

美国纽约州 股份有限公司 注册指引

Guide to Starting a
Corporation
in New York

简介 Introduction

在纽约州,股份有限公司(Corporation)和有限责任公司(LLC)是最普遍的两种公司形式。投资者可以根据自身需要开设相应类型的公司。

- ▶ 纽约州因其卓越的地理位置,一直深受境内外投资者的喜爱。投资者可选择在纽约州设立股份有限公司(Corporation)或有限责任公司(LLC)类型的子公司。股份有限公司的股东以其所持股份为限对公司债务承担有限责任,公司内部的管理结构相对集中。有限责任公司与其类似。但从公司结构和纳税角度出发,股份有限公司(Corporation)依旧是境外投资者的第一选择。
- ▶ 股份有限公司(Corporation)必须依照《纽约州公司法》设立;而有限责任公司(LLC)则必须依照《纽约州有限责任公司法》成立。以上两部法规都可在纽约州政府网站获得。
- ▶ 在美国,注册公司的审批由每个州的州务卿或管理企业的政府部门办理。就纽约州而言,负责审批公司注册机构为“纽约州州务卿”。所有于纽约州注册的公司都需向纽约州州务卿提交注册文档并支付注册费用。

In New York, corporations and limited liability companies (LLCs) are the most prevalent business forms. Each has different characteristics that must be considered carefully because they may be an advantage to certain investors but not to others.

- ▶ Due to the location advantage, the popular option for an overseas company to establish a presence in the US is to incorporate a subsidiary in New York. The subsidiary can be a corporation or an LLC. A corporation offers limited liability and has centralised governance structures. Similarly, an LLC offers limited liability and can have centralised governance structures if the members so elect. While corporations have been and still are the first choice for foreign companies establishing a business presence in New York, LLCs are an acceptable alternative, but careful consideration should be given to the governance and tax aspects discussed below.
- ▶ The main statutes governing New York corporations and LLCs are the New York Business Corporation Law and the New York Limited Liability Company Act. Both statutes are available online.
- ▶ The New York Division of Corporations is the administrative agency responsible for accepting and processing all documents required to be filed to form and register any business entity in New York.



如非另有说明,本报价所述美国纽约州公司,特指根据美国纽约州公司法(Business Corporation Law)注册成立的股份有限公司(Corporation)。

Unless otherwise mentioned, the quotation of U.S. Corporation specifically refers that the Corporation registration is in accordance with the New York State Business Corporation Law.

美国纽约州股份有限公司的主要特点

Major Features of New York Corporation

公司名称

于美国纽约州注册成立的股份有限公司, 其名称必须包含以下其中一个单词: "Company" (公司), "Corporation" (公司), "Incorporated" (公司), "Limited" (有限), "incorporation" (公司), "Corp" (公司), "Co" (公司), "Inc" (公司) 或 "Ltd" (有限公司) 字样。

拟使用的公司名称不可与已注册或预留在案的公司实体名称相同或相近。

Name of Company

The name of a corporation must include one of these words: "Company", "Corporation", "Incorporated", "Limited", "incorporation", "Corp", "Co", "Inc" and "Ltd".

Also, the name of a corporation must be distinguishable from the names that are reserved with the office of the Division of Corporations or from the names on records of each other business entity.

注册资本

《纽约州公司法》对股份有限公司的注册资本并没有做出特别限制, 注册资本金额由股东全权自主决定。

Capital

New York does not have a minimum capital requirement to incorporate a corporation.



股东

《纽约州公司法》并没有对股份有限公司的股东人数做出任何特别的限制。股东可以由一个或多个法人团体或自然人担任，且股东国籍不受限制。

Shareholders

There are no restrictions on the number of shareholders (equity holders) a New York company can have. A corporation can have one or more shareholders. The shareholder can be a legal entity or natural person, without nationality limitation.

成立人

成立人的主要任务是提交注册证书。公司必须于注册证书上注明成立人的名字。所有于纽约州成立的公司都必须有一个成立人。成立人可由自然人或法人团体担任，该成立人不必是纽约州居民。

Incorporators

An incorporator's primary role is to file the Articles of Incorporation. The incorporator's name must be listed on the certificate. An incorporator may be a natural person or legal entity. The incorporator does not have to reside or be incorporated in New York.

董事

《纽约州公司法》除了规定公司董事必须由自然人担任之外，并没有对董事做出其他特别限制。一般情况下，公司的首任董事由股东出任，但公司法并没有要求董事必须持有公司股份。并且，公司法没有对董事的居住地和国籍做出限制。外国人也可以担任董事的职位。

Director

There are no general restrictions or requirements on the appointment of directors, except that they must be natural persons. Typically, the corporation's initial directors consist of one or more of its founders, but there is no statutory requirement that a director must be a shareholder. There is no requirement that the directors must reside in New York or in the US. There is also no requirement that any number of directors must be US citizens or permanent residents. All directors can be foreign citizens.

注册代理及注册地址

《纽约州公司法》规定，所有于纽约州注册成立的股份有限公司都必须有一个位于纽约州的注册代理代其接收法律文书。注册代理可由居住在纽约州的个人或当地公司担任，但注册代理必须在纽约州有实际地址。启源可以为客户安排提供一个位于纽约州的注册代理以满足此项要求。

Registered Agent

All corporations registered in New York must have a registered agent on behalf of the corporations to receive legal documents. A registered agent may be an individual who resides in New York or a business entity that is authorized to do business in New York. The registered agent must have a physical street address in New York. Kaizen can provide a registered agent for your New York corporation.

公司注册证书

所有拟在美国注册成立的公司,都需要由公司成立人向所在州州务卿办公室提交公司注册文档并缴纳注册费用。州务卿办公室进行文档审阅,如果没有问题,则会出具公司注册证书(盖有提交日期及编号)。纽约州股份有限公司的注册证书性质类似香港注册证书(或中国大陆的营业执照)。启源可提供注册证书模板以供客户参考。

Certificate of Incorporation

An Certificate of Incorporation is a form filed with an agency in your state to register your corporation. The corporation needs to submit the Articles of Incorporation to New York registration's office and pay the registration filing fee. The officer will review the document, and mail back the sealed Articles of Incorporation with the filing date and filing number if approved. Kaizen offers a free Articles of Incorporation template that you can use in New York or any state.

公司法规

公司法规(Bylaws),是公司的内部管理制度。这份制度阐述了公司内部的组织结构、职能划分、人事任免等规定。该份文件不同于公司注册证书,只做内部记录用途,无需上交至州政府,但公司法规的编制必须严格遵照纽约州法律规定。首份公司法规必须经由董事或成立人签署生效。

Bylaws

A corporation's bylaws are its internal rules and operating procedures. They are not filed with the Division of Corporations. Bylaws may include any provisions relating to the business and affairs of the corporation or the rights and powers of the corporation and its directors, officers, shareholders and employees. Bylaws cannot include anything that is inconsistent with the law or the Articles of Incorporation. The incorporators or directors must approve initial bylaws.



股份有限公司与责任有限公司比较

Corporation VS LLC

在美国纽约州, 股份有限公司 (Corporation) 和有限责任公司 (LLC) 是最受欢迎的两种公司形式。两种公司形式各有特点, 投资者可根据自身需要决定注册哪种形式的公司。

In New York, corporations and limited liability companies (LLCs) are the most prevalent business forms. Each has different characteristics that must be considered carefully because they may be an advantage to certain investors but not to others.



相同 Similarities

无论是股份有限公司还是责任有限公司, 股东(成员)以自身的出资额为限, 对公司债务承担有限责任。股东(成员)不以个人财产对公司债务承担责任。

Both corporations and LLCs shield their owners from personal liability. The shareholders of a corporation and the members of an LLC are not personally liable for the debts, obligations and liabilities of the entity.

股份有限公司和有限责任公司都可以选择永久存在。

New York corporations and LLCs have a statutory right to exist perpetually and continue in existence even if the original principals depart.

不同 Differences

税务申报

股份有限公司(Corporation)可能面临双重征税。股份有限公司不仅自身要申报并缴纳公司所得税, 股东也要根据从公司收到的收入, 申报缴纳个人所得税(当股东为个人时)或公司所得税(当股东为公司实体时)。但是, 股份有限公司可以选择留存收益不分配, 作为公司发展和运营金, 直至250,000美元(个人服务类公司为150,000美元)。选择此种方式, 则股东不需要对这部分金额缴纳所得税, 有效避免了双重征税。但若公司留存超过250,000美元(个人服务类公司为150,000美元), 不仅要超出部分征收所得税, 还需支付额外20%的惩罚性税款。

与之相反的是, 有限责任公司(LLC)在有大于2名成员时, 被默认为穿透主体(Pass-Through Entity)。有限责任公司(LLC)需要提交所得税税表, 但是不需要缴纳所得税, 因为有限责任公司(LLC)的利润已经根据成员持有的份额穿透延申到成员的所得税税表, 不管收益是否分配。成员需要将由公司穿透延申过来的收入体现到自身的所得税表中。值得注意的是, 若有限责任公司亏损, 成员在所得税申报时可享受部分抵减。

Taxation

A corporation's income may subject to double taxation. A corporation must pay taxes on its income when earned, and the shareholders must pay taxes on any dividends or other distributions they received from the corporation. However, the corporation can choose to retain the earnings to finance growth and reasonable needs of the business till USD 250,000 (USD 150,000 for personal service corporation) to avoid double taxation. Accumulated Earnings Tax with tax rate 20%, in addition to regular income tax, will be applied on corporations for unreasonably accumulating earnings, which is the amount exceeds USD 250,000 (USD 150,000 for personal service corporation).

In contrast, LLCs have the advantage of flow-through taxation. An LLC does not pay entity-level taxes on its income; instead, profits and losses pass through to the members, then the members will report the apportioned profits on their own income tax returns with applicable tax rates, regardless of whether the income is distributed or not. If the LLC is profitable but does not distribute any cash to the owners, the owners are still taxed on the income of the LLC. That is one potential downside of the LLC. However, pass-through taxation can be advantageous if the owners can anticipate and take advantage of company losses on their own tax returns.

不同 Differences

管理结构

股份有限公司的组织结构较为集中。股份有限公司的经营管理由董事会决定，股东并不参与公司的日常运营。但是，股份有限公司一些重要决策如合并，必须由股东大会表决通过。而对于有限责任公司，根据经营协议，成员可以自己或雇佣经理参与公司的日常经营管理活动。

Management

Corporations have mandatory centralised management. Control of the business and affairs of the corporation is vested in the corporation's board of directors, and the shareholders are generally not involved in the day-to-day management of the affairs of the corporation. However, shareholder's approval is required for certain significant transactions such as mergers. On the other hand, LLCs can be managed either by the members themselves or by managers appointed by the members.



股份有限公司的注册程序

Corporation Registration Procedures

1 确定公司名称 Choose a Corporate Name

拟使用的公司名称不可与已注册或预留在案的公司名称相同或相近。启源可为您进行公司名称的查重,以确定拟用的公司名称的可用性。您也可以选择在網上申請預留公司名稱。

Your corporation's name must not be deceptively similar to the names of other business entities already on file with the New York Division of Corporations. Names may be checked for availability by searching the New York Division of Corporations business name database. You can reserve a name online through the New York Division of Corporations website.

2 编制公司注册 所需文档 Prepare and File Certificate of Incorporation

所有拟在美国注册成立的公司,都需要向所在州州务卿办公室提交公司注册文档并缴纳注册费用。州务卿办公室进行文档审阅,如果没有问题,则会出具公司注册证书(盖有提交日期及编号)。注册文档可通过网上或邮寄提交。公司注册文档须包含公司名称、纽约州注册代理和注册地址、公司邮寄地址、公司准许发行的股票数量及面值,及成立人的姓名。

Your corporation is legally created by filing an Certificate of Incorporation with the New York Division of Corporations. Articles can be filed by postal mail or online system and you must include a Filing Cover Memo. The articles must include the corporation's name; the registered office name and street address in New York; the number of shares authorized to issue and par value; the mailing address and the name of the incorporator.

3 委任纽约州 注册代理 Appoint a Registered Agent

所有于纽约州注册成立的公司都必须有一个注册代理。注册代理必须同意代表拟注册公司接收法律文书或商业信件。注册代理可由居住在纽约州的个人或当地公司担任,但该注册代理必须在纽约州有实际地址。

Every New York corporation must have an agent for service of process in the state. This is an individual or corporation that agrees to accept legal papers on the corporation's behalf if it was sued. The agent should agree to accept service of process on your corporation's behalf prior to designation. The agent may be an individual New York resident, or a business entity authorized to do business in New York. The registered agent must have a physical street address in New York.

4 设立一个公司 文件档案 Set Up a Corporate Records Book

设立一个公司文件档案, 以方便您保存如股票书、股东登记册、董事登记册、股权转让名册以及会议记录册等重要资料。公司文件档案应妥善保管在股份有限公司办公室。

Set up a corporate records book in which you keep all your corporation's important papers, including minutes of director and shareholder meetings, stock certificates, and stock certificate stubs. Keep your corporate records book at the principal office of your corporation.

5 编制公司法规 Prepare Corporate Bylaws

公司法规 (Bylaws), 是股份有限公司的内部管理制度。该份文件只做内部记录用途, 无需上交至州政府。虽然公司法规并不是纽约州公司注册的硬性要求, 但启源建议您编制一份公司法规, 以规范公司的管理结构, 并满足可能产生的合规性要求。

Bylaws are an internal corporate document that set out the basic ground rules for operating your corporation. They are not filed with the state. Your corporation is not legally required to have corporate bylaws, but you should adopt them because they establish your corporation's operating rules, and help show banks, creditors, the IRS, and others that your corporation is legitimate.

6 指定公司首任 董事 Appoint Initial Corporate Directors

公司的董事会的首任成员由公司成立人指定。董事会的更换由股东大会表决决定。公司成立人需要填写并签署“公司成立人声明”, 显示所指定的首任董事的姓名和地址。此声明及副本需在公司文件档案处妥善保管。

The incorporator, the person who signed the Certificate of Incorporation, must appoint the initial corporate directors who will serve on the board until the first annual meeting of shareholders (when the board members who will serve for the next term are elected by the shareholders). The incorporator must fill in an "Incorporator's Statement" showing the names and addresses of the initial directors. The incorporator must sign the statement and place a copy in the corporate records book. The statement need not be filed with the state.



7 召开首次董 事会 Hold Your First Board of Directors Meeting

公司首次董事会应由首任董事组织召开。首次董事会应通过如公司章程、银行开立、授权发行的股票数目、会计年度选择、股票证书形式、公司印章形式等一系列决策。董事所通过的决策必须通过会议记录的形式记录在册。值得注意的是，若公司选择以S公司的形式申报，必须有记录显示董事会同意该决议。

The first meeting of the corporation's board of directors should be held at which the directors can appoint corporate officers, adopt bylaws, select a corporate bank, authorize the issuance of shares of stock, set the corporation's fiscal year, and adopt an official stock certificate form and corporate seal. The directors' actions must be recorded in corporate minutes prepared by the incorporator or any of the directors and approved by the board of directors. Additionally, if the corporation will be an S corporation, the directors should approve the election of S corporation status.

8 发行股票 Issue Stock

向股东发行股票。大多数州对股票的发行没有硬性要求，但小公司一般选择发行纸质股票证书，并在公司股票流通记录中填写每个股东的姓名和联系信息。

虽然公司发行的股票根据联邦、州证券安全法应划分为证券，但美国联邦和所有州都对大多数小型企业豁免此项分类。例如，联邦法律豁免了“非公开发售”的股票：即采用非广告形式，出售给限定群体（通常指35人或以下）的股票不被划分为证券。

Issue stock to each shareholder. Although not legally required in most states, small corporations usually issue paper stock certificates. Enter each shareholder's name and contact information in the corporation's stock transfer ledger.

A share of stock in your corporation is classified as a security under state and federal security laws that regulate the offer and sale of corporate stock. However, the federal government and all states exempt most small corporations from these laws. For example, federal law exempts "private offerings" a non-advertised sale to a limited number of people (generally 35 or fewer). Most states have enacted their own versions of this SEC exemption.



在纽约州成立一家公司，你需要采取以上步骤。

To form a corporation in New York, you need to take the steps set forth below.

股份有限公司的合规维护

Compliance Requirements

纽约州年检申报要求

所有于纽约州注册的股份有限公司必须每两年向纽约州政府提交年检报告。

- ▶ 年检报告必须阐明:1) 其首席执行官或主要员工的姓名和营业地址;2) 其主要行政办公室的地址;3) 可代其收寄政府邮件的邮寄地址。

Comply with New York Annual Renewal Requirements

All active business activities registered at New York must file Biennial Statement with the New York Department of State every two years. The statement is due by the last day of the registration anniversary month.

- ▶ The Biennial Statement must set forth: (i) the name and business address of its chief executive officer, (ii) the street address of its principal executive office and (iii) the address to which the New York Department of State shall forward copies of process accepted on behalf of the corporation.

其他合规性要求

Comply with Other Tax and Regulatory Requirements

所有于美国成立的股份有限公司都必须申请雇主识别编号 (Employer Identification Number)。若公司负责人有美国社会安全号 (SSN)，则可通过美国国税局网络系统在线申请雇主识别编号。否则，只能通过邮寄方式，纸质申请该编号。

Your corporation must obtain a federal employer identification number (EIN). EIN can be obtained by completing an online application on the IRS website if the responsible person has SSN. Otherwise, EIN application can only be filed via postal mail.

雇主识别编号 (EIN)
EIN

若股份有限公司的所有股东都是税务居民，可以选择作为S公司进行申报，则必须向政府提交由全体股东签字的2553表格。该表格必须在所选纳税年度开始之前，或纳税年度开始的两个半月内进行提交申报。

Only the corporation whose shareholders are all tax residents can elect S corporation status for tax purposes, it must submit Form 2553 Election by a Small Business Corporation (signed by all the shareholders). The election should be filed within two months and 15 days after the beginning of the tax year the election is to take effect, or at any time during the tax year preceding the tax year it is to take effect. See the IRS S Corporation Fact Sheet for details.

S公司申报
S Corporation Filing

您的纽约州股份有限公司是否需要申请营业执照及需要申请哪些营业执照，与您的纽约州公司所经营业务及经营场所所在地有关。详情请向启源顾问咨询。

Depending on the type of business and where it is located, your corporation may need to obtain other state and local business licenses.

营业执照
Business Licenses



额外的税收和监管要求适用于您的公司。这些包括：

Additional tax and regulatory requirements apply to your corporation. These include:

股份有限公司的税收规定

Taxation

1 纽约州 所得税 申报 Corporate Income Tax

如果您公司在纽约州成立或在州内经营,则必须申报并支付纽约州所得税。纽约州所得税于每年4月15日截止申报。纽约州股份有限公司所得税包括特许经营税和MTA税。特许经营税按照营业收入应纳税额,资本应纳税额,或最低固定税额三者之中的最大额确定。MTA税主要适用于在纽约大都会交通区域内(包括纽约市及附近的区域)经营的公司,若不在此区域内,则无需缴纳MTA税额。

Business entities incorporated or do business in New York State must file and pay business taxes. The tax is due on or before April 15. New York corporations are subject to franchise tax and metropolitan transportation business (MTA) tax. The amount of the franchise tax is the highest of business income, business capital or fixed dollar minimum tax. MTA tax only applies to corporations that do business in the Metropolitan Commuter Transportation District.

2 纽约州 纽约市 所得税 申报 Gross Receipts Tax

如果您公司注册在纽约州纽约市,还必须申报纽约市所得税。纽约市所得税于每年4月15日截止申报。纽约市股份有限公司的所得税,应该按照营业收入应纳税额,资本应纳税额,或最低固定税额三者之中的最大额确定。

If your company is registered in New York state, you must also file New York City income tax returns. New York City income tax returns close each year on April 15. The income tax of a New York City corporation shall be determined by the largest of the three: the taxable income, the taxable capital, or the minimum fixed tax.

3 联邦 所得税 申报 Federal Income Tax

根据国税局 (IRS) 规定,所有股份有限公司无论他们是否有应纳税所得额,若按照日历年度报税,则都必须在每年4月15日或之前提交所得税申报表,延期后的截止日期为10月15日。需要注意的时,即使延长了申报时间,公司也必须在纳税申报表的截止日期(不包含延期)前支付所有的应交税款,否则会产生相应的罚款和利息。

According to Internal Revenue Service (IRS), all business entities must file an income tax return on or before the following April 15th of the tax year, or Oct 15th with extension, if calendar year is applied on tax purpose. However, the business entity must pay the tax due in full no later than the original due date for filing its tax return (not including extensions). Interest and penalty will be charged on taxes paid late even if an extension of time to file is granted.



在纽约州注册成立的公司应缴纳以下类型的税款:

A New York corporation is subject to the following taxes:

外州公司

Foreign Corporations Doing Business in New York

所有于纽约州州外成立的股份有限公司,在纽约州开展业务之前,都必须向纽约州州务卿办公室提交注册文档,注册为纽约州外州公司。外州公司也必须在纽约州指定一个注册代理。该注册代理必须在纽约州有实际地址。需要注意的是,该外州公司在向纽约州州务卿办公室提交注册文档前,还需额外提供一份其在原注册州6个月内取得的公司证明文件。

All corporations organized outside of New York must register with the New York Division of Corporations to do business in New York. Foreign corporations must appoint a registered agent for service of process physically located in New York. To register, file the State of New York Qualification Certificate of a Foreign Corporation. The completed certificate must be accompanied by a Certificate of Existence, dated within 6 months prior to the filing of the certificate, from the foreign corporation's home state.



服务范围

<h2>公司注册</h2> <ul style="list-style-type: none"> ✓ 公司组建注册 ✓ 银行账户办理 ✓ 公司秘书 ✓ 注册地址 ✓ 维护变更 ✓ 注销清盘 	<h2>审计、会计</h2> <ul style="list-style-type: none"> ✓ 财务咨询 ✓ 尽职调查 ✓ 会计记账 ✓ 法定审计 ✓ 专项审计 	<h2>税务</h2> <ul style="list-style-type: none"> ✓ 税务咨询 ✓ 税务筹划 ✓ 税务申报 ✓ 税务审查 ✓ 转移定价
<h2>签证</h2> <ul style="list-style-type: none"> ✓ 工作签证 ✓ 商务签证 ✓ 创业准证 ✓ 投资移民 ✓ 技术移民 	<h2>人事</h2> <ul style="list-style-type: none"> ✓ 员工雇佣 ✓ 劳务派遣 ✓ 工资发放 ✓ 人事管理 ✓ 劳动法咨询 	<h2>知识产权</h2> <ul style="list-style-type: none"> ✓ 商标注册和延展 ✓ 商标侵权 ✓ 商标监控 ✓ 外观设计注册 ✓ 专利注册 ✓ 域名登记

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申请企业所得税优惠和个人所得税优惠是一项非常专业的工作,如有失误,可能导致申请并不成功。
 如果您需要专业优质的服务,请联系启源会计师事务所,我们的专业服务顾问,会为您提供详尽的解决方案。

如果您需要进一步的信息或协助,烦请您浏览本所的官方网站 www.kaizencpa.com
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