

February 18, 2010

## Texas Business Organizations Code Now Applicable to All Entities

On January 1, 2010, the Texas Business Organizations Code ("TBOC") became applicable to all Texas entities and foreign entities required to register to do business in Texas. The TBOC originally went into effect on January 1, 2006; however, it previously applied only to Texas entities formed after that date, to Texas entities formed prior to January 1, 2006 that elected to be governed by the TBOC, to foreign entities initially registered to do business in Texas after January 1, 2006 and to non-filing foreign entities. On January 1, 2010, the TBOC became effective for all Texas entities, whether formed prior to or after January 1, 2006, all foreign entities registered to do business in Texas and non-filing foreign entities.

The TBOC replaced the following statutes:

- Texas Business Corporation Act
- Non-Profit Corporation Act
- Limited Liability Company Act
- Revised Partnership Act
- Revised Limited Partnership Act
- Professional Corporation Act
- Professional Associations Act
- Miscellaneous Corporation Laws Act
- Real Estate Investment Trust Act
- Cooperative Associations Act
- Uniform Unincorporated Non-Profit Association Act

While a section-by-section comparison of the TBOC with prior law is beyond the scope of this alert, there are a number of areas in which the TBOC diverges from prior law, a few of which are mentioned below. Many of the key changes in the TBOC deal with new terms or modified definitions of existing terms, such as (i) "Certificate of Formation" which applies to the formation documents for corporations, limited partnerships, limited liability companies, professional associations, cooperatives and real estate investment trusts, and (ii) "Fundamental Business Transaction" which refers to mergers, interest exchanges, or conversion or sale of all or substantially all of an entity's assets.

**A few of the key changes applicable to corporations include the following:** no longer is a corporation required to have \$1,000 before commencing business; the subscription process has been modernized; and electronic proxies are now permitted.

**A few key changes for limited liability companies include the following:** the term "company agreement" replaces the term "regulations"; it is now clear that except for certain enumerated subjects, any provisions of the TBOC applicable to limited liability companies can be waived or modified by the company agreement; the default is that all existing members of a limited liability company must approve additional issuances of membership interests; there is no longer a default that a limited liability company is operated by managers; and the default is that members can remove managers.

**A couple of key changes for partnerships include the following:** as with limited liability companies, except for certain enumerated subjects, any provisions of the TBOC applicable to limited partnerships can be waived or modified by the partnership agreement; and a limited partnership may stop a winding up that is triggered by certain events if certain actions are taken to stop the winding up within one year after the event causing the winding up rather than just 90 days, as previously provided.

For entities formed before January 1, 2006, no immediate action is necessary. However, any amendment to the formation documents or registration documents filed by such entities must include all amendments necessary to bring such documents into compliance with the TBOC. The TBOC does provide some relief regarding amendments by providing a list of synonymous terms that may continue to be used in current formation documents and do not have to be amended if the formation documents are otherwise being amended.

If you have any questions about the TBOC or its application, please contact a member of our [Investment Funds](#), [Mergers and Acquisitions](#), [Private Equity](#) or [Securities/Capital Markets](#) practice groups.

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