

ANDREAS M.SOFOCLEOUS & CO. LLC

ADVOCATES - LEGAL CONSULTANTS

Practical Guide to Company Formation In the State of Delaware





PRACTICAL GUIDE TO COMPANY FORMATION IN THE STATE OF DELAWARE

Delaware General Information

The basic reason why so many people choose Delaware for their new corporation or limited liability company is to protect their personal assets. Delaware has passed incorporation, limited liability company and tax laws that are favourable to all types of businesses. These include companies headquartered and/or operating in every one of the 50 states of the United States, the District of Columbia, Puerto Rico and Guam, as well as companies in over 100 other countries. In many respects Delaware is similar to Hong Kong, Monaco, Liechtenstein, Singapore or Switzerland. It is a corporate haven that helps you to conserve and increase your capital through liberal corporate and tax laws.

Major Advantages

Sixty eight percent of five hundred of the United States largest corporations have relocated to the State of Delaware to reap the benefits of the non-existent state tax.

An LLC in the State of Delaware is ideal for those without activities in the United States, whom are interested in a tax free corporate vehicle.

Delaware is one of the cheapest and easiest juris-

Incorporation Process

- A Registered Agent in the State of Delaware shall undertake the registration/ incorporation of the company through our office;
- A company name **is** approved by the relevant authorities;
- Submission of Articles of Incorporation;
- Requirement of at least one Director and one shareholder and a secretary, who can be the same person

Formation Period

A Delaware company may be incorporated within 3-5 days and within 15 days we shall have the original and apostilled documents here at our office in Cyprus .

Incorporation Costs

Variable legal fees for the incorporation of a standard Delaware company are available upon request.

Duration of Existence

A Delaware LLC is a separate legal entity and may have perpetual existence until dissolution or strike off.

Business License

- Any person or entity conducting a trade or business within the State of Delaware is required to obtain a Delaware business license from the Delaware Division of Revenue.
- This includes entities located in Delaware who conduct their business outside the state.
- A business license must be obtained at the time business commences in Delaware.
- Examples of commonly required licenses and permits include general business licenses, Tax Registrations, Health Permits, state-issued occupational licenses, liquor licenses, lottery licenses, **reseller's licenses, zoning and land-use permits**, health department permits.
- Failure to obtain and renew the correct business licenses and permits can result in fines, notices and forced closure of that business.

Maintenance

Annual Reporting/Filing Requirements

- Delaware limited liability companies must file an Annual Report.
- By filing an annual report, the Secretary of State is being provided with updated information about the relevant business, such as principal business office address, name of registered agent, names and addresses of officers, directors, members, managers and/or trustees.
- Failure to file an annual report can mean penalties, fines and loss of good standing of business.



Annual Costs

- Annual franchise tax which falls due on 1st March (for Corporations) and 1st June (for LLC) respectively.
- The minimum annual franchise tax for a LLC is \$250 (USD) plus an additional filing fee of \$50 (USD) for the annual franchise tax report.
- The minimum annual franchise tax for a Corporation with the standard minimum share capital is \$75 (USD) plus an additional filing fee of \$50 (USD) for the annual franchise tax report.
- Please note that the maximum annual franchise tax can be as high as \$180,00.00.
- There is a penalty and an interest payable for a failure to pay on time.

Annual Director Meetings

- Unless otherwise restricted by the certificate of incorporation or bylaws, the board of directors of any corporation may hold its meetings.
- If such meetings are called, the members may congregate at any location of their choosing or do so by means of conference telephone or other communication equipment.

Annual Shareholders Meetings

There is a duty to hold annual meetings to elect the board of directors and decide on any other issues may brought before them.

In such meetings the members may congregate at any location of their choosing. However, such decisions may be decided by written consent of shareholders even if there is no meeting at all.

Requirements of Locality

A Delaware LLC is required to have a registered office address and name and address of a registered agent. No director, secretary, or shareholder is required to be from the State of Delaware.

Taxation

Tax Exemptions

There is no state income tax for Delaware Corporations or LLCs that do not conduct business in the U.S. The only tax payable is the annual franchise tax (as described above).

Financial Records and Accounts

Financial Record Keeping

There is no requirement to file or publish in any way the accounts or financial records of a company in the State of Delaware. However, the financial records of a company must be prepared and maintained at the Registered Office of the company or the Agent.

Audit Requirements

There are no audit requirements for a LLC in the State of Delaware.

Constitutional Documents

Governance

A company in the State of Delaware is governed by its Certificate of Incorporation, Bylaws and by the Delaware General Corporation Law.

Amendments

Amendments to the Certificate of Incorporation may be done by a shareholder resolution or a resolution by the directors.

Authorised Share Capital

- It is possible to structure a company to facilitate the authorisation and issue of an unlimited number of shares.
- There is a difference in the payable amount of franchise tax if the authorised share capital is up to 5,000 shares, or 5,001 -10,000, or more than 10,001.

Capital Requirements

- There are no minimum capital requirements, provided at least one share is issued.
- A company may be formed with a purely nominal equity investment.
- Multiple classes of shares with differing rights and restrictions are permitted.
- A company may issue fractional shares and can issue shares with or without par value.



Preferred Shares

Different classes of shares may be created bestowing distinct rights and restrictions or indeed no rights at all on such shares, in regards to voting and other matters. This may be used in relation to economic entitlements and priority rankings pertaining to payments of dividends, distributions and returns of capital.

Bearer Shares

Bearer shares are not permitted.

Shareholders

Minimum Number of Shareholders

- A company must have at least one shareholder.
- May be a corporate body or a natural person.
- It is possible for the shares to be held by a nominee

Limitation of Shareholder Liability

- Shareholder liability may be restricted to any desirable amount, even a purely nominal amount, upon incorporation.
- Limitations by shares and by guarantee are permissible.

Resident Requirements for Shareholders

There are no residency requirements for shareholders. Accordingly, the company may be fully owned by foreign nationals.

Government Approval for Allotments/Transfer of Shares

No government approvals are required for allotments and/or transfers of shares.

Directors

Minimum Number of Directors

The board of directors of a corporation shall consist of 1 or more members, each of whom shall be a natural person. The number of directors shall be fixed by, or in the manner provided in, the bylaws, unless the certificate of incorporation fixes the number of directors, in which case a change in the number of directors shall be made only by amendment of the certificate. The Directors need not be stockholders unless so required by the certificate of incorporation or the Bylaws.

Ability to Mitigate Director Liability

- **A company may indemnify its directors against all expenses, including legal fees, incurred by such persons in their capacity as a director, provided the said director has behaved in the company's best interests.**
- In the case of criminal proceedings the director must have had no reasonable cause to believe that their conduct was unlawful.
- The company may maintain insurance in relation to a director against any liability asserted against said director and may do so regardless of whether or not the company has the power to indemnify him against such liability.

Appointment/Removal of Directors

- The power to appoint and remove directors will be regulated by the provisions of a company's Bylaws.
- Typically, the responsibility would ultimately be in the hands of the shareholders or in some case certain selected shareholders.
- Directors may be elected for terms of any length or on a staggered basis.

Distributions

Flexibility of Dividend Payments

- A company may dividend out any of its assets, including; profits, share premium and capital, as long as said company can pass a solvency test immediately after the dividend payment.
- A company satisfies the requirements of a solvency test if the value of the company's assets exceeds its liabilities and if the company is able to pay its debts in due course.

Flexibility of Share Buy-backs and Redemptions

A company may buy back or redeem its own shares as long as the said company can pass a solvency test, immediately after the distribution.



Return of Capital in the Event of Liquidation

The traditional "debt before equity" rule applies.

The company's creditors must be reimbursed, prior to the shareholders, in the event of liquidation.

Redomiciliation

Transfers of companies both inwards and outwards of Delaware are permitted.

Disclaimer

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Andreas M. Sofocleous & Co. LLC

Advocates & Legal Consultants

Andreas Sofocleous & Co was founded by Mr. Andreas Sofocleous in 1995. Over the years the firm grew considerably and expanded with new offices in Russia and Ukraine . In 2012 the partnership was succeeded by the law firm Andreas M. Sofocleous & Co LLC .

The firm is one of the most successful corporate and commercial law firms in Cyprus. Headquartered in Limassol and with offices in Eastern Europe and the UK, the firm provides legal services for individuals and companies at a national and international level across a wide range of industries, dealing with mergers and acquisitions, cross border transactions, joint ventures, intellectual property licensing, as well as company formation and management and other business arrangements.

Our main areas of practice are: Corporate and Commercial law; International and Domestic Arbitration; Commercial and Civil Litigation; Banking and Finance Law; Admiralty and Marine Law; Aviation Law; Property Law; Immigration Law.

The Firm's specialization

We specialize in global corporate structuring, helping businesses and individuals who wish to protect their assets to invest and expand their operations in new international markets.

We work with a range of clients worldwide, including multinational corporations, public companies, small to medium enterprises and individuals. Each and every client, regardless of size and status, has specific needs, particular goals and individual plans for the future. Our aim is to assist them all to achieve their objectives and fulfil their plans successfully. To that end we focus on their needs and concerns by developing the appropriate business strategy to suit each client, and then work together to implement it.

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