

ARTICLE

Overhaul of District of Columbia Laws on Business Organizations

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In December of 2010 the Council of the District of Columbia approved a major overhaul of the District of Columbia's laws governing the organization of business entities in the nation's capital, the "District of Columbia Official Code Title 29 (Business Organizations) Enactment Act of 2010." Mayor Gray signed the bill in February and it is expected to become law by the end of May, 2011, when the 30 legislative day Congressional review required for all D.C. legislation has been completed. The new law will take effect on January 1, 2012, assuming it gets the required funding in the District's 2012 fiscal year budget. The enactment of this law is a significant step in the District's long range plan to become a more attractive location for business activities.

The District of Columbia has for many years been considered an unfavorable venue for private enterprise, not least because of its outdated and sometimes inconsistent laws governing the formation of business entities, some of which date back to the 19th century. For example, current law does not accommodate electronic commerce (documents must be filed in hard copy) or have provisions for transactions among different types of entities. Historically, it has not been uncommon for lawyers practicing in the District to recommend to their clients to form entities under the laws of other jurisdictions, such as Delaware, Maryland or Virginia. In the March 30, 2010 public hearing on this legislation, held by the Committee on Public Safety and Consumer Affairs, one witness noted that the District ranked last —51 out of 51 jurisdictions rated—in the 2009 Business Survival Index, making it the least friendly jurisdiction for entrepreneurship. The new statute will repeal existing laws dealing with business organizations and replace them with a unified and modern law, based on the latest

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versions of model laws published by the Uniform State Law Commission and the American Bar Association (ABA). Much of the language of the new statute mirrors laws in other jurisdictions that have adopted model acts. With the passage of the new code, the District Government is hopeful that practitioners will begin advising their clients to form entities in the District of Columbia.

One of the authors of this article, Lawrence Mirel, served as District of Columbia Commissioner of Insurance, Securities and Banking from 1999 to 2005, as well as a member of the ad hoc committee that drafted the new Business Organizations Act. In his testimony at the March 30 public hearing, Mr. Mirel noted that when he was Commissioner he urged the Council to enact the principal model laws developed by the National Association of Insurance Commissioners for the regulation of insurance, and the Council did so. Since then the District has become an attractive jurisdiction for insurers, with more than 140 captive insurance companies now domiciled there. He testified that the enactment of uniform business organization laws, developed carefully by leading experts, can transform the District into an attractive jurisdiction for commercial business entities and nonprofit organizations.

The new statute follows a "hub and spoke" structure comprising 12 chapters. The first chapter contains rules and definitions common to all forms of business organizations, such as registration requirements for domestic and foreign organizations, the use of names, the requirements for a registered agent and dissolution requirements. Chapter 2 deals with entity transactions, such as mergers and acquisitions.

The remaining 10 chapters are each specific to a particular type of business organization, namely business corporations (Chapter 3), nonprofit corporations (Chapter 4), professional corporations (Chapter 5), general partnerships (Chapter 6), limited partnerships (Chapter 7), limited liability companies (Chapter 8), general cooperative associations (Chapter 9), limited cooperative associations (Chapter 10), unincorporated nonprofit associations (Chapter 11) and statutory trusts (Chapter 12).

Most of these forms of organization are already allowed in the District of Columbia, although often governed by obsolete or incomplete laws, but some—such as limited cooperative associations and statutory trusts—are new.

The legislation, which was introduced jointly by Councilmembers Muriel Bowser and Mary Cheh, was drafted by a group of business and government lawyers, organized by the D.C. Affairs Section of the District of Columbia Bar, using the ABA and Uniform Law Commission model laws as guides. Instead of trying to amend the District's outdated, incomplete and disorganized laws, the drafters decided to replace them with up-to-date, comprehensive and efficiently organized laws that provide business entities the certainty and flexibility they need to accomplish their goals.

The District has long been the location where the government affairs offices of the world's largest and most influential corporations connect with the federal government. With the overhaul of the District's laws on business organizations, the District is eliminating an obstacle that has held it back from becoming the world class business center it should be.