

Delaware v. Massachusetts LLCs & Corporations

Differences and practical considerations for formation, operation, and exit

There are many differences between the laws governing Massachusetts and Delaware corporations and limited liability companies, and many differences in how courts of the two states handle similar matters—all of which one must keep in mind when selecting a jurisdiction in which to organize an entity or bring litigation. A practitioner must also remember—and be able to take advantage of—these differences in the ongoing representation of operating businesses.

Massachusetts lawyers who spend most of their time advising Delaware corporations cannot afford to overlook the differences when representing a Massachusetts entity, whether planning routine or unusual matters involving shareholders, advising the board on its responsibilities, structuring transactions, or dealing with shareholder activists and unsolicited offers. Lawyers forming LLCs must understand the differences in the two states' LLC statutes, especially the default provisions that apply to the operating agreement. The differences also affect operating matters and exit transactions.

This program provides an overview of the considerations for selecting a jurisdiction, as well as the most significant differences in drafting constitutive documents, corporate operations, litigation, and sale of the entity.

Agenda and written materials

► Corporations

Choosing a jurisdiction in which to incorporate; Planning ordinary corporate functions, such as shareholder meetings and approvals, or significant transactions, including a sale of the company or bankruptcy; Conflict of interest transactions and advising the board on the business judgment rule; Handling unusual matters, such as managing a dispute between controlling and minority shareholders, removing a director, or dealing with a proxy contest or shareholder-proposed bylaw amendment; Responding to an unsolicited acquisition offer and the differing impacts of the two states' antitakeover laws

► LLCs

Choosing a jurisdiction in which to organize; Statutory default provisions and drafting the operating agreement; Allocation of control, the treatment of member and manager fiduciary duties, and conflicting obligations; Sale of the company and other exit transactions

► "Ask the Experts" Q&A Session

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A Practical Guide to Massachusetts Limited Liability Companies

This practical guide covers the spectrum of issues surrounding LLCs. Beginning with classification and choice of entity issues, it offers advice on the advantages and disadvantages of LLC status; a view from the Secretary of Commonwealth's office; how to draft an LLC operating agreement; the rights and duties of members and fiduciaries; issues concerning the conversion, merger, or dissolution of a limited liability entity; and more.

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