

CHOOSING A JURISDICTION: KEY DIFFERENCES BETWEEN TEXAS AND DELAWARE

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UT Law CLE

25th ANNUAL LLCs, LPs AND PARTNERSHIPS

July 15, 2016

Austin

60706279v3

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General

- Institutional bias in favor of choosing Delaware for entity domicile
- Texas Business Organizations Code generally provides more clarity and certainty, but Delaware offers more “business-reasonable” resolution of disputes
- Delaware Chancery Court and developed jurisprudence are well respected
- Influence of Delaware corporate law disproportionate to its size and population
- Texas corporate law is more influenced by MBCA than Delaware corporate law is
- Review of differences in Delaware and Texas law is advisable before choosing

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Fundamental Business Transactions

A. Mergers

Texas

- broad definition of “merger” (opportunity to coordinate different transactions)
- broader list of eligible types of merger candidates
- may treat owners in same class or series differently
- permits multiple surviving or new organizations
- clear provision specifying no “transfer” of assets
- “divisive” mergers authorized

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Fundamental Business Transactions (Cont'd.)

Delaware

- old “consolidation” concept
- no short form merger for non-corporate entities
- no holding company formation merger for non-corporate entities
- no divisive or multiple survivor mergers

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Fundamental Business Transactions (Cont'd.)

B. Interest Exchanges

Texas

- authorizes entities to effect interest exchange without approval of all owners

Delaware

- no counterpart provisions
- merger generally gets to same place

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Fundamental Business Transactions (Cont'd.)

C. Sales of Assets

Texas

- broad enabling provision in statute
- protects purchasers from liability for seller's obligations that are not specifically assumed
- “substantially all assets” defined clearly in corporate statutory provisions to mean what it says

Delaware

- no counterpart provisions
- case law unclear on “substantially all assets” standard

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First appeared as part of the conference materials for the
25th Annual LLCs, LPs and Partnerships session

"Choosing a Jurisdiction: Key Differences Between Texas and Delaware"