

KNOWLEDGE SHARE

ALTERNATIVE ENTITIES

NAVIGATING NEW CHOICES
FOR BUSINESS FORMATIONS

2016

SEMINAR
REFERENCE
BOOK

ALTERNATIVE ENTITIES

NAVIGATING NEW CHOICES FOR BUSINESS FORMATIONS

Seminar Reference Book

TABLE OF CONTENTS

INTRODUCTION	2
I. WHY DO STATES CREATE DIFFERENT BUSINESS ENTITIES?	3
II. SERIES LLCs	5
III. SOCIAL ENTERPRISE ENTITIES	9
IV. NCCUSL'S ALTERNATIVE ENTITIES	14
V. SOME OTHER ALTERNATIVE ENTITIES	17

INTRODUCTION

Choosing a business entity is one of the most important decisions an entrepreneur will make. There are many factors that go into that decision. The entrepreneur's and business' financial and tax needs, the type of business, the anticipated duration of the business, the need for start up and additional capital, and the desired management structure are just some of the considerations.

Today, there are more entity choices than ever before. There are the common law choices – such as the sole proprietorship and the general partnership. There are also the traditional statutory entities – such as the for-profit corporation, the nonprofit corporation, the limited liability company (LLC), and the limited partnership (LP). And there are several other choices, some of which have been around for decades and some brand new.

Having so many entity types to choose from can be both a blessing and a curse for entrepreneurs and their legal advisors. On the one hand it increases the chances of finding an entity type that meets most of the business' and the owners' needs. On the other hand, it makes the choice more complex. In order to take advantage of these new entity types, a person has to know that they exist, know what states allow them, become familiar with the statutes authorizing and governing them, and keep up with the inevitable statutory changes.

This seminar reference book seeks to assist in the effort to keep up by discussing some of the statutory business entity choices other than the traditional ones listed above. Those covered include the Series LLC, benefit corporation, low-profit limited liability company, unincorporated nonprofit association, and limited cooperative association.

In discussing these topics, references are made to model and uniform business entity laws, as they are generally representative of the state laws. Delaware law is also highlighted because of its preeminent position as a formation state. However, before choosing an entity type, drafting or filing documents, or entering into any statutory transactions involving the entities discussed in this seminar reference book, it is necessary to research and follow the requirements of the specific governing state law.

I. WHY DO STATES CREATE DIFFERENT BUSINESS ENTITIES?

Why do the states authorize formation of so many different forms of business entities? Primarily to create an economic benefit for their citizens. In order to understand how statutory business entities create an economic benefit, as well as understanding why there are so many different forms of statutory business entities, it is useful to take a look at the history of business entity creation in America.

Until mid-way through the 19th century, business was conducted mainly through sole proprietorships and general partnerships. A major problem for business owners during this period was that they were responsible for their business' debts. This limited the number of people who could afford to start businesses, made it difficult to find investors to expand existing businesses and discouraged people from entering into risky ventures.

The states' response to the problem of unlimited liability was to enact laws that authorized the formation of the corporation. These laws gave shareholders the statutory right to limited liability.

Some business owners and investors found that the corporation did not meet all of their needs. For example, a corporation's income was subject to double taxation, thereby reducing the profits. In addition, the corporation laws required a separation of ownership and management and imposed management rules that some people found burdensome.

Thus, business owners and investors sought to have the states pass laws authorizing new forms of business entities that met more of their needs. This resulted in some new business entities being authorized.

One was the limited partnership (LP). The LP provided many of the features business owners and investors desired. It created a class of owners with limited liability – the limited partners. It also offered single taxation and imposed few management restrictions. However, limited partners could not manage the LP without losing their liability shield.

To better meet the needs of business owners whose main objection to the corporation was the separation of ownership and management, some states passed laws authorizing the statutory close corporation. In this type of corporation, shareholders are permitted to dispense with the board of directors and manage themselves.

The professional corporation form of business entity was created to help those professionals who wanted limited liability and the ability to deduct fringe benefits and who could not obtain those features practicing as sole proprietorships and general partnerships.

The 1980s and 1990s saw the authorization of several new business entity types that combined more of the features of the partnership and the corporation. One was the limited liability company (LLC). The LLC protects its owners from liability for the entity's debts, has few restrictions on management and financing arrangements, and has favorable taxation.

There are still people who favor the partnership form of doing business but who also want limited liability. Their needs may be met by two other statutory entities - the limited liability partnership (LLP) and the limited liability limited partnership (LLLLP). The LLP is a general partnership with limited liability for all partners. The LLLP is a limited partnership with limited liability for all partners.

Those entities listed above are by no means the only ones that have been authorized by one or more states. This seminar reference book will discuss some of the other alternatives. It is not meant to cover every possible alternative entity – only a few that may be of interest to the readers.

II. SERIES LLCs

A. What is a Series LLC?

A Series LLC is a limited liability company, formed under the laws of a state that authorizes Series LLCs, that is divided into separate series. Each series functions like a separate LLC. Each series can have its own assets, liabilities, business purpose, members and managers. If certain statutory requirements are met – that mainly have to do with providing notice of the separate series and with keeping their assets separate – then the Series LLC laws provide that the liabilities of each particular series can be satisfied from the assets of that series only and not from the assets of any other series or the LLC itself.

B. How does a Series LLC differ from other business entities?

A Series LLC differs from other available entity types in that in a properly formed and maintained Series LLC there is a separation of assets, liabilities, owners, and managers in a single entity. Many corporations, LLCs and other entities own and operate more than one business and own more than one piece of property. The debts and liabilities associated with each of those businesses or properties may be satisfied from the assets associated with the other businesses and properties. In a Series LLC each series can have its own assets and liabilities.

C. How can a Series LLC be used?

Below are some of the ways Series LLCs may be used that have been suggested by commentators on business entity law.

1. Ownership of real estate - Owners of real estate are often advised to hold each piece of property in a separate entity so that the liabilities associated with any particular piece will not threaten the assets of any other. This can be expensive and complex. However, it has been theorized that a Series LLC can be formed and each piece of real property placed in a separate series.
2. Ownership of multiple business ventures - The owner of multiple business ventures might be able to benefit from using a properly formed and maintained Series LLC. Say a client owns three bakeries. Each bakery could be contained in a separate series with the intent that each has its own assets and liabilities.
3. Separation of business ventures from business assets – Say the owner of the bakery also owns the property where the bakery is located and the oven used to

bake its goods. A Series LLC could be formed with the bakery's operations, property, and oven held in separate series.

4. Holding securities – Another possible use would be to hold securities. In fact, the Series LLC concept comes from the mutual fund/unit investment trust concept where separate series are created pursuant to one trust instrument, with each series having a distinct portfolio of securities and different investment objectives, managers, and owners.

D. The Delaware Series LLC Law

Delaware is an important Series LLC formation state. Its Series LLC law has been in existence the longest and it is a popular formation state for Series LLCs.

The Delaware LLC Act provides that an LLC agreement may establish or provide for the establishment of one or more designated series of members, managers, interests or assets having separate rights, powers, or duties with respect to specified property or obligations of the LLC or profits and losses associated with specified property or obligations and any series may have a separate business purpose or investment objective. It also states that each series may sue or be sued, contract, hold title to assets, grant liens and security interests and conduct business in its own name.

The Delaware LLC Act also provides that the debts, liabilities, and obligations incurred, contracted for, or otherwise existing with respect to a particular series of an LLC are enforceable against the assets of such series only, and not against the assets of the LLC generally or against the assets of a different series, if the following conditions are met: (1) notice of the limitation on liabilities of a series is set forth in the Certificate of Formation, (2) the LLC agreement establishes or provides for the establishment of one or more series, (3) separate and distinct records are maintained for each series, and (4) the assets associated with each series are held (directly or indirectly, including through a nominee or otherwise) in such distinct and separate records and accounted for in such distinct and separate records separately from the other assets of the LLC or any other series of the LLC.

A series may be terminated and its affairs wound up without causing the dissolution of the LLC. However, a series is terminated and its affairs must be wound up upon the dissolution of the LLC itself.

E. The Series LLC laws of other states

As of 2016 about a dozen states besides Delaware had enacted laws allowing Series LLCs. The majority of these states' Series LLC laws are based on Delaware law. In these states, a

Series LLC is formed in the same manner as a regular LLC. A formation document is filed with the business entity filing office which must contain a notice of the limitation of liability of the separate series.

As in Delaware, the series are established in the operating agreement. The debts, liabilities, and obligations incurred, contracted for, or otherwise existing with respect to a particular series will be enforceable against the assets of that series only if all of the following apply: (1) the operating agreement creates one or more series, (2) separate and distinct records are maintained for the series and the assets associated with the series are held and accounted for separately from the other assets of the LLC, or from any other series of the LLC, (3) the operating agreement provides for such limitation on liabilities, and (4) notice of the limitation on liabilities of a series is set forth in the formation document.

Illinois' Series LLC law takes a somewhat different approach from Delaware. Like Delaware, Illinois requires that a Series LLC file a formation document (Articles of Organization) with the Secretary of State that must set forth the notice of limitation of liability of the series. However, the LLC must also file with the Secretary of State a certificate of designation for each series. The series' existence begins after this certificate is filed.

A few other states have adopted the Illinois approach by requiring the filing of a separate certificate to establish the series and imposing name requirements on the series and on the Series LLC.

F. What if a Series LLC does business outside its formation state?

All LLC Acts provide that a foreign LLC - that is, an LLC formed in another jurisdiction - may not do business in that state until it has applied for and received authority to do business. The LLC acts that authorize the formation of a domestic Series LLC generally provide that foreign Series LLCs must qualify and that their certificate of authority must state that the LLC has series with limited liability. Few of the LLC Acts that do not authorize domestic Series LLCs specifically address the registration of a foreign Series LLC. And fewer still deal with the issue of whether a foreign series must register.

G. Taxation

In 2010 the Treasury Department announced proposed regulations dealing with the treatment of series for federal income tax purposes. Proposed Reg. Sec. 30.7701-1, Fed. Reg. 55699, provides that each series will be treated as a separate entity. Thus, each series is taxed pursuant to the "check-the-box" rule. Pursuant to this rule, by default, a series with

one member would be disregarded for tax purposes and a series with more than one member taxed as a partnership. The series would also be able to select corporate taxation. As of the beginning of 2016 the proposed regulations had not been made final but the proposed regulations are “substantial authority”.

Taxation of the Series LLC itself, of the individual series for federal taxes other than income tax, and under state tax laws are still mostly unclear.

H. What are the risks of forming and using a Series LLC?

There are risks involved in forming and using a business entity before every state authorizes that type of entity, before the courts have interpreted the statutes authorizing that entity, and before the state legislatures and state and federal agencies have had a chance to clarify the laws and regulations that affect the entity. These risks arise because there are a number of “unanswered questions” involved in the use of these entities.

Listed below are some of those unanswered questions surrounding the Series LLC.

1. How will a Series LLC be treated under federal and state income, franchise, employment, transfer, and other taxes?
2. Will a court pierce the veil of an individual series, thereby allowing a creditor to reach the assets of another series or the Series LLC itself?
3. What if a creditor of one series seeks to recover the assets of another series by bringing suit in a foreign state that does not authorize Series LLCs? Will that foreign state respect the separation of liabilities granted by the home state?
4. Can an insolvent series receive bankruptcy protection?
5. If a series offers interests to the public must it register under the federal and state securities laws?

III. SOCIAL ENTERPRISE ENTITIES

Meeting the needs of social entrepreneurs - Some people start a business to earn a profit for themselves and their investors. Others to provide a benefit to society. For those entrepreneurs seeking income, the for-profit corporation is a suitable business vehicle. For those who are more concerned with benefiting society there is the non-profit corporation.

But what about the “social entrepreneurs” - who want to use their business to simultaneously achieve a profit and promote social good? A for-profit corporation may not meet their needs. Directors of for-profits are thought to have a duty to maximize shareholder value and risk liability if they make a decision placing the interests of non-shareholder constituents, such as employees or the local community, over their shareholders’ financial interests. A non-profit corporation is not suitable for social entrepreneurs because it cannot distribute its profits to its shareholders or members. In order to meet social entrepreneurs’ needs a growing number of states enacted laws permitting the formation of one or more social enterprise entities.

A. Benefit Corporations

A benefit corporation is an incorporated entity that can earn and distribute profits to its shareholders like a for-profit corporation and have as a purpose the furthering of a social good like a non-profit corporation.

The benefit corporation statutes - In 2010 Maryland became the first state to enact a benefit corporation law. As of early in 2016 about thirty other states had followed suit. Most of these benefit corporation statutes are based on a Model Benefit Corporation Act drafted on behalf of B Lab - a non-profit organization that certifies whether businesses have met standards of social and environmental performance, and that is a leading advocate for benefit corporation legislation. This seminar reference book will focus mainly on the Model Act approach, while adding the reminder that each individual state law must be consulted by anyone planning on forming a benefit corporation.

Forming or becoming a benefit corporation - A new benefit corporation is incorporated in the same manner as a traditional for-profit corporation. It is subject to the provisions of the state’s general corporation law except where the statute specifically provides otherwise. The benefit corporation’s articles of incorporation must state that it is a benefit corporation.

An existing corporation may become a benefit corporation by amending its articles of incorporation to add the statement that it is a benefit corporation. An existing corporation

may also become a benefit corporation by merging into a benefit corporation. Under the Model Act, the shareholders must approve the amendment or the merger by a two-thirds vote.

The differences between a benefit corporation and a traditional for-profit corporation - A benefit corporation differs from a traditional for-profit corporation in three main areas – (1) corporate purposes, (2) director duties, and (3) transparency (annual reporting).

Corporate Purposes – Every benefit corporation has a purpose of creating a general public benefit. A general public benefit is defined by the Model Act as “a material positive impact on society and the environment, taken as a whole, assessed against a third party standard, from the business and operations of the benefit corporation.”

A benefit corporation can also have one or more specific public benefits. These must be set forth in its articles of incorporation. A specific public benefit includes: (1) providing beneficial products or services to low-income or underserved individuals or communities, (2) improving human health, and (3) promoting the arts, sciences or advancement of knowledge.

A benefit corporation can also have any other lawful purpose that a traditional corporation can have.

Directors’ Duties – The Model Act provides that a benefit corporation’s directors, in discharging their duties, must consider the effects of any action or inaction upon:

- The benefit corporation’s shareholders
- The benefit corporation’s employees
- The benefit corporation’s customers as beneficiaries of the general or specific public benefit
- Community and societal factors
- Local and global environmental interests
- The benefit corporation’s short term and long term interests
- The benefit corporation’s ability to accomplish its general and specific public benefits

The Annual Benefit Report – The Model Act provides that a benefit corporation is required to prepare an annual benefit report including the following:

1. A description of the ways the benefit corporation pursued a general public benefit and any specific public benefit, the extent to which these benefits were created, any circumstances hindering the creation of benefits, and the process and rationale for selecting the third party standard
2. An assessment of the benefit corporation's overall social and environmental performance measured against a third party standard
3. The name and contact information for the benefit director, if any, and any benefit officer
4. The compensation paid to the each director
5. The benefit director's compliance statement, if any
6. A statement of any connection between the organization that established the third party standard and the benefit corporation

Under the Model Act the annual benefit report must be sent to each shareholder either within 120 days after the end of the fiscal year or at the same time it delivers any other annual reports to shareholders. In addition, the benefit corporation must post the report on the public portion of its website. If the benefit corporation does not have a website it must provide a copy of the report, free of charge, to any person who requests a copy. Some states also require the report to be delivered to the state's business entity filing office.

Delaware's Public Benefit Corporation Law - In 2013, Delaware's General Corporation Law was amended to permit the formation of a public benefit corporation (PBC). A Delaware PBC differs from the benefit corporation approach found in the Model Act in several respects. The main differences include the following:

1. A Delaware PBC is required to identify a specific public benefit in its certificate of incorporation
2. A Delaware PBC's directors are required to balance the shareholders' pecuniary interests, the interests of those materially affected by the corporation's conduct, and the specific public benefit
3. A benefit report is only required every other year, it does not have to be made public, and a third party standard for measuring the PBC's performance in creating a public benefit is not required

B. Low-Profit Limited Liability Company (L3C)

What is an L3C? - The main LLC social enterprise business entity is the “low-profit limited liability company” – a.k.a. the “L3C”. An L3C is an LLC, organized under a state LLC Act that authorizes L3Cs, for a business purpose that satisfies each of the following requirements: (1) it significantly furthers the accomplishment of one or more charitable or educational purposes within the meaning of Sec. 170(c)(2)(b) of the Internal Revenue Code and would not have been formed but for the company's relationship to the accomplishment of those charitable or educational purposes, (2) it does not have as a significant purpose the production of income or the appreciation of property, and (3) it does not have as a purpose the accomplishment of one or more political or legislative purposes.

The procedure for organizing an L3C is the same as that for a regular LLC except that the L3C designation must be indicated in the articles of organization and the name must include the words “Low-Profit Limited Liability Company” or the abbreviation “L3C.”

Why an L3C? - An L3C is designed to encourage charitable foundations to make more Program Related investments (PRIs). A PRI is one of the ways a charitable foundation may meet the IRS' requirement that it pay out a minimum of 5% of its funds annually towards its mission. Examples of acceptable PRIs, as provided by the IRS, include (1) low interest loans to disadvantaged small business owners who cannot get funds at reasonable interest rates, (2) direct investments in businesses or properties in economically distressed areas, and (3) low interest loans to needy students.

Foundations generally meet their annual payout requirement by making grants. Very few PRIs are made. There are two main reasons why. One is the uncertainty in determining which investments qualify. This uncertainty often requires a Private Letter Ruling from the IRS before the PRI will be made. The process for obtaining a Private Letter Ruling is time consuming and expensive.

The second reason for the lack of PRIs is that it is hard for foundations to locate entities involved in the type of projects that would qualify as a PRI.

The creators and advocates of the L3C hope to provide solutions to those two problems. The statutory requirements for being an L3C match the conditions placed on PRIs by the IRS. Therefore, the L3C's proponents hope that it will no longer be necessary to obtain a Private Letter Ruling. In addition, by requiring registration under a name containing the term “Low-Profit Limited Liability Company” or the abbreviation “L3C”, it is hoped that foundations will have an easier time finding companies involved in activities that will qualify for a PRI.

Another advantage, according to the L3C's proponents, is that an L3C can earn modest profits. It may therefore be able to attract private investors, banks, pension funds and other investors who would be looking for a return on their investments.

Vermont was the first state to authorize the formation of a L3C, which it did in 2008.

C. Some Other Social Enterprise Entities

The Model Benefit Corporation Act and Delaware Public Benefit Corporation Law approaches to social enterprise corporations are not the only ones. Some states have enacted laws permitting the incorporation of social enterprise entities that differ in certain respects from the Model Act and Delaware law. These include California's Social Purpose Corporation Act, Washington's Social Purpose Corporation Act, and Minnesota's Public Benefit Corporation Act.

In addition, a few states authorize formation of a Benefit LLC. A benefit LLC differs from a traditional LLC in that it requires a beneficial purpose, requires managers to consider certain stakeholder and societal interests in making decisions and has a reporting requirement.

IV. NCCUSL'S ALTERNATIVE ENTITIES

NCCUSL, The National Conference of Commissioners on Uniform State Laws, was established in 1892. NCCUSL researches, drafts and promotes the enactment of uniform state laws in areas where it believes uniformity is desirable and practical. NCCUSL is probably best known for the Uniform Commercial Code. However, NCCUSL has also drafted a number of uniform laws dealing with business entities, including the uniform and revised uniform partnership, limited partnership and limited liability company acts.

While LPs and LLCs were already in existence when NCCUSL drafted its uniform laws, NCCUSL has also drafted laws providing for new business entity types. Two such entities are the unincorporated nonprofit association and the limited cooperative association.

A. Unincorporated Nonprofit Associations (UNA)

What is a nonprofit association? - There are many thousands of associations in this country formed to accomplish charitable, educational, religious or other nonprofit purposes. Some of these operate as nonprofit corporations. Some as LLCs. However, most are common law associations – that is, they were not formed under any state statute. Under the common law, a nonprofit association is considered a collection of its members and not an entity in and of itself. This means that the nonprofit association lacks the authority to own property or sue or be sued. It also means its members are liable for the association's debts and obligations.

In 1996, NCCUSL drafted the Uniform Unincorporated Nonprofit Association Act (UUNAA), thereby creating the Unincorporated Nonprofit Association (UNA) in hopes of rectifying some of the problems unincorporated nonprofit associations faced under the common law.

How does a UNA differ from a common law nonprofit association? - A UNA differs from a common law nonprofit association in several ways. The statutes provide that a UNA has the legal capacity to acquire, hold and transfer property and that a UNA can sue and be sued in its own name. The statutes also limit the liability of the members for the UNA's debts and obligations

In 2008, a Revised Uniform Unincorporated Nonprofit Association Act (RUUNAA) was adopted by NCCUSL. RUUNAA retains the main provisions of UUNAA. It also addresses several other issues. It recognizes the unincorporated nonprofit association as a legal entity and deals with the implications flowing from that status beyond those provided for in

UUNAA. RUUNAA also provides default rules that can be varied in the unincorporated nonprofit association's governing documents dealing with various management and financial issues such as fiduciary duties, admission and expulsion of members, selection of managers, meetings, transferability of membership interests, the payment of distributions, and the dissolution and winding up of the UNA.

B. Limited Cooperative Association (LCA)

What is a cooperative? - A traditional cooperative is an association owned by persons who join together to (1) utilize the association to provide themselves with goods, services or other items, (2) control the association democratically, (3) provide the basic equity financing and (4) share the financial benefits based on their use of the association rather than on their investment.

The traditional cooperative differs from a for-profit entity in that it does not permit outside investment from persons who would have a vote in the way the cooperative is run. It differs from a non-profit entity in that it returns its profits to its members.

Why an LCA? - A main problem facing traditional cooperative associations is that it is difficult to obtain financing due to the inability to admit outside investors who will receive voting rights and the right to share in profits and losses. In order to address this problem NCCUSL drafted the Uniform Limited Cooperative Association Act. The ULCAA created a new business entity called the limited cooperative association (LCA). The ULCAA is not intended to replace the existing state cooperative laws. It is intended to provide those interested in forming a cooperative with another option.

What is an LCA? - An LCA is a cooperative association that has two types of owners. It has investor members, who do not use the cooperative's services. And it has patron members – who do use the cooperative's services. Both investor and patron members have voting rights.

The provisions regarding the formation and operation of LCAs generally contain elements of traditional cooperative statutory and common law and elements of LLC and LP acts. Like LLC and LP acts, LCA acts contain default governance and financial provisions and allow the members to vary those provisions in their governing documents.

LCAs are formed by filing articles of organization with the state business entity filing office that contain basic information such as the LCA's name, name and address of its registered agent, principal office address, purpose, and term of duration. LCAs may be organized for any lawful purpose, profit or not for profit.

LCAs have bylaws that can contain governance and financial rights. LCAs are managed by a board of directors. The LCA statutes also contain provisions for merging, converting, and dissolving a domestic LCA, and authorizing a foreign LCA to do business in the state.

IV. SOME OTHER ALTERNATIVE ENTITIES

A. Master Limited Partnerships

A limited partnership (LP) is a partnership with two classes of owners – general partners who manage the business and have unlimited liability for the LP's debts and obligations, and limited partners who do not participate in management and whose liability is limited to their investment.

An LP is formed by filing a certificate of limited partnership with the state business entity filing office that contains certain basic information such as the LP's name, its agent for service of process' name and address and the name and address of its general partners. An LP doing business in states outside of its state of organization must register as a foreign LP.

A Master Limited Partnership (MLP) is a special kind of LP. It differs from other LPs in two main ways. One is that it is publicly traded. The other is that its activities are limited to engaging in the transportation, storage, and processing of minerals and natural resources.

Although it is publicly traded, an MLP, unlike other publicly traded organizations, is not subject to the corporate income tax. It is a pass-through entity like a regular partnership. Thus, an MLP is an entity that provides both the tax advantages of a partnership and the liquidity of a publicly traded corporation.

MLPs are formed in the same manner as any other LP. Most MLPs today are formed under Delaware law and most are traded on the NYSE. The relationship between the limited partners, who provide the capital, and the general partner, who runs the day-to-day operations, are set forth in the MLP's partnership agreement.

The first MLP was formed in 1981 by the Apache Corporation. Early MLPs operated in a variety of industries. In 1987 the tax law was changed to restrict the use of MLPs. Now, in order to be taxed as a partnership the MLP must receive at least 90% of its income from natural resource based activities.

B. The North Dakota Publicly Traded Corporations Act

On July 1, 2007, the North Dakota Publicly Traded Corporations Act (PTCA) went into effect. This law was referred to as the United States' first "shareholder friendly" state corporation statute. It was intended to provide investors in publicly traded corporations with greater protections than those offered by any other state corporation law.

The law is optional. A North Dakota publicly traded corporation may elect to be governed by the PTCA by so providing in its articles of incorporation.

The provisions of PTCA that are considered “shareholder friendly” include the following:

1. In an uncontested election for directors, each share is entitled to vote for or against or to abstain with respect to each candidate. To be elected, a candidate must receive the affirmative vote of at least a majority of the votes. A director who was not reelected may continue to serve for no longer than 90 days after the date of the public announcement of the results of the election.
2. The articles of organization or bylaws may not fix a term for directors longer than 1 year and may not stagger the terms of directors into groups whose terms end at different times.
3. If a shareholder owning more than 5% of the outstanding shares who owned the shares continuously for at least 2 years nominates one or more candidates for election to the board, the corporation must include the candidate in its proxy statement and make provision for the shareholders to be able to vote on each nominee on the proxy solicited by the corporation.
4. A corporation must reimburse a shareholder who nominates one or more candidates for election for the reasonable actual costs of the solicitation of proxies to the extent the shareholder was successful.
5. Neither the articles of incorporation nor the bylaws may provide for a supermajority quorum or voting requirement for directors or shareholders.
6. A corporation must hold a special shareholders' meeting called by shareholders owning 10% or more of the voting power.
7. The compensation committee must report to the shareholders at each regular meeting on the compensation paid to executive officers. The shareholders are entitled to vote on an advisory basis on whether they accept the report.
8. The chairperson of the board may not serve as an executive officer.

CT

111 Eighth Avenue
New York, NY 10011
855.316.8948
www.ctcorporation.com