

Table of Contents

CHAPTER 1. CHOOSING THE FORM OF BUSINESS ORGANIZATION AND WHERE TO ORGANIZE

- § 1:1 The basic choices
- § 1:21 The tax, service of process on nonresidents, and other burdens of incorporating in Delaware

CHAPTER 2. AGENCY CONSIDERATIONS

- § 2:2 Creation of the agency relationship
- § 2:2.50 Agent versus independent contractor *[New]*
- § 2:5.50 Implied authority—In Limited Liability Company context *[New]*
- § 2:7 Apparent authority
- § 2:8.50 Apparent authority—In unincorporated association context *[New]*
- § 2:9 Apparent authority—In corporate context
- § 2:10 Apparent authority—In tort context
- § 2:11 Ratification
- § 2:12 Liability in general
- § 2:14 Liability of agent to third party
- § 2:15 Liability of agent to principal; liability of principal to agent *[Retitled]*
- § 2:16 Imputation of agent's knowledge to principal
- § 2:19 Fiduciary duty of an agent

CHAPTER 3. PARTNERSHIP

- § 3:1 Introduction; creation of a partnership or joint venture *[Retitled]*
- § 3:3 Apparent partnership or partnership by estoppel
- § 3:6 Mutual agency
- § 3:7 Division of profits and losses
- § 3:10 Liabilities of the partnership and partners to third parties
- § 3:18 Fiduciary duty of partners
- § 3:21 Dissolution and dissociation
- § 3:25 Merger and conversion

CHAPTER 4. LIMITED PARTNERSHIP

- § 4:6 The partnership agreement
- § 4:16 Derivative actions
- § 4:17 Fiduciary duty of general partners to limited partners
- § 4:19 Merger and conversion

CHAPTER 5. LIMITED LIABILITY COMPANY

- § 5:1 The development of the limited liability company concept
- § 5:2 Introduction to the Illinois LLC Act
- § 5:4 Formation of LLC; member or manager managed; operating agreements
- § 5:5 Finance: capital, distributions, and capital calls *[Retitled]*
- § 5:7 Liability for personal conduct
- § 5:9 Liability for improper distributions
- § 5:10 Liabilities arising out of dissolution
- § 5:11 Liability stemming from piercing the entity veil
- § 5:12 Management and agency powers
- § 5:13 Compensation and reimbursement
- § 5:14 Transferability; transferee and creditors rights
- § 5:15 Dissolution, involuntary dissolution, and reinstatement *[Retitled]*
- § 5:16 Dissociation
- § 5:17 Statutory repurchase of dissociated member's interest
- § 5:18 Judicial dissolution or other remedy for oppression *[Retitled]*
- § 5:19 Fiduciary duties—Statutory provisions
- § 5:20 Fiduciary duties—Case law development
- § 5:21 Records and right of inspection
- § 5:23 Merger and conversion
- § 5:24 Derivative actions and actions brought directly by a member *[Retitled]*
- § 5:26 Series LLCs

CHAPTER 6. FORMATION OF CORPORATIONS

- § 6:2 Preincorporation transactions—Promoter's liability
- § 6:3 Preincorporation subscription agreement
- § 6:11 Registered agent and registered office
- § 6:18 Bylaws: adoption, amendment, and content
- § 6:19.50 Annual report *[New]*
- § 6:23 Benefit corporations *[New]*
- § 6:24 Admission of foreign corporations *[New]*

CHAPTER 7. FINANCING THE CORPORATION

- § 7:19 Preemptive rights
- § 7:22 Intrastate offering exemption *[Retitled]*
- § 7:23 Rule 147 and 147A—Safe harbor *[Retitled]*
- § 7:24 Section 3(b): small offering exemption
- § 7:27 Regulation D
- § 7:28 Rule 504: the small offering exemption
- § 7:29 Rule 505: exemption for limited offers not exceeding \$5 million
- § 7:30 Rule 506: exemption for limited offers without regard to dollar amount

TABLE OF CONTENTS

- § 7:32 Regulation A—Conditional small issues exemption
- § 7:33 Rule 144: the resale safe harbor
- § 7:33.50 Integration *[New]*
- § 7:38 The Jumpstart Our Business Startups Act (JOBS Act) *[New]*

CHAPTER 8. LIABILITY OF SHAREHOLDERS AND OTHERS NOTWITHSTANDING THE FORMATION—OR ATTEMPTED FORMATION—OF A CORPORATION

- § 8:3 Defective incorporation/administrative dissolution
- § 8:9 Piercing the corporate veil—In general
- § 8:10 Fraud or injustice
- § 8:11 Inadequate capitalization
- § 8:16 Commingling of funds and assets
- § 8:17 Failure to observe corporate formalities and ritual
- § 8:19 Parent/subsidiary situations
- § 8:20 Brother/sister corporations
- § 8:21 “Reverse” piercing the corporate veil
- § 8:22 Liability of shareholders, officers, directors, and limited liability company members because of personal conduct
- § 8:23 Procedural issues
- § 8:25 “Direct participant” parent corporation liability for acts of its subsidiary

CHAPTER 9. SHAREHOLDER PROCEDURES AND VOTING

- § 9:1 Meetings of shareholders
- § 9:5 Voting lists
- § 9:20 Shareholder derivative suits—In general
- § 9:21 Distinction between direct suits and derivative suits
- § 9:22 Procedural requirements—In general
- § 9:23 Demand required versus demand excused
- § 9:24 Recovery in derivative suits; attorney’s fees
- § 9:25 Inspection of books and records by directors and shareholders
[Retitled]

CHAPTER 10. SHAREHOLDER AGREEMENTS AND FIDUCIARY DUTIES

- § 10:2 Shareholder fiduciary duties in Illinois
- § 10:3 When do fiduciaries’ duties end
- § 10:14 Restricting the transfer of shares
- § 10:18 Validity of restrictions on transfer of shares

CHAPTER 11. POWERS AND DUTIES OF DIRECTORS AND OFFICERS

- § 11:1 Duties and responsibilities—Background

BUSINESS ORGANIZATIONS, 2D—ILLINOIS PRACTICE SERIES

- § 11:4 Powers of directors—Nonstatutory
- § 11:5 Powers of directors—Election of officers
- § 11:6 Powers and fiduciary duties of officers
- § 11:9 *De jure v. De facto* directors and officers [*Retitled*]

Table of Contents

CHAPTER 12. COMMITTEES OF THE BOARD OF DIRECTORS

§ 12:3 Audit committees

CHAPTER 13. THE DUTY OF CARE

§ 13:2 Duty of care—Illinois decisions

§ 13:3 Duty of care—Other jurisdictions

§ 13:6 Statutory approaches to the duty of care

CHAPTER 14. THE DUTY OF LOYALTY

§ 14:1 Duty of loyalty—In general

§ 14:5 The elusive concept of fairness

§ 14:6 The significance of disclosure

§ 14:8 Misappropriation of assets by officer or director

§ 14:9 Compensation of officers and directors as a conflict of interest

§ 14:11 What is a corporate opportunity

§ 14:13 The importance of tendering the opportunity to the corporation

§ 14:14 Remedy for corporate opportunity—Constructive trust
[Retitled]

§ 14:15 Competing with corporation—Introduction

§ 14:16 Relation between corporate opportunity and competing with the corporation

§ 14:18 Impermissible pretermination activity

§ 14:19 Under what circumstances do pretermination duties extend into the posttermination period

§ 14:21 Damages, including punitive damages, forfeiture, and other relief in competition and other duty of loyalty cases
[Retitled]

§ 14:22 Trade secrets

§ 14:23 Covenants not to compete—Individual *[Retitled]*

§ 14:23.50 Covenants not to compete in connection with the sale of a business *[New]*

§ 14:24 Aiding and abetting a breach of fiduciary duty

§ 14:25 Fiduciary duty to creditors

§ 14:26 Fiduciary duty of officers and employees

CHAPTER 15. ANTIFRAUD UNDER FEDERAL & STATE SECURITIES LAWS

§ 15:2 The Securities Act of 1933

§ 15:3 The Securities Exchange Act of 1934 and Rule 10b-5

- § 15:5 The Private Securities Litigation Reform Act of 1995
(PSLRA)—Overview and the issue of scienter *[Retitled]*
- § 15:6 Scienter: from PSLRA to *Tellabs*
- § 15:7 Fraud—In general and the *Santa Fe* standard
- § 15:9 Deception of the public by the corporation
- § 15:9.50 Criminal liability for management in creating false information disseminated to shareholders *[New]*
- § 15:11 Insider trading
- § 15:14 Causation: reliance and the fraud on the market theory
[Retitled]
- § 15:16 Causation: loss causation
- § 15:17 Bespeaks caution
- § 15:18 PSLRA—Pleading with particularity *[Retitled]*
- § 15:19 PSLRA—Safe harbor for forward-looking statements
[Retitled]
- § 15:20 Aiding and abetting
- § 15:21 Damages
- § 15:24 Express civil remedies under the securities laws
- § 15:25 The Securities Litigation Uniform Standards Act of 1998
- § 15:27 The Illinois Blue Sky version of Rule 10b-5
- § 15:28 Rescission under Illinois Blue Sky Law

CHAPTER 17. ORGANIC CHANGES

- § 17:17 Asset acquisitions
- § 17:21 Merger or consolidation
- § 17:22 Mere continuation
- § 17:23 Fraud
- § 17:25 Expansion of the mere continuation exception
- § 17:27 Jurisdictions adopting the product line theory
- § 17:29 Successor liability in Illinois—Background

CHAPTER 18. DISSOLUTION OF A CORPORATION AND ALTERNATIVES TO DISSOLUTION

- § 18:6 Survival of remedies for dissolved corporation
- § 18:10 Administrative dissolution
- § 18:11 Reinstatement of administratively dissolved corporations
- § 18:16 The development of the concept of oppression
- § 18:23 Appointment of a provisional director or custodian and related alternative remedies *[Retitled]*
- § 18:24 The significance of 1995 amendments dealing with dissolution and alternative remedies
- § 18:26 Propriety of pre-judgment and post-judgment interest; attorney's fees *[Retitled]*
- § 18:27 Statute of limitations in BCA § 12.56 actions *[New]*
- § 18:28 Oppression litigation—Standing issues including whether action is direct or derivative *[New]*

Table of Laws and Rules

Table of Cases

Index