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# Compliance and Governance for Statutory Business Entities Under State Business Entity Laws

The state corporation, LLC, limited partnership, limited liability partnership, and other statutory business entity laws impose a number of compliance obligations on their domestic and qualified foreign business entities. Compliance is the price statutory business entities pay for the benefits they receive from being able to do business as an entity – the main one being limited liability for their owners. The states also impose penalties on the corporations, LLCs, LPs, LLPs and other state created entities that fail to comply. And although it is the entity itself that is required to comply, they are “artificial” persons that act through “real” people, who hold certain positions of authority within their company, who are actually responsible for ensuring compliance.

This white paper will discuss five of the most common compliance requirements imposed by the state business entity laws on the four most common types of business entities. It will also discuss how the statutory governance structures of these entities help determine which positions of authority are responsible for compliance.

## Five Statutory Compliance Obligations

Although compliance requirements vary by state and entity, most state business entity statutes impose the following five compliance obligations:

### 1. Annual Report

Most states require domestic and qualified foreign corporations, LLCs, LPs, and LLPs to file with the Secretary of State (or similar office) a report containing certain basic information, such as the name, business address, and the registered agent’s name and address. In most states it must be filed annually. However, some states require filing every two years or some other period instead of annually. A failure to file will result in the entity not being in good standing and can eventually result in administrative dissolution or revocation.

### 2. Registered Agent and Office

Corporations, LLCs, LPs, and LLPs are required to continually maintain a registered agent and registered office in their formation state and in each state in which they are qualified to do business. A registered agent is an agent authorized to receive service of process and other court documents and official communications on the corporation, LLC, LP, or LLP’s behalf. The registered office is where the registered agent is located. A failure to maintain a registered agent and office, or to timely notify the state of a change in registered agent and/or office can result in penalties, including, in some states, administrative dissolution or revocation.

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### **3. Foreign Qualification**

Corporations, LLCs, LPs, and LLPs that transact business in a state other than the formation state are required to qualify (or register, as it is referred to in a number of entity statutes) in the foreign state. Transacting business without qualifying or registering may subject the entity, and in some cases its officers or agents, to monetary penalties, and the entity will be unable to bring an action in the state's courts until they have qualified.

### **4. Franchise Taxes**

Many states impose a franchise tax or fee on statutory business entities in return for granting them the privilege of being formed as a domestic business entity or allowing them to do business as a foreign business entity. Payment is often due at the same time the annual report is filed and the failure to pay will result in a loss of good standing and can result in administrative dissolution or revocation.

### **5. Assumed Name Registration**

In most states, if a business entity does business under a name other than the name that is on its formation document, it must register that "assumed" name. (Note that in some states the assumed name statute may be found in the state's consumer protection law rather than the business entity law). Doing business under an unregistered assumed name can bring monetary penalties and a loss of access to the state's courts, depending upon the state.

## **Statutory Governance Structures**

By "governance" we are referring to the allocation of power and decision making authority within corporations, LLCs, and partnerships. Governance is determined, in part, by the state statutes - which set forth the basic governance structure. Governance is also determined by internal documents, such as corporate bylaws, LLC operating agreements, and partnership agreements, to the extent these documents are permitted by the statutes to also set forth provisions regarding governance.

The basic statutory governance structures are as follows:

### **1. Corporations**

The state corporation laws provide that corporations are managed by or under the direction of a board of directors, who are elected by shareholders. The directors appoint officers who handle the day-to-day operations while the directors are responsible for major decisions. Under this structure it is more likely that a person holding the position of officer will be responsible for compliance. The directors' role in compliance is mainly in monitoring the actions of others while the shareholders do not have a role in compliance.

### **2. LLCs**

The state LLC laws in general vest management of the LLC in all members unless the operating agreement or articles of organization provide for management by managers. Therefore, responsibility for compliance may depend upon whether the LLC is member-managed or manager-managed. If the members so choose, they can set forth the identity of the manager or member who is responsible for compliance with state LLC laws in their operating agreement. Several statutes also permit the filing of a statement of authority, whereby the LLC can also set forth the authority, or limits on authority, of certain members.

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### 3. Limited Partnerships

Limited partnerships have two classes of owners – general partners and limited partners. The state LP laws vest management in general partners. Limited partners have a limited role in governance. Therefore, it will typically be the general partners who are responsible for compliance. The distribution of management authority among partners may be set forth in the partnership agreement.

### 4. Limited Liability Partnerships

LLPs are general partnerships with special rules limiting the liability of the partners. They are governed by the same law as general partnerships except for provisions that apply specifically to LLPs (which generally involve the liability limitations as well as the compliance obligations imposed on the LLP). LLPs, like regular general partnerships, are governed by their partners. Therefore, the partners are equally responsible for compliance with the LLP law unless the LLP provides otherwise in its partnership agreement.

## Conclusion

It is important that business entities that are created and governed by a state business entity law comply with the requirements of that governing state law. It is also important that the individuals who are responsible for compliance are aware of these requirements. This white paper has discussed the most common statutory business entities, the most common compliance requirements they face, and the typical governance structure provided for by the governing statutes.

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