

5 Questions Businesses Should Ask About Their Compliance Posture Before 2023

By **Hans Howk**

Another year is racing to a close. While many businesses may already be in throes of planning holiday parties, there could be some lingering compliance or filing-related tasks that require attention before 2022 can be closed successfully.

Here are five important questions to consider before the end of the year.

1. Have the company's business licenses been renewed?

While requirements may vary based upon the industry in which a given company or entity is operating, many business licenses must be renewed annually. Businesses should perform a careful inventory to ensure that they've obtained all appropriate business licenses while also paying close attention to their renewal dates.

This is far from a one-time exercise, as much can change for a business even over the course of a single year. For example, if you've expanded or changed your business in the past year you might need new licenses or may no longer need one that you have. Different states often have varying licensing requirements, which rapidly come into play each time an entity adds or shuts a location.

Additionally, participating in a merger or acquisition or onboarding a new product/service can also trigger new licensing requirements. Even less dramatic changes may be cause for a business to reevaluate its compliance stance for the coming year. If an entity decides to begin allowing



employees to work permanently from home, for instance, certain jurisdictions could mandate that it obtain a home occupation permit first.

2. Has the company obtained the necessary foreign qualifications?

If part of a company's 2022 business strategy included expanding its reach beyond the state which it was formed, obtaining the appropriate foreign qualification will become necessary. Corporations and LLCs are considered domestic only in their state of incorporation (for corporations) or formation (for LLCs and other entities besides corporations). For example, a limited liability company formed in New Jersey would be considered a domestic entity in New Jersey, but a "foreign LLC" in any other state.

Foreign qualification is the process of registering to do business in a state other than the one in which you incorporated or formed your business. This process often involves many different steps, from determining if the company's existing name

is available in the state of foreign qualification to appointing a local registered agent and filing the appropriate qualification documents with the corresponding state agency.

Each state requires that different information be included in this document, but common data points include a company's date of incorporation/organization and the names and addresses of officers (for corporations) or members (for LLCs). An entity will want to make sure the foreign qualification process is executed correctly to avoid the risk of fines and penalties that could hit in 2023.

3. Does the company have outstanding annual reports?

Business entities will want to make sure that they file any outstanding annual reports prior to yearend. Less detailed than reports that a company might assemble for investors, most states request only basic contact information, such as a company's name and place of business, the name and address of the corresponding registered agent, and the names of directors, officers, or managers.

Annual report and franchise tax due dates vary from state to state. For instance, many states have due dates centered around a company's anniversary date – meaning that the report is due in the same month during which the business was originally incorporated or foreign qualified.

If a company has missed the requisite deadline for filing an annual report, it's imperative to take corrective action before the end of the year. Failure to do so may result in serious consequences, such as a corporation or LLC falling out of good standing, in addition to risking the possibility of fines and penalties.

4. Has the company filed for dissolution or withdrawal where necessary?

The end of the year may also find some companies looking to downsize their operational footprint.

Not only for compliance reasons, it's also important for businesses to undertake the appropriate procedures to negate risks such as falling victim to business identity thieves who prey on inactive and delinquent entities.

Companies that elect to cease operations should undertake a proper dissolution – an official filing with the original formation state that terminates the legal existence of a company not only in that state, but throughout the country as well. Similarly, the decision to withdraw from a state where a business entity is foreign qualified should also be accompanied by a formal withdraw process, which terminates an entity's right to do business within the bounds of a particular state.

The benefits of such an approach can serve companies well into the new year. By following proper dissolution or withdraw processes, for example, companies can avoid having to file annual reports with or pay taxes to states of foreign qualification in which they no longer do business.

5. Should the company file any amendments?

A company's circumstances can vary greatly over the course of a year. If changes have been made to the information that was originally presented in a company's Articles of Incorporation (Corporation) or Articles of Organization (LLC), then the entity must file amendments with its state of formation.

Changes that necessitate an amendment include something as simple as a change in company name or a switch from member-management to manager-management (and vice versa). A name change may also require foreign qualified entities to file an amendment to its Certificate of Authority – a document issued by the local secretary of state office authorizing a foreign entity to do business.

Hans Hawk is a Manager for Content Management at Wolters Kluwer CT Corporation.