not transact any business of the company. ABC Cotton, LLC does not have any employees or offices in Florida. Any sales to customers in Florida are handled by Bob from Mississippi. In this scenario, the business transactions described are INTER-STATE commerce, and as such, would not require ABC Cotton, LLC to register in Florida.

What is the procedure to Foreign Qualify in an additional state?

If you need to qualify your Delaware company in an additional state, DBI can help you with the process at the same time the new Delaware company is formed, or later as the need arises. The procedure usually consists of completing an application form and filing proof of existence in the home state, by submitting either a Certified Copy or a Certificate of Good Standing. DBI will obtain these documents for you and complete them as part of the process.

For Example: If a Delaware LLC wanted permission to transact business as a foreign LLC in New York State it would submit an Application for a Certificate of Authority to Transact Business in the State of New York from the Division of Corporations of the New York Department of State together with a Certificate of Good Standing from the Delaware Secretary of State.

The authority who grants permission for foreign companies to do business within that state varies by state; typically it is the Secretary of State's office but other possible authorities include:

Commissioner of Commerce, Corporate Commission, Superintendent of Corporations, State Department of Assessments and Taxation, Secretary of The Commonwealth, Department of The Treasury, Department of Revenue, State Corporation Commission or Corporation Commissioner.

For some states the process will require DBI to collect additional information regarding your company and will require the signature of an officer on the application form; for other states DBI is able to complete the entire process without anything additional from you. The cost of qualification varies by state. Contact an Incorporation Specialist for a quote.

What happens after my company is Foreign Qualified in an additional state?

Most states will require you to maintain a Registered Agent in the state and most will require you to pay an annual tax and/or file an Annual Report. Some states will also require the publication of a notice regarding your company's new authority to transact business in the state. DBI will inform you what is required for the state you are applying in. If you fail to meet the annual requirements you can lose your permission to do business in the state and may also be fined; if this occurs it may be necessary to file for reinstatement, which DBI can assist with.

Q: I sell my products or services over the internet and don't really have a physical location. Do I have to qualify my company in every state? Do I have to qualify my company in any state?

A: No; it is unlikely that your company would need to qualify in every state. because most of your internet business activity will consist of transactions between parties in two different states and will therefore be exempt under the Interstate Commerce protections of the US Constitution. As to qualifying in any state: If you pay wages to an employee, you will most likely need to qualify your business in the state where the employee works. If you regularly transact business with customers located in the same state where your business is located, you will most likely be required to register in that state because these transactions are not protected by the Interstate Commerce clause. If you run an internet business and you do not have an office, your home is usually considered your business location. If your business is located and operated entirely outside the US, it is unlikely that you would need to Qualify your Delaware company in any other US States.

Q: My bank says they can't open an account for my company until I provide a Certificate of Authority. Can you provide this document to me?

A: The truth is, most state laws do not require a company to Qualify for a Certificate of Authority to just to open a bank account; but many banks request one anyway. Banks make their own policies regarding what documentation is required to open a company account. If you are living in the same state you are banking in, you may need to Qualify your business in that state because you will be completing frequent business transactions there in addition to banking. If you will not have routine business transactions other than banking in that state, you may inquire with another bank to see if they will allow you to open a bank account without providing a Certificate of Authority. If

you do need to satisfy this requirement for your bank, DBI can provide you a quote on the cost of applying for a Certificate of Authority (aka Qualifying) and an estimate of the time required to complete the process.

Opening a Bank Account

Many of our customers want to know what steps are involved in obtaining a bank account in the name of their company. Procedure varies, but the following information can familiarize you with the process. Please do not hesitate to contact an Incorporation Specialist if you have questions about how to open a bank account for your Delaware LLC or Delaware Corporation.

Summary of Requirements to Open a Bank Account in the US

You may be surprised to learn US banks do not all have the same policies to open a business bank account (aka corporate bank account or commercial bank account)! Despite these differences, there are a few things you can be sure the bank will request: Certificate of Incorporation (aka Articles of Incorporation, Certificate of Formation, Articles of Organization), photo identification of the person authorized to open the account, and an EIN. Other documents the bank is likely to request include a Certificate of Good Standing, and a Banking Resolution. Some US banks will also request proof of address. Some US banks may request the By-Laws or Operating Agreement. Unless you have an existing account with the bank, US banks will require the accountholder to come in person to open the account. It is always a good idea to contact the bank branch in advance of your visit to find out what documents they will require, as requirements vary from branch to branch.

Summary of Requirements to Open a Bank Account Outside the US

Did you know your Delaware Corporation or Delaware LLC can bank anywhere in the world? If you are not interested in banking in the US, we suggest you contact a reputable international bank with a branch conveniently located near you to learn what their requirements will be to open a business bank account (also known as corporate account or Commercial account). Typically, a bank located outside the US will require Articles of Incorporation, By-laws or Operating Agreement and Certificate of Incumbency or Power of Attorney. You can also expect the bank to require at least one of the documents to bear an Apostille or to be legalized by the consular office in Washington, DC. All our International Incorporation and LLC Formation service packages include an Apostille or Gold Seal Authentication on the Certificate of Incorporation. If you will not have a US Source of Income, will not be banking in the US and will not have employees in the US, you are not likely to need an EIN.

Contacting Your Bank

When you contact a bank about opening an account, we suggest making a list of questions so you don't forget anything DBI will help you obtain the documents and certifications required by your bank. Contact an Incorporation Specialist to find out if the documents your bank

requires are included in your New Company Registration Package or if you will need to order them separately.



For more information about the EIN required to open a bank account in the US see the Employer Identification Number (EIN) section.

For more information about the documents mentioned in this section, including the Apostille and legalization of documents by foreign embassies, see the Certificates, Apostilles, Legalization and Authentication of Documents section.

Employer Identification Number (EIN)

Aka Federal Tax ID Number

An Employer Identification Number (EIN) is a nine-digit number [like the Social Security Number (SSN)] that the IRS assigns to business entities, non-profit organizations and some other associations. It is also known as a Corporate Taxpayer Id Number. The format is ##-#####; but not all EINs start with the same two numbers. An EIN is not an authorization to live or work in the United States and is not presentable as a form of personal identification.

All banks will require your company to provide an Employer Identification Number (EIN) to open a bank account in the US. Your company would also be required to obtain an EIN if you have wage earning employees working in the US. Some organizations such as Amazon or PayPal may request a company's EIN as part of an approved vender application process or other business relationship.

If you will be opening your bank account outside the US, and will not have employees in the United States, it may not be necessary for your company to obtain an EIN.

US Citizens and Resident Aliens

For companies physically located inside the US headed by a US Citizen or Resident Alien, DBI can electronically file an application for an EIN with the IRS and obtain the EIN for your new Delaware Corporation or Delaware LLC. This process would be initiated after the new company is registered with the Delaware Division of Corporations and before the bank account is opened. You will receive your confirmation letter by email; the process can usually be completed in less than 24 hours, often as quickly as 1-2 hours!

One Member or Principal Shareholder will be required to give his or her social security number as part of the application process. If the company is a subsidiary, it may provide the EIN of its parent company for application purposes instead of the social security number of an owner. You must also provide the physical address where the business is located, but you may have your tax-related correspondence mailed to a different mailing address. Only the mailing

address will appear on the confirmation letter. We will also need to know if you expect to have any W-2 wage earning employees within the next 12 months, how many members will be in your LLC, and the nature of your business activity. Additional information may be requested by an Incorporation Specialist after your order is reviewed, if needed to complete your application.

Non-Resident Non-Citizens

For companies physically located outside the US owned by non-citizens, DBI cannot use the electronic filing method, but can obtain an EIN by a different method. A Virtual Office is not considered a physical location within the USA. DBI will prepare the application form with the information you provide and will send it to you by email or fax for the signature of the owner. When the signed application form is received, DBI will file the application form with the IRS on your behalf.

You will not be required to provide a social security number or ITIN if the owner does not have one. You must provide the physical address outside the US where the business is located, but you may have your tax related correspondence mailed to a different mailing address. Only the mailing address will appear on the confirmation letter. We will also need to know if you expect to have any W-2 wage earning employees within the next 12 months, how many members will be in your LLC, and the nature of your business activity. Additional information may be requested by an Incorporation Specialist after your order is reviewed, if needed to complete your application. Your EIN will be assigned within 30 business days. The EIN confirmation letter will be mailed to your mail forwarding address within 4-6 weeks.



Q: My company won't have any employees; can I still get an EIN?

A: Although the name may seem misleading, you are not required to have employees to apply for an EIN. If you need an EIN for banking purposes, you will be assigned an EIN even if you have no employees.

Q: If I apply for an EIN, does that mean I have to start paying US Federal Income Taxes?

A: Obtaining an EIN is not a factor taken into consideration when determining if you will owe US Federal Income Taxes. US citizens who have a One-Member LLC or an S-Corporation will usually file any profits or losses on their personal income tax return. In general, Non-Resident Non-citizens who have no US-Source Income will not owe personal US Federal Income Tax. If you are not sure if you will owe Corporate or Personal Income Tax, we recommend that you consult a tax advisor; please contact an Incorporation Specialist if you would like a referral.

Q: What is the deadline to apply for an EIN?

A: If you have wage earning employees in the US it is best to obtain your EIN before the first payroll runs. If you will not have employees or do not have any yet and have no immediate plans to open a bank account, you may wait until the need arises. Be aware that there may be other tax registration deadlines which apply to your business other than the EIN application. An EIN application does not afford S-Corporation, C-Corporation or Tax-Exempt status; it only assigns a taxpayer number.

Certificates, Apostilles, Legalization and Authentication of Documents

Delaware Business Incorporators, Inc. | Website: www.DelawareBusinessIncorporators.com
3422 Old Capitol Trail, Suite 700, Wilmington DE 19808 | 1-800-423-2993 or 1-302-996-5819 |
support@dbiglobal.com

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At various times your company may be asked to provide special documentation respecting the organization and registration of your company, such as when you open a bank account, or submit a bid for a government contract. Most of these documents can be obtained by DBI from the Secretary of State of Delaware. DBI can also help you obtain many forms of official documentation or certification which are not provided by the Delaware Secretary of State. If an organization or agency you are dealing with requests official documentation of your company, contact an Incorporation Specialist for help; many times, we can communicate directly with the person who is requesting the documents from you to ensure that we deliver exactly what is needed.

Certificate of Good Standing

aka Certificate of Existence

A Certificate of Good Standing is an official statement by the Secretary of State of Delaware that your Delaware LLC or Corporation has been legally registered in Delaware and has paid its taxes. This document is often requested by banks and agencies soliciting bids for contracts. Through our direct connection with the State computer system, we can usually generate a Certificate of Good Standing within two hours of receiving payment. We will email the Certificate to you. All Delaware Certificates of Good Standing bear an authentication code that can be used by the requestor to authenticate an email or fax copy.

Certified Copy

A Certified Copy is a reproduction of any document filed with the Corporations Division attached to a statement by the Secretary of State that the document is a “true and correct copy”. Most often a Certified Copy of the Certificate of Formation or Certificate of Incorporation is requested by a bank, foreign state, or other agency to verify the credentials of your company. We are usually able to obtain a Certified Copy within an hour or two of your payment, however some documents are not available for 1–2-hour service. Your Incorporation Specialist will let you know the expected processing time and will discuss any expedited service options available.

It is not possible to obtain a Certified Copy of an Operating Agreement, By-laws or Transfer Ledger, because these documents are not filed with the Secretary of State’s office. See Notarized True Copy for information about certifying documents which were not filed.

Notarized True Copy

If you need a certified copy of a document that was not filed with the Secretary of State, such as an Operating Agreement, By-Laws, Share Transfer Ledger or Power of Attorney, DBI can provide you with a “Notarized True Copy” if you send us the original document. A Notarized True Copy is a reproduction of a document attached to a certificate from a Notary Public of the State of Delaware stating that the document is a true reproduction and is not available in public record. We cannot notarize an email, fax or photocopy of a document, it must be the original document. Your original document will be returned. We cannot notarize signatures on documents unless we witness the signing of the document in person, but we can notarize a “True Copy” of a document bearing original signatures.

Certificate of Incumbency

A Certificate of Incumbency is an official document which certifies the names and officer's titles of the individuals associated with a given organization such as Members, Managers, Officers, Directors, and sometimes major shareholders. This document is often requested when a bank or other agency wishes to confirm who has the authority of the company to endorse documents with their signature. It may or may not include the incumbent's identifying information such as date of birth or passport number.

Apostilles

Apostille is a French word which means a *certification*. It is commonly used in English to refer to the legalization of a document for international use under the terms of the 1961 Hague Convention Abolishing the Requirement of Legalization for Foreign Public Documents. Documents which have been certified with a conformant Apostille are accepted for legal use in all nations that have signed the Hague Convention.

An Apostille can be obtained for any document filed with the Delaware Secretary of State. If an Apostille is needed for a non-public document, such as an Operating Agreement, the document must first be notarized by a Delaware Notary Public. DBI has Delaware Notary Publics on staff.

Legalization of Documents by Foreign Consulates

The Legalization of Documents of a Delaware company in a foreign country that does not participate in the Hague Convention is usually a 4-step process. DBI will perform each step of the process for you:

1. We will order the document from the Delaware Secretary of State if it has been filed with the Division of Corporations, otherwise, we will produce a Notarized True Copy of the original document.
2. We will send the document to the Delaware Secretary of State, who will then attach a "Gold Seal Certified Copy" by the Secretary of State or an "Authentication" statement by the Secretary of State on the Notary's seal.
3. DBI will contact the foreign consulate to learn if they will require the prior Legalization by the US Department of State Secretary Hillary Clinton. If this is required DBI will arrange it.
4. Finally, DBI will forward the documents to the foreign consulate of the desired country in Washington DC or New York for legalization.

When the Authentication Seals of the foreign consulate have been obtained DBI will forward these documents to you and will also return any original documents you submitted for Legalization.

Conversions

Conversion is the process of changing a company from one type to another by filing the appropriate documentation with the issuing authority so that the change will be officially recognized. There are three varieties of Conversion: Entity Type, Domestication and Tax Status.

Entity Type Conversion

In Delaware it is possible to convert an existing corporation into an LLC, or an existing LLC into a Corporation. This is accomplished by filling a Certificate of Conversion together with a Certificate of Formation if changing into an LLC, or with a Certificate of Incorporation if converting into a corporation. Not all states offer the option to convert entity types; in some other states it can only be accomplished through Merger rather than Conversion. If you choose to convert your company, it will also be necessary to replace the Stock or Interest certificates; the By-Laws or Operating Agreement; and if you use one, the company seal. If your company is registered in additional states, it will also be necessary to file the necessary documentation in the additional state(s) for the Conversion to be recognized. Before deciding to order Entity Type Conversion service, you should consult your tax advisor about the possible tax consequences of the conversion.

Domestication

In Delaware, and in most states, it is possible to convert a “Foreign Entity” into a “Domestic Entity”. This means that a company initially registered in one jurisdiction can have its Charter transferred to another jurisdiction. So, for example, if DBI Global, Inc. was created by registering a Certificate of Incorporation in Delaware, the Delaware Corporation can be transformed into a California Corporation. The home of the company Charter would then be California. After the conversion, DBI Global would be a “Foreign” Corporation in Delaware and a “Domestic” Corporation in California. In fact, after converting into a California Corporation, if DBI Global wanted to continue doing business in Delaware, it would have to Qualify as a Foreign Corporation. The cost of Domestication varies widely by state; please contact an Incorporation Specialist for more information and a price quote. It is also possible to convert an entity from another state or country into a Delaware entity by the same process.

Tax Status Conversion

In some cases, it may be possible to convert an entity (company) from one tax status to another. The most popular Conversion is a C-Corporation to an S-Corporation. Some things you should bear in mind when considering Conversion:

If you are converting an *existing* C-Corporation to S-Corporation status, to completely avoid C-Corporation income taxes, no more than 25 percent of its gross income may be derived from “passive” sources such as rent, dividends, interest, annuities, royalties, sales or exchange of securities. However, if you are incorporating your enterprise from the beginning as an S-Corporation, it may earn as much passive income as you wish with no limitations.

When a C-Corporation switches to S status and later disposes of an asset of the C-Corporation that became an asset of the new S-Corporation, it must pay taxes on the “built-in gain” it benefited by at the time of the S election. If you have a C-Corporation that has appreciable assets and plan to elect S-Corporation status, you should obtain an independent

professional appraisal of both the bulk sale (wholesale) value and retail value of such assets at the time of S-election.

The United States Patriot Act

The United States Patriot Act became law in late 2001. The purpose of the Act is to prevent terrorism. To achieve that goal the Act imposes financial reporting, compliance, and due diligence obligations on a broad range of financial institutions, business entities and transactions. The Act applies to financial institutions; however, the Act's definition of a financial institution is very broad. While banks and financial institutions are clearly subject to the Patriot Act other businesses dealing in credit and credit cards, mutual funds, securities, currency, commodities, insurance, real estate sales, gaming establishments and car, boat and aircraft sales organizations are subject to the Act.

The Act requires financial institutions to establish anti-money laundering programs to detect and prevent money laundering schemes, to determine a client's source of assets, methods to verify customer identities, maintain detailed customer records and to develop record-keeping measures to identify suspicious transactions or money laundering activities. One immediate consequence of these regulations is that any entity or person opening a bank account with a US bank must have either a social security number, if eligible, an Individual Taxpayer Identification Number and/or a Federal Employer Identification Number.

Under certain circumstances, the US government may withhold regulatory approval of a merger or acquisition involving a bank holding company if either the bank or acquirer's anti-money laundering programs or records are deficient.

The Act now requires that any transaction of more than \$10,000 made to any person engaged in trade or business, even if made by a nonfinancial institution, is subject to reporting.

Under the Act, banks and securities brokers may not maintain correspondent accounts with "shell banks" that lack a physical presence in any country. Financial institutions may exchange information with other institutions and law enforcement, without civil liability, if done for the purpose of investigating suspected terrorist or money laundering activities. Also, the Act provides a "safe harbor" for those that report suspected money laundering.

Financial institutions may exchange information with other institutions and law enforcement, without civil liability, if that information is exchanged for the purpose of investigating suspected terrorist or money laundering activities. To this end the financial institutions must produce financial information for the government within 120 hours of a request.

Finally, the Act carries stiff civil and criminal penalties for violations. Financial fines for noncompliance can be as high as \$1,000,000.

The Corporate Transparency Act

What is the Corporate Transparency Act

The Corporate Transparency Act was passed into law in December 2019. The act requires that certain businesses disclose beneficial ownership information. This information will not be public. The information in the database will be made available to government entities, law enforcement and financial institutions.

What is Beneficial Ownership Information?

Beneficial ownership information refers to identifying information about the individuals who indirectly or directly control or own a company or legal entity.

Why do companies have to report beneficial ownership information?

Very few U.S. states or territories require companies to disclose information about their beneficial owners—the individuals who control or own or control companies or legal entities. This lack of transparency allows corrupt government officials, criminals, and other bad actors to hide their identities and launder illicit funds through the United States using front and shell companies. This in turn hurts ordinary Americans because the lack of transparency results in an uneven playing field for legitimate and honest U.S. businesses. The inaccessibility of beneficial ownership information also makes it hard for law enforcement to track and prosecute criminal activity.

In 2021, Congress, with support from both political parties, enacted the Corporate Transparency Act to address this problem. The Corporate Transparency Act requires certain types of U.S. and foreign entities to report information about their beneficial owners to the Treasury Department's Financial Crimes Enforcement Network, commonly known as FinCEN. FinCEN is responsible for safeguarding the U.S. financial system from illicit use. Subject to strict controls and safeguards, FinCEN will disclose the reported beneficial ownership information to certain authorized government authorities, financial institutions, and other authorized users. By collecting beneficial ownership information and sharing it with law enforcement, financial institutions, and other authorized users, FinCEN is making it harder for bad actors to benefit or hide their ill-gotten gains. Companies that report beneficial ownership information will contribute to this important goal.

Should my company report beneficial ownership information now?

No one needs to report beneficial ownership information to FinCEN until January 1, 2024. FinCEN is currently not accepting any beneficial ownership information reports.

When do I need to report my company's beneficial ownership information to FinCEN?

A reporting company created or registered to do business before January 1, 2024, will have until January 1, 2025 to file its initial beneficial ownership information report.

A reporting company created or registered on or after January 1, 2024, will have 30 days to file its initial beneficial ownership information report. This 30-day deadline runs from the time the company receives actual notice that its creation or registration is effective, or after a secretary of state or similar office first provides public notice of its creation or registration, whichever is earlier.

When will FinCEN accept beneficial ownership information reports?

FinCEN will begin accepting beneficial ownership information reports on January 1, 2024. Beneficial ownership information reports will not be accepted before then.

Will there be a fee for submitting a beneficial ownership information?

No. There will be no fee for submitting your beneficial ownership information report to FinCEN.

What companies will be required to report beneficial ownership information?

Certain companies — referred to as “reporting companies” — will be required to report their beneficial ownership information to FinCEN. There are two types of reporting companies — domestic reporting companies and foreign reporting companies.

A domestic reporting company is defined as —

- a corporation,
- a limited liability company, or
- any other entity created by the filing of a document with a secretary of state or any similar office under the law of a state or Indian tribe.

A foreign reporting company is any entity that is —

- a corporation, limited liability company, or other entity formed under the

law of a foreign country, AND

- registered to do business in any U.S. state or in any Tribal jurisdiction, by the filing of a document with a secretary of state or any similar office under the law of a U.S. state or Indian tribe.

If you had to file a document with a state or Indian Tribal-level office such as a secretary of state to create your company, or to register it to do business if it is a foreign company, then your company is a reporting company, unless an exemption applies. For the definitions of both domestic and foreign reporting companies, a “state” means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and any other commonwealth, territory, or possession of the United States.

Are there exemptions from the reporting requirement?

Yes. The Corporate Transparency Act exempts 23 types of entities from the beneficial ownership information reporting requirement.

Below is a list of the types of entities that are exempt —

- (i) Certain types of securities reporting issuers.
- (ii) A U.S. governmental authority.
- (iii) Certain types of banks.
- (iv) Federal or state credit unions as defined in section 101 of the Federal Credit Union Act.
- (v) Any bank holding company as defined in section 2 of the Bank Holding Company Act of 1956, or any savings and loan holding company as defined in section 10(a) of the Home Owners’ Loan Act.
- (vi) Certain types of money transmitting or money services businesses.
- (vii) Any broker or dealer, as defined in section 3 of the Securities Exchange Act of 1934, that is registered under section 15 of that Act (15 U.S.C. 78o).
- (viii) Securities exchanges or clearing agencies as defined in section 3 of the Securities Exchange Act of 1934, and that is registered under sections 6 or 17A of that Act.
- (ix) Certain other types of entities registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934.
- (x) Certain types of investment companies as defined in section 3 of the Investment Company Act of 1940, or investment advisers as defined in section 202 of the Investment Advisers Act of 1940.
- (xi) Certain types of venture capital fund advisers.
- (xii) Insurance companies defined in section 2 of the Investment Company Act of 1940.
- (xiii) State-licensed insurance producers with an operating presence at a physical office within the United States, and authorized by a State, and subject to supervision by a State’s insurance commissioner or a similar official or agency.
- (xiv) Commodity Exchange Act registered entities.
- (xv) Any public accounting firm registered in accordance with section 102 of the Sarbanes-Oxley Act of 2002.
- (xvi) Certain types of regulated public utilities.

- (xvii) Any financial market utility designated by the Financial Stability Oversight Council under section 804 of the Payment, Clearing, and Settlement Supervision Act of 2010.
- (xviii) Certain pooled investment vehicles.⁵
- (xix) Certain types of tax-exempt entities.
- (xx) Entities assisting a tax-exempt entity described in (xix) above.
- (xxi) Large operating companies with at least 20 full-time employees, more than \$5,000,000 in gross receipts or sales, and an operating presence at a physical office within the United States.
- (xxii) The subsidiaries of certain exempt entities.
- (xxiii) Certain types of inactive entities that were in existence on or before January 1, 2020, the date the Corporate Transparency Act was enacted.

Many of these exempt entities are already regulated by federal and/or state government, and many already disclose their beneficial ownership information to a governmental authority. Additional information about the entities that are exempt can be found in the Beneficial Ownership Information Reporting Regulations at 31 CFR § 1010.380(c)(2).

You should consult the text of the regulations, which include specific criteria for the exemptions, before concluding that an entity qualifies for an exemption.

Who is a beneficial owner of a reporting company?

In general, a beneficial owner is any individual (1) who directly or indirectly exercises “substantial control” over the reporting company, or (2) who directly or indirectly owns or controls 25 percent or more of the “ownership interests” of the reporting company. Whether an individual has “substantial control” over a reporting company depends on the power they may exercise over a reporting company. For example, an individual will have substantial control of a reporting company if they direct, determine, or exercise substantial influence over, important decisions the reporting company makes. In addition, any senior officer is deemed to have substantial control over a reporting company. Other rights or responsibilities may also constitute substantial control. Additional information about the definition of substantial control and who qualifies as exercising substantial control can be found in the Beneficial Ownership Information Reporting Regulations at 31 CFR §1010.380(d)(1).

“Ownership interests” generally refer to arrangements that establish ownership rights in the reporting company, including simple shares of stock as well as more complex instruments. Additional information about ownership interests, including indirect ownership, can be found in the Beneficial Ownership Information Reporting Regulations at 31 CFR §1010.380(d)(2).

Will a reporting company need to report any other information about its beneficial owners?

Yes. The information that needs to be reported, however, depends on when the company was created or registered.

If a reporting company is created or registered on or after January 1, 2024, the reporting company will need to report information about itself, its beneficial owners, and its company applicants.

If a reporting company was created or registered BEFORE January 1, 2024, the reporting company only needs to provide information about itself and its beneficial owners. The reporting company does not need to provide information about its company applicants.

Who is a company applicant of a reporting company?

There can be up to two individuals who qualify as company applicants —

- the individual who directly files the document that creates, or first registers, the reporting company; and
- the individual that is primarily responsible for directing or controlling the filing of the relevant document.

No reporting company will have more than two company applicants. If only one person was involved in filing the relevant document, then only that person should be reported as a company applicant. Only reporting companies formed or registered on or after January 1, 2024, will have to report their company applicants. Companies created or registered before January 1, 2024, do not have to report their company applicants.

What information will a reporting company have to report about itself?

A reporting company will have to report:

- Its legal name;
- Any trade names, “doing business as” (d/b/a), or “trading as” (t/a) names;
- The current street address of its principal place of business if that address is in the United States (for example, a domestic reporting company’s headquarters), or, for reporting companies whose principal place of business is outside the United States, the current address from which the company conducts business in the United States (for example, a foreign reporting company’s U.S. headquarters);
- Its jurisdiction of formation or registration; and
- Its Taxpayer Identification Number.

A reporting company will also have to indicate the type of filing it is making (that is, whether it is filing an initial report, a correction of a prior report, or an update to a prior report).

What will a reporting company have to report about its beneficial owners and applicants?

For each individual who is a beneficial owner or a company applicant, a reporting company will have to report:

- The individual’s name, date of birth, and address;
- A unique identifying number from an acceptable identification document; and
- The name of the state or jurisdiction that issued the identification document.

Delaware Business Incorporators, Inc. | Website: www.DelawareBusinessIncorporators.com
 3422 Old Capitol Trail, Suite 700, Wilmington DE 19808 | 1-800-423-2993 or 1-302-996-5819 |
support@dbiglobal.com

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Address: For a beneficial owner, the reporting company must report the residential street address. For a company applicant, the reporting company must report the individual's residential street address. However, if an individual engages in the business of corporate formation (e.g., as an attorney or corporate formation agent) and files the formation or registration document in the course of that business, then the reporting company must report the current street address of the company applicant's business.

For example, if the company applicant is a paralegal who filed the document while working at a law firm, the reporting company must report the business address of the law firm where the paralegal worked when filing the document.

Identification Document: The list below sets out the forms of acceptable identification documents:

- A non-expired driver's license issued by a U.S. state. A "U.S. state" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and any other commonwealth, territory, or possession of the United States.
- A non-expired identification document issued by a U.S. state or local government, or Indian Tribe that is issued for the purpose of identifying the individual. For example, a non-driver identification card issued by a state Department of Motor Vehicles would qualify because it is issued for identification purposes.
- A non-expired passport issued by the U.S. government; or
- If the individual does not have any of the three forms of identification document described above, the reporting company may provide the identifying number from a non-expired passport issued by a foreign government.

In addition, the reporting company must submit an image of the identification document associated with the unique identifying number reported to FinCEN.

How will I report my company's beneficial ownership information?

If you are required to report your company's beneficial ownership information to FinCEN, you will do so electronically through a secure filing system available via FinCEN's website. This system is currently being developed and will be available before your report must be filed.

Who will be able to access reported beneficial ownership information?

The Corporate Transparency Act authorizes FinCEN to disclose beneficial ownership information in certain circumstances to six types of requesters:

- U.S. Federal agencies engaged in national security, intelligence, and law enforcement activities;
- State, local, and Tribal law enforcement agencies with court authorization;
- The U.S. Department of the Treasury;
- Financial institutions using beneficial ownership information to conduct legally required

customer due diligence, provided the financial institutions have their customer consent to retrieve the information;

- Federal and state regulators assessing financial institutions for compliance with legally required customer due diligence obligations; and
- Foreign law enforcement agencies and certain other foreign authorities who submit qualifying requests for the information through a U.S. Federal agency. The Corporate Transparency Act imposes stringent access requirements and safeguards on each group of requesters.

How will FinCEN protect beneficial ownership information reported to it?

Protecting the security and confidentiality of beneficial ownership information is a top priority for FinCEN. Federal law requires FinCEN to implement protocols to safeguard beneficial ownership information, to build a secure IT system to store the information, and to establish processes and procedures to ensure that only authorized users can access beneficial ownership information for authorized purposes.

FinCEN is developing the policies and procedures that will govern access to and handling of beneficial ownership information. FinCEN is also building a secure and confidential IT system to store the information. Consistent with Federal law, the system will be cloud-based, and will meet the highest Federal Information Security Modernization Act (FISMA) level to keep beneficial ownership information secure.

FinCEN will work closely with those authorized to access beneficial ownership information to ensure that they understand their roles and responsibilities to ensure that the reported information is used only for authorized purposes and handled in a way that protects its security and confidentiality.

Glossary

Administrative Dissolution:	See VOID STATUS
Alien:	A foreign national, a person who is not a citizen of the United States. Aliens may be Resident or Non-Resident (in the US.).
Amendment:	A change made to a previously adopted document such as a Certificate of Incorporation or BY-LAWS. Some AMENDMENTS are required to be registered with the Secretary of State while others can be accomplished privately by the CORPORATION or LLC without registration or filing with the Secretary's Office.
Apostille:	The LEGALIZATION of a document for use in a foreign jurisdiction which is a party to the "Hague Convention Abolishing the Requirement of Legalization of Foreign Public Documents".
Articles of Incorporation:	See CERTIFICATE OF INCORPORATION
Articles of Organization:	See CERTIFICATE OF FORMATION
Artificial Person:	A legal ENTITY through which the law allows a group of human persons to act as if they were a single composite individual for certain purposes, for example, a group of investors who own stock in a CORPORATION. This does not mean the Artificial Person is a human being, but rather means that the law allows the Artificial Person to enjoy the privileges a human person would enjoy in certain cases, for example: the right to bring or defend lawsuits, to own property, and to make contracts.
Authentication:	The verification of the legitimacy of a document and the authority of the issuer.
Authorized Shares:	The number of shares authorized at the time the CHARTER was registered to potentially be issued by the company.
Business Statement:	See STATEMENT BY INCORPORATOR
By-Laws	A document specifying the rules adopted by the founders and/or directors of a corporation, and outlining the rights and responsibilities of SHAREHOLDERS, DIRECTORS, and OFFICERS.
Cancellation:	The legal process of ending the existence of an LLC after close of business.
Capital:	The money or other assets of value (usually STOCKS, bonds or other SECURITIES that can be readily converted to cash at an easily established market value) which SHAREHOLDERS invest in a business to enable it to operate. The capital of an established corporation is normally defined as the contributions of the shareholders plus accumulated profits. It is the total book worth of the enterprise after all liabilities are deducted.
Capitalization:	The total value of all securities of an enterprise. Capitalization sometimes includes long-term debt, if any. It represents what would have to be paid to investors and long-term creditors if the business and its assets were to be liquidated.
Capital Stock:	The total amount of stock a CORPORATION is authorized to issue by its Certificate of Incorporation
Capital Surplus:	The sum of the paid-in surplus (if any), profits (if any) retained as earned surplus and the surplus (if any) created by a revaluation of assets, including "good will" (upon which a value may be set).
C-Corporation:	A CORPORATION with the default TAX STATUS which pays Federal Corporate Income Tax at the Corporate tax rates.

Certificate of Incorporation:	A document filed with the authority which issues Corporate CHARTERS in a given jurisdiction (such as the Secretary of State in Delaware) and which outlines certain defining qualities of the CORPORATION, such as its name, the number of shares of Stock authorized and the address of its REGISTERED AGENT.
Certificate of Incumbency:	See STATEMENT BY INCORPORATOR
Charter:	A Charter is the grant of authority or rights, stating that the granter formally recognizes the prerogative of the recipient to exercise the rights specified. A CORPORATION issued a Charter by the Secretary of State of Delaware has been granted the right to exist as an ARTIFICIAL PERSON and to operate as a business.
Close Corporation:	A CORPORATION which sets certain limitations on the sale, holding and transfer of its shares of Stock, which is held by a small number of Shareholders and which is exempt from certain administrative responsibilities which other Corporations must observe.
Common Stock:	Corporate stock which normally entitles the shareholder to Dividends if the CORPORATION is profitable and does not need to retain all of its earnings for its own purposes. Common stock may be assumed to carry voting rights unless it is classed as "Nonvoting" Common Stock
Convertible Preferred Stock:	Carries the privileges and entitlements of Preferred Stock and gives the holders the right, at their option, to convert these shares into Common Stock, according to a specified formula.
Corporate Seal:	The Corporate Seal is an image approved by the Directors or Members of a company to represent the authority of a signatory as a company representative, or the company's endorsement of a device such as a contract. The Seal may be in the form of an ink stamp or embossing stamp or as a gold medallion affixed by adhesive. The Seal is frequently affixed to a STOCK CERTIFICATE at the time of issuance to a SHAREHOLDER, differentiating an Issued Stock Certificate from an unissued Certificate.
Corporate Security:	A share of stock, bond, note, debenture, or other financial instrument, issued by a CORPORATION and registered as to its ownership on the books of a corporation.
Corporation:	An Entity registered with a state authority and issued a Charter by which it obtains the rights and privileges of an Artificial Person, with Limited Liability for the owners, who are known as Shareholders.
Director:	A person elected by or appointed by a body of SHAREHOLDERS to oversee the activities of the CORPORATION, to act on behalf of the full assembly of voting shareholders. The Director usually sits on a Board of Directors whose responsibilities are outlined in the By-Laws of the Corporation.
Dissolution:	The process of legally ending the existence of a corporation after the close of business. It is not legal for shareholders to take the final distribution after close of business until the Certificate of Dissolution is filed.
Disregarded Entity:	An Entity which has the right to be regarded as an Artificial Person for legal purposes but who is treated as a Natural Person or Partnership of Natural Persons for tax purposes. An LLC is a Disregarded Entity by default and will be taxed on an owner's personal income tax return if there is one Member or taxed as a partnership if there are multiple Members. The taxes of a Disregarded Entity are said to Pass Through to the owners' personal income.
Domestic:	A company is considered "domestic" in the state in which it is DOMICILED, which is to say, the state in which it was CHARTERED (Incorporated, Organized), regardless of where the company is physically located or headquartered.
Domicile:	The state or Jurisdiction in which a company received its company CHARTER, the state in which it was INCORPORATED or ORGANIZED. The Domicile is the legal home of your company regardless of where your business is physically located or headquartered.

Dividend:	A distribution of profits made to a STOCK SHAREHOLDER or MEMBER.
Double Taxation:	When income is subjected first to CORPORATION Income Tax and then taxed a second time when paid to the SHAREHOLDERS as DIVIDENDS and taxed as Personal Income.
Earned Surplus:	The profits a corporation has retained since its incorporation. It is synonymous with “retained earnings,” “retained income” and “accumulated surplus.” Earned surplus may also include portions of the surplus(es) of other corporations that may have been acquired by or merged or consolidated into the corporation.
EIN:	Employer Identification Number. A number issued to CORPORATIONS and LLCs for tax reporting purposes; a prerequisite for opening a bank account in the US in the name of an LLC or CORPORATION.
Entity:	Something which has a distinguishable existence.
Entity Type:	The class of company as officially registered with a state authority. CORPORATIONS and LLCs are examples of Entity Types, as are Limited Partnerships and Trusts.
Equity:	The net investment which shareholders have in their corporation. It is another term for “Net Worth” which is what remains for the owners after all liabilities are deducted from assets.
Exclusive Use:	Only one ENTITY has the right to use the name registered.
Expedited Service:	Faster than regular processing, usually within a guaranteed timeframe.
Fiscal Year:	A period used for calculating annual financial statements. A Fiscal Year is often, but not always, the same as a calendar year.
Foreign:	A company CHARTERED (Incorporated/Organized) in Delaware is a Foreign Corporation or Foreign LLC in any state or JURISDICTION other than Delaware, regardless of where the business or headquarters are physically located.
Forfeit Status:	In Delaware, the revocation of a company CHARTER due to failure to maintain a Delaware REGISTERED AGENT.
Formation:	Usually, the creation of an LLC by REGISTRATION in the DOMICILE state and the filing of the CERTIFICATE OF FORMATION. Sometimes also used to mean INCORPORATION.
General Corporation:	See CORPORATION
Good Standing:	A status in Delaware and many other states in which the CORPORATION or LLC has a valid CHARTER by virtue of meeting all the state requirements such as REGISTRATION, paying annual taxes and filing an Annual Report, and maintaining a REGISTERED AGENT and REGISTERED OFFICE in the state. A Certificate of Good Standing is a statement by the Secretary of State that the Entity is in Good Standing.
Incorporation:	The process of creating a CORPORATION by REGISTRATION in the DOMICILE state and filing the CERTIFICATE OF INCORPORATION.
Incorporator:	A person or company appointed by the founder of a new CORPORATION as an agent for the purpose of registering the new company with the Secretary of State and filing the CERTIFICATE OF INCORPORATION or CERTIFICATE OF FORMATION. DBI is an INCORPORATOR; our duties end when the new CORPORATION is registered, and the INITIAL DIRECTOR is appointed as our successor.
Initial Director:	The person appointed by the INCORPORATOR of a CORPORATION to hold the responsibility of organizing the company after it has been registered. Such responsibilities may include issuing STOCK SHARE CERTIFICATES, holding the Initial Meeting to elect or appoint the BOARD OF DIRECTORS or OFFICERS, and assembling the BY-LAWS for ratification by the Board.
Initial Member:	The person appointed by the ORGANIZER of an LLC to hold the responsibility of

organizing the company after it has been registered. Such responsibilities may include issuing MEMBERSHIP INTEREST CERTIFICATES, drafting or retaining a professional to draft an OPERATING AGREEMENT, opening bank accounts or other responsibilities.

Interstate:	Involving parties in two or more states.
ITIN:	Individual Taxpayer Identification Number. A number issued to non-citizen non-residents for tax reporting purposes; a prerequisite for obtaining an EIN for companies owned by non-resident ALIENS. STOCK CERTIFICATE: A certificate recording a share of ownership in a CORPORATION by specifying the name of the owner, the name of the Corporation, the number of SHARES AUTHORIZED, and the number of SHARES ISSUED.
Intrastate:	Involving parties within the same state.
Involuntary Withdrawal:	See FORFEIT STATUS
Issued Shares:	The stock shares which have been sold, transferred, or assigned to a SHAREHOLDER (owner).
Jurisdiction:	The geographical area to which an authority applies. Examples would include Cities, Counties and States.
LLC:	Limited Liability Company. An ENTITY TYPE which features LIMITED LIABILITY like a CORPORATION, but which is generally regarded as having greater flexibility and ease of administration.
Legalization:	The process of having a document inspected and certified as legitimate for use in a foreign JURISDICTION by a representative of that jurisdiction, such as a Foreign Consulate.
Limited Liability:	A feature shared by LIMITED LIABILITY COMPANIES and CORPORATIONS by which a person's accountability for loss due to the debts, obligations or liabilities of a company is limited to the amount the person paid for the Stock Shares or Membership Interest (or otherwise invested in the company); provided that the person did not personally guarantee the debts of the Entity or commit fraud or other illegal dealings.
Manager:	Specifically, when used in the discussion of an LLC, a manager is an employee or agent, appointed by the MEMBERS of the LLC, to run the operations of the company on their behalf. The position is like that of the DIRECTOR of a CORPORATION or the General Partner of a Partnership. Unless the title is given as "Managing Member", a manager can be assumed to have no ownership stake in the LLC. When an LLC distinguishes between MEMBERS and MANAGING MEMBERS, the "Member's role may be compared to that of a "Silent Partner" while the "Managing Member's may be compared to that of the General Partner; such a distinction is at the discretion of the LLC and is not required to be made in Delaware.
Member:	A person who owns all or part of an LLC. The Member is like the SHAREHOLDER of a CORPORATION or the Partner in a Partnership.
Membership Interest:	A MEMBER'S percent of ownership of an LLC. A Membership Interest Certificate is like a Stock Certificate in that it records the investor's share of ownership.
Minutes:	A record of the proceedings of a Meeting of the DIRECTORS, OFFICERS, SHAREHOLDERS, MEMBERS or MANAGERS of a company. CORPORATIONS should maintain MINUTES of their meetings; LLCs are not required to do so; but may if they so choose.
Naming Conventions:	The rules or standards which must be followed in selecting a company name to be REGISTERED with the Secretary of State or other authority.
Net Assets:	The amount by which the total assets of a corporation, including money, securities, property, equipment, etc., exceed its total debts.

NGO:	See NOT-FOR-PROFIT
Non-Profit:	See NOT-FOR-PROFIT
Non-Stock:	See NOT-FOR-PROFIT
No Par Value:	STOCK with no money value stated in the company CHARTER. NO PAR VALUE stock may be sold for whatever the investor is willing to pay.
Not-for-Profit Corporation:	A CORPORATION organized solely for Charitable, Educational or Religious reasons.
Officer:	Persons elected by the SHAREHOLDERS or DIRECTORS of a CORPORATION to direct daily operations and or business planning. Examples include CEO, President, Secretary, and Treasurer.
Operating Agreement:	The document outlining the business structure, manner of operations and distribution rights of an LLC. The Operating Agreement is like the BY-LAWS of a CORPORATION or the Partnership Agreement of a Partnership.
Operating Surplus:	The amount remaining at the end of a corporation's reporting period (fiscal year), following the deduction of expenses, taxes and dividends. At the end of the fiscal year, operating surplus is added to earned surplus on the corporation's books.
Organizer:	A person or company appointed by the founder of a new LLC as an agent for the purpose of Registering the new company with the Secretary of State and filing the CERTIFICATE OF FORMATION. DBI is an Organizer, and our duties will end when the INITIAL MEMBER is appointed as our successor.
Par Value:	The stated money value on the face of a STOCK share. If a Par Value is stated when the CHARTER is registered, the company must receive CONSIDERATION worth at least Par Value for each share sold. Delaware permits NO par value stock.
Pass Through:	A quality of certain Tax Statuses whereby the profits and loss of the company will "pass through" to the owner of the company (SHAREHOLDER or MEMBER) and be claimed on the owner's personal income tax return.
Paid-in Surplus:	The difference between paid-up capital and the stated value of the corporate stock. It is the surplus that is created when shareholders have paid more for their stock than the stated value (par value or no-par value) per share.
Paid-up Capital:	The total amount paid by SHAREHOLDERS for their shares of CAPITAL STOCK. On the balance sheet of the CORPORATION, Paid-Up Capital is equal to the stated value (PAR VALUE or NO-PAR VALUE) of its COMMON STOCK plus what Shareholders may have paid, or contributed to value, more than stated value.
Perpetual Duration:	An LLC or Corporation which will continue to exist as a legal Entity indefinitely or until a Certificate of CANCELLATION or DISSOLUTION is filed. The opposite would be a company with a finite duration, which would automatically be legally dissolved on a stated expiration date.
Preferred Stock:	Entitles its SHAREHOLDERS to priority over other the shareholders of other classes of STOCK in the DISTRIBUTION of profits. Frequently, preferred stock entitles its holders to DIVIDENDS of a specified amount each year which must be paid before COMMON STOCK dividends, if any, are paid. Preferred stockholders typically surrender voting rights in return for priority in dividend payout. However, they may obtain voting rights by deferring their dividends. These dividends, in turn, will accrue, adding to the overall outstanding debt of the company.
Qualification:	The process of applying for permission to do business in a state that is not the home of your company CHARTER. When a company successfully Qualifies in another state, they are typically issued a Certificate of Authority to Transact Business in that additional state.
Registered Agent:	The agent appointed to receive SERVICE OF PROCESS and tax notices on behalf of a registered ENTITY. Required by law in most states.

Registered Office:	The address of the REGISTERED AGENT. The Registered Office is not the address of the company.
Registration:	The process of entering a company into the record in a specific JURISDICTION and filing any documentation necessary to satisfy the requirements of that jurisdiction. <i>See also</i> INCORPORATION, FORMATION, ORGANIZATION.
S-Corporation:	An Entity (STOCK CORPORATION or LLC) which has successfully elected to be taxed under Subchapter S of the IRS code.
Service of Process:	The delivery of legal notice of an action of the court. Service of Process can be delivered by registered mail or hand delivered by a Process Server.
Shareholder:	The owner of a portion of a STOCK CORPORATION is called a SHAREHOLDER because they have been issued Stock Shares in evidence of their ownership stake. In the case of a CORPORATION owned by one person, that owner might be known as a Sole Shareholder.
Stated Capital:	The sum of the par value of all issued shares of the CORPORATION assigned PAR VALUE plus other amounts that have been paid into the stated capital of the corporation.
Statement by Incorporator:	A notarized statement by the INCORPORATOR attesting to the organization of a company, including the names of OFFICERS, MEMBERS, MANAGERS, and sometimes SHAREHOLDERS.
Stock:	A SECURITY which represents the CAPITAL invested into a CORPORATION by the founders/owners/investors. A Stock Share is a unit of Stock issued to an investor usually expressed by a STOCK CERTIFICATE.
Suffix:	The part of a company's legally registered name which identifies which ENTITY TYPE it is. For example, "Inc." is a Suffix which identifies the Entity Type as a CORPORATION.
Surplus:	The amount by which the net assets of a CORPORATION exceed its stated capital.
Tax Status:	Tax Status defines what Federal Tax return a person or Entity will file. Examples of Tax Status include Disregarded Entity, C-CORPORATION or S-CORPORATION.
Title:	Synonymous with "Name"
Total Surplus:	The sum of all surpluses, including earned and capital surplus and any additions to surplus from revaluations of assets which may have appreciated or depreciated in value during the fiscal year.
Treasury Shares:	Any shares of stock which were previously issued to a SHAREHOLDER and subsequently bought back from the shareholder by the CORPORATION itself, and which were not cancelled nor retired following reacquisition. Treasury Shares are included when counting the total number of shares issued but are not considered outstanding.
Virtual Office:	A suite of services which provide remote access to the amenities of a professional office, including an office address at which a receptionist or mailroom person can receive and sign for regular and certified mail, courier delivery and small parcels, with mail forwarding, a telephone number, phone forwarding, fax number and fax forwarding.
VOID Status:	In Delaware, the revocation of a company CHARTER due to failure to pay taxes or file and Annual Report.

Service by Professionals.

