

Memorandum

Texas Adopts Further Legislation in Push to Attract Corporations

June 24, 2025

On June 23, 2025, Gov. Abbott signed in to law additional updates to Texas' corporate and legal framework as part of the state's continued focus on competing with Delaware as the "jurisdiction of choice" in which to domicile public and private business organizations. These updates supplement the significant amendments to the Texas Business Organizations Code (TBOC) enacted by the Texas Legislature on May 7 and discussed in our prior alert.¹ An overview of the supplemental legislation, which goes into effect September 1, 2025, is set forth below.

2024 DGCL Updates Brought to Texas

Senate Bill 2411 ("SB 2411") mirrors many of the 2024 amendments to the Delaware General Corporation Law regarding the procedural approval requirements of mergers. Notably, it provides (i) that the board may approve substantially final documents (rather than final documents), (ii) that the disclosure schedules are not considered part of the merger agreement for approval purposes (such that they do not need to be in final or substantially final form at the time of approval), (iii) that a document attached to, or enclosed with, a notice is deemed a part of such notice, and (iv) that actions of a converted entity contemplated in a duly-approved plan of conversion are deemed approved by the converted entity. It also expressly authorizes the use of a shareholder representative in merger agreements for purposes of enforcing the post-merger rights of shareholders.

Exculpation Expanded to Officers

SB 2411 also permits Texas entities to exculpate their officers to the same extent already permitted with respect to directors, provided that their organizational documents expressly provide for such exculpation. Exculpation is impermissible, however, with respect to breaches of the duty of loyalty, intentional misconduct or knowing violations of law, transactions with an improper benefit, or where liability is expressly provided by statute.

Shareholder Proposals Limited to Material Shareholders

Senate Bill 1057 ("SB 1057") permits publicly traded corporations, which are either domiciled in Texas or have their principal office in the state, to include in their organizational documents minimum beneficial ownership requirements restricting the ability to bring shareholder proposals (excluding director nominations). Specifically, shareholder proposals may be limited to shareholders (i) who own either (a) 3% or more of the corporation's

¹ For more on these amendments, see [Texas Adopts Significant Amendments to the Texas Business Organizations Code](#).

voting shares or (b) shares with a market value of \$1 million or more and (ii) who have held such shares for a continuous period of at least six months leading up to and through the applicable shareholder meeting.

Restrictions Placed on Proxy Advisory Firms

Senate Bill 2337 (“SB 2337”) places restrictions on the recommendations that proxy advisory firms provide to publicly traded corporations that are either domiciled in Texas or have their principal office in the state. Specifically, if a proxy advisory firm provides a recommendation that considers factors other than the financial interest of the shareholders (with express references to ESG, DEI, and social credit), then the proxy advisory firm must (i) provide a conspicuous disclaimer in the recommendation noting that the advisory firm is considering non-financial factors, (ii) explain why the advisory firm’s recommendation sacrifices financial performance in favor of such factors, (iii) provide a detailed financial analysis of the short and long term effects of the underlying proposal, and (iv) conspicuously disclose on its website’s homepage that its proxy advisory services include advice and recommendations that are not based solely on the financial interest of shareholders. Failure to comply with the foregoing is a violation of the Texas Deceptive Trade Practices Act, which provides for treble damages, and the statute expressly provides for injunctive relief against violators.

Powers and Scope of the Texas Business Court Expanded

House Bill 40 (“HB 40”) expands the powers and scope of the Business Court following lessons learned over the Business Court’s first six months of operation. Amongst other things, HB 40 (i) authorizes an entity’s governing documents to designate the Business Court as the exclusive venue for disputes over the entity’s governance or internal affairs, (ii) reduces the dollar threshold to which the Business Court’s jurisdiction extends to \$5 million (from \$10 million), (iii) expands the Business Court’s jurisdiction to include intellectual property and trade secrets disputes and the review or enforcement of arbitration agreements (although it removes jurisdiction over consumer transactions), (iv) updates Texas’ procedural rules to clarify that the various procedural rules applicable to Texas state district courts also apply to the Business Court, and (v) directs the Texas Supreme Court to establish additional rules and procedures for the “prompt, efficient, and final determination of business court jurisdiction.”

For further information regarding this memorandum, please contact one of the following authors:

HOUSTON

Christopher R. May
+1-713-821-5666
cmay@stblaw.com

Daniel McEntee
+1-713-821-5618
daniel.mcentee@stblaw.com

Brian E. Rosenzweig
+1-713-821-5674
brosenzweig@stblaw.com

BOSTON / WASHINGTON, D.C.

Joshua Ford Bonnie
+1-617-778-9032 (Boston)
+1-202-636-5804 (Washington, D.C.)
jbonnie@stblaw.com

WASHINGTON, D.C.

William R. Golden
+1-202-636-5526
wgolden@stblaw.com

PALO ALTO

Stephen P. Blake
+1-650-251-5153
sblake@stblaw.com

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