



ESTABLISHMENT OF COMPANY BASED IN THE US AND IN THE CAYMAN ISLANDS

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1. ESTABLISHING OF COMPANY IN DELAWARE (US)

Delaware is known worldwide for its high relevance in establishing business companies in the United States.

With this, Delaware's legislation is also attractive to foreign companies seeking to expand by opening its business to several countries.

Generally, Delaware's business laws offer numerous benefits to international trade. In addition, Delaware law also provides efficient procedures in the business sphere, such as transactions involving mergers, conversions, transfers, etc

1.1 Delaware Benefits for Opening Business

I. Ease of creation

Delaware offers business holders (partners) greater ease in creating companies through efficient and simple processes.

The State Secretariat has improved its operations, – by providing a fast-track process, that meets international quality standards, allowing for greater ease in establishing new companies.

The ease of creation and flexibility in administration in the face of other international business laws with costlier procedures, are seen as more efficient and results in greater opportunities in certain operations.

The benefits offered make Delaware location for new organizations, including from outside the United States.

II. Flexibility in administration and control structures

Providing substantial flexibility for parties in international trade to form corporate companies other than necessarily corporations, including limited liability companies and companies and special-purpose limited liability companies.

Partners of business companies registered in Delaware may structure their companies in order to adapt to special situations, since Delaware law allows multiple classes of controlling interests, whereby each may hold control rights or preferential (economic) rights. In other words, this structural flexibility favors transactions that include joint ventures, in which the parties may not own an equivalent interest.

III. Limitation of liability

Generally, Delaware allows the parties to define their operations, eliminating personal liability for the investors, through an LLC operating contract, titled as contractual freedom.

Therefore, Delaware law also recognizes the limitation of fiduciary liability for violation of duties of caution, as well as broad indemnification for liabilities, reducing the exposure to directors and board members.

IV. Efficient and fair procedures for conflict resolution

Over the years, the state of Delaware and its courts have taken several initiatives to help companies resolve complex business disputes outside the justice system. As a result, laws and rules that promote vast alternative solutions for the reresolution of conflicts were adopted by the Court of Chancery.

This allows the parties involved in certain disputes to seek mediation of their demands before another judicial authorities, other than those responsible for the monitoring of their proceedings.

The Delaware Court of Chancery is a special court of equity, its legal system is known worldwide for its expertise in conflict resolution, thus allowing for more efficient and fairer procedures.

Some of the main benefits for conflict resolution include: greater agility, confidentiality of process and efficiency.

1.2. ESTABLISHING OF A COMPANY IN THE USA

For the most part, the preferred form are limited liability companies LLCs. An LLC is a relatively new type of entity in the United States. However, it is important to mention that while LLCs can be regarded as partnerships, they are not corporations.

An LLC is a commercial vehicle with a legal existence separate and distinct from its owners, whereby its owners and managers are not held personally liable for the company's debts and obligations. The operations and management of an LLC are governed by a written agreement established amongst its owners, called the LLC Operating Agreement, and although Delaware LLCs can be managed by its members, members are not required to be managers.

That is, the main objective of an LLC is establishing a commercial vehicle with a separate and distinct existence from its owners. Therefore, for US tax purposes, owners and managers are not personally responsible for the company's debts and obligations.

1.3. ESTABLISHING AND REGULARIZING THE COMPANY IN DELAWARE

I. Company Name

A total of 3 different names must be selected and their availability verified. After that, these names are sent for approval by the Delaware government.

II. Registered Agent of the company

The Registered Agent may be a natural or a legal person, who will assist the company in receiving important information, such as official government notifications, legal documents, tax forms and others related to legal proceedings. That is, the Registered Agent will be the point of contact of the company with the State.

III. Filling of the Certificate of Formation

To register an LLC in Delaware, business owners need to file the certificate with the Secretary of State. This can be online or by mail to the Corporation's Delaware division website.

IV. Obtaining the EIN

A Delaware company requires obtaining the employer's identification number (EIN) to file tax returns and pay taxes thereafter.

V. Drafting and signing the LLC Agreement

Final step for the establishing and regularizing a Delaware company.

1.4. MANAGEMENT

I For LLCs, Delaware law allows management by their members, but does not require members to be managers.

II Delaware Law states that no member or manager is personally liable for any debts, obligations or liabilities of a Delaware LLC by merely being a member or acting as a manager.

III The Delaware Limited Liability Company Act, known as freedom of contract, allows the parties to define their operations, management and business relationship in a Contribution Agreement.

2. ESTABLISHING OF A COMPANY IN THE CAYMAN ISLANDS

2.1. STRUCTURING

Cayman Islands companies and their corporate laws attract international businesses, and as a result, numerous offshore investors choose to incorporate in this jurisdiction, since their structuring is seen as interesting due to their developed and stable economy.

2.2. MAIN BENEFITS OF SETTING UP A CONTROLLED HOLDING COMPANY IN THE CAYMAN ISLANDS

I No federal income tax return in the U.S. is required for shareholders of the parent holding company

II With the complete structure, an LLC in Delaware would not be considered as an American company for tax purposes

III Investors feel more comfortable investing in a company through its parent holding company located in the Cayman Islands

IV Unlike U.S. LLCs and C-Corps, cayman holding companies do not require financial reporting.

2.3. DISADVANTAGES OF A HOLDING COMPANY IN THE CAYMAN ISLANDS

I Additional expenses for maintaining the additional company in the corporate structure.

II Increased costs for establishment and maintenance, compared to companies in the state of Delaware, US.

III The possibility for investors, usually U.S.-based funds, to owe the establishment of a structure where the parent company is based in the Cayman Islands.

2.4. REQUIREMENTS FOR ESTABLISHING AND REGULARIZING OF A COMPANY IN DELAWARE

I Information on members and directors

II Description of the company's structure and purpose

III Other information may vary depending on the characteristics of the holding company, such as checking the name availability

IV Registered Office for compliance with tax obligations before the government and responsible body in the Cayman Islands

V Preparation of the company's constitutive documents, usually prepared by the Registered Office of the holding company

VI Obtaining the EIN (employer identification number). For a Cayman holding company, obtaining the EIN is used in opening bank accounts with American banks, where the company will receive its contributions and investments.

Our recognitions



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