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Guide to Starting a Corporation in New York

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

Introduction

In New York, corporations and limited liability companies (LLCs) are the most prevalent business forms. Investors must consider each type of business form carefully because one business form may be an advantage to certain investors but not to others.

Due to the location advantage, New York is one of the most popular options for both domestic and foreign investors. Investors can choose to establish a corporation or an LLC subsidiary in New York. A corporation offers limited liability to its shareholder and has centralized governance structures. An LLC has the similar characteristics. While the corporation is the first choice for foreign investors, the LLC is an acceptable alternative. Whatever type of business is chosen, investors should carefully consider the governance and tax aspects discussed below.

New York corporations and LLCs must be established in compliance with New York General Corporation Law and New York Revised Uniform Limited Liability Company Act separately. Both statutes are available online.

The New York Division of Corporations is the administrative agency, and is responsible for accepting and processing all required documents and application fees to register a business entity in New York.

1. Major Features of New York Corporation

(1) Name of Company

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

In addition, the name of a corporation must be distinguishable from the names reserved or already registered with the office of the Secretary of State.

(2) Capital

New York does not have a minimum capital requirement to incorporate a corporation. The shareholders can decide the amount of initial capital.

(3) Shareholders

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

(4) Incorporators

An incorporator's primary role is to file the Certificate of Incorporation. The incorporator's name must be listed on the certificate. All the business registered in New York need an incorporator. The incorporator should be a natural person, but not have to reside in New York.

(5) Directors

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.

(6) 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 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 corporation in New York.

(7) Certificate of Incorporation

Articles of Incorporation is the official document received from New York state registration office after the registration is approved.

To register a corporation in New York, the incorporator needs to submit the application form to New York registration's office and pay the registration filing fee. The officer will review the document, and mail back the sealed Certificate of Incorporation with the filing date and filing number if approved. Kaizen offers a free Articles of Incorporation template for your reference.

(8) Bylaws

Bylaws is a corporate's internal rules and operating procedure, it's not required to file with the Secretary of State. Bylaws may include internal organizational structure, responsibility of each position, and personnel appointment and removal, etc. Bylaws cannot include anything that is inconsistent with the New York law. The incorporators or directors must sign on the initial bylaws.

2. Corporation VS LLC

Similarities:

(1) Limited Liability

Both corporations and LLCs shield their owners from personal liability. The shareholders/the members take on limited liability of the corporations or LLCs up to their percentage of stocks/shares, but not personally liable for the debts, obligations and liabilities of the entity.

(2) Perpetual Existence

New York corporations and LLCs have a statutory right to exist perpetually.

Differences:

(1) Taxation

A corporation may subject to double taxation. Specifically, a corporation must file and pay corporate income tax during each taxable year, and the shareholders must pay taxes on any dividends or other distributions during the taxable year when they got them from the corporation. However, the corporation can choose to retain the earnings to finance growth and reasonable needs of the business up to USD 250,000 (USD 150,000 for personal service corporation) to avoid double taxation temporarily. However, if the retain earnings exceed USD250,000 (USD 150,000 for personal service corporation), Accumulated Earnings Tax with tax rate 20% will be added to regular income tax.

In contrast, an LLC with 2 or more members, is deemed as a pass-through entity. An LLC should file tax return, but not pay entity-level taxes on its tax return; instead, profits and losses should pass through to the members, then the members will add the apportioned profits on their own income tax returns with applicable tax rates, regardless of whether the income is distributed or not. Specifically, if the LLC is profitable but does not distribute any cash to the owners, the owners are still subject to tax on the income of the LLC. Similarly, the owners can take advantage of company losses on their own tax returns.

(2) Management

Corporations have comparably centralized management. The board of directors participate in daily operation, while the shareholders generally are not involved in the day-to-day affairs of the corporation. However, shareholders' 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.

3. Corporation Registration Procedures

(1) Choose a Corporate Name

Proposed corporation name cannot be similar to other names that already on file with New York Secretary of State. Kaizen can check the name availability for you. Also, you can reserve a name online through New York Secretary of State website.

(2) Prepare and File Certificate of Incorporation

To register your corporation in New York, the application form and the application fee should be submitted to New York Secretary of State via online system.

The application form includes 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) Appoint a Registered Agent

Every corporation in New York 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.

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 address in New York.

(4) Setup a Corporate Records Book

Set up a corporate records book in which you keep all your corporation's important papers, including stock certificates, list of shareholders, list of directors, shareholder transfer ledger, meeting minutes, etc. Keep your corporate records book at the principal office of your corporation.

(5) Prepare Corporate Bylaws

Bylaws is an internal corporate document that sets out the basic rules for operating your corporation. A corporation is not legally required to have bylaws; however, Kaizen advise you to prepare it in record. Because it specified the corporate's management practice and other aspects which should be followed to meet the compliance requirements.

(6) Appoint Initial Corporate Directors

The incorporator must appoint the initial corporate board of directors, while the board members who will serve for the next term are elected by the shareholders. The incorporator must fill an "Incorporator's Statement" showing the names and addresses of the initial directors. The statement should be placed in the corporate records book.

(7) Hold Your First Board of Directors Meeting

The first meeting of the initial board of directors should be held about appointing corporate officers, adopting bylaws, selecting a corporate bank, authorizing the issuance of shares of stock, setting the corporation's fiscal year, and adopting an official stock certificate form and corporate seal. All the directors' actions should be recorded the in minutes.

(8) Issue Stocks

Although most states do not have legal requirements, small corporations usually issue paper stock certificate, and record each shareholder's name and contact information in the corporation's stock transfer ledger.

4. Compliance Requirements

(1) Annual Renewal Requirements

All active corporations registered in New York must file Biennial Statement with New York Department of State every two years. Failure to file the required Statement of Information may result in penalties assessed by the Franchise Tax Board and suspension or forfeiture.

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 New York Department of State shall forward copies of process accepted on behalf of the corporation.

(2) Other Regulatory Requirements

(a) EIN

All the U.S. 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 or fax.

(b) S Corporation Filing

Only all the shareholders of the corporation who are tax residents can elect S corporation status for tax purposes. The corporate must submit Form 2553 which should be signed by all the shareholders. The election should be filed within two months and 15 days after the beginning of the tax year on which the election is to take effect, or at any time during the tax year preceding the tax year it is to take effect.

(c) Business Licenses

Depending on the type of business activities and the physical location, your corporation may need to obtain other state and local business licenses. Please consult with Kaizen consultants for more details.

5. Taxation

A New York corporation is subject to the following taxes:

(1) New York State Corporate Income Tax

Every business entity doing business in New York is required to file a state income tax return regardless of the amount, if any, of its net taxable income. New York state corporate income tax returns are due on the 15th day of the fourth month after the close of the year.

New York corporations are subject to franchise tax and metropolitan transportation business (MTA) tax, if any. 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) New York City Corporate Income Tax

Business entities incorporated or do business in New York City must file and pay business taxes. The tax is due on or before April 15. The amount of the corporation income tax is the highest of business income, business capital or fixed dollar minimum tax.

(3) Federal Income Tax

According to the Internal Revenue Service (IRS), all business entities, regardless of the taxable income, if any, 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.

6. Foreign Corporations Doing Business in New York

All corporations organized outside of New York must register with 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. It should be noted that the Certificate of Existence dated within 6 months prior to the filing of the certificate is required from the foreign corporation's home state.

If you wish to obtain more information or assistance, please visit our official website at www.kaizencpa.com or contact us through the following means:

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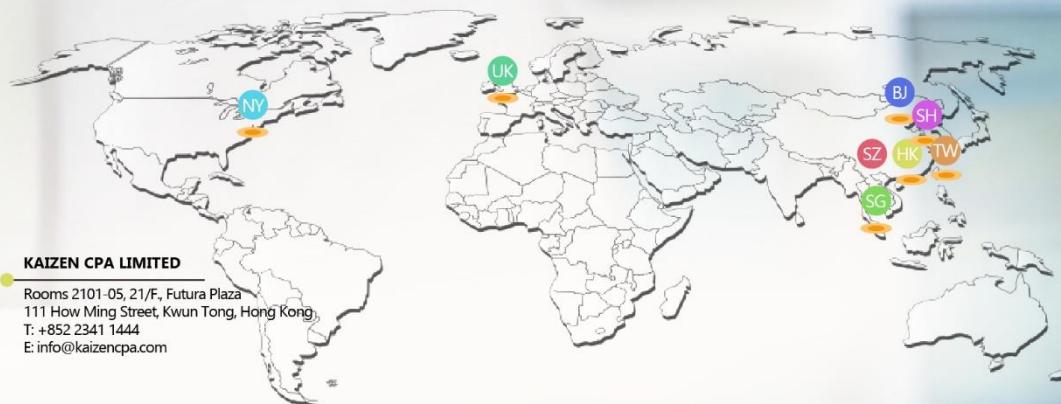
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