

## CORPORATE AUDIT CHECKLIST INDEX

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**INTRODUCTION:** The following is a list of corporate matters which should be reviewed by clients on at least an annual basis (preferably prior to the corporate annual meetings of the shareholders and directors), or more frequently as individual items may require. Although this list is not exhaustive, it does represent issues common to most corporations and should be refined for individual corporations on an ongoing basis.

**I. CORPORATE INFORMATION SHEET.**

- A. Confirm information listed.
- B. Update changes.

**II. COMPLIANCE REVIEW.**

A. Corporate Matters.

- 1. Articles of Incorporation and Amendments;
- 2. By-Laws and Amendments;
- 3. Minutes of Shareholder and Director Meetings;
- 4. Certificates of authority regarding qualification to do business as a foreign corporation in other states;
- 5. Stock Ledgers and Journals;
- 6. Relationships with affiliated corporations; and
- 7. Agreements relating to ownership of stock, including any buy-sell agreements, stock options, stock bonus plans, etc.

B. Personnel Matters.

- 1. Employment Agreements;
- 2. Retirement benefit plans and related documentation (as related to implementation, but not IRS qualification);
- 3. Current outstanding issues or problems related to personnel matters in general;
- 4. Employee claims, suits or actions pending against the company;
- 5. Employee handbook, standard employment application and "at will" letter; published (written) personnel policies;
- 6. Union Agreements;
- 7. Status of Grievance and/or other administrative proceedings;
- 8. Postings; and
- 9. Recordkeeping/retention requirements.

C. Operational Matters.

- 1. Standard form contracts with independent contractors/subcontractors/sales

- representatives;
- 2. Terms of standard purchase orders;
- 3. Blanket purchase order/sales agreements;
- 4. Promotional literature;
- 5. Current construction liens;
- 6. Insurance matters (general review of types of policies, but not a contract by contract review);
- 7. Environmental matters, including environmental reports and compliance issues (general review, but not a survey or audit);
- 8. OSHA or MIOSHA citations, complaints, notices or violations and stipulations;
- 9. Loan Agreements and related bank documents;
- 10. Non-compete/confidentiality agreements;
- 11. Pending litigation matters;
- 12. Pending administrative proceedings; and
- 13. Intellectual Property Matters; Patents; Licenses; Trade Practices; Know-How.

D. Environmental Matters.

- 1. Ascertain need for, and determine compliance with, all operation recording permitting including air emission permits, storm water discharge permits, and waste water discharge permits;
- 2. Review hazardous waste management practices for compliance;
- 3. Review hazardous and non-hazardous waste disposal practices;
- 4. Determine compliance with regulations effecting underground storage tanks, if applicable;
- 5. Determine compliance with emergency response planning requirements including Worker Right to Know and Community Right to Know laws;
- 6. Determine reporting requirements for each facility;
- 7. Review environmental record keeping; and
- 8. Review training procedures.

III. ANNUAL CORPORATE PLANNING REVIEW.

A. Tax Planning Opportunities.

- 1. Fringe Benefits. Review to determine if all compensation and fringe benefit strategies have been considered;
- 2. Corporate Tax Planning. Review corporate tax planning opportunities;
- 3. Michigan Tax Incentives. Review future corporate plans to determine

whether the business will qualify for a substantial reduction in property taxes;

4. Personal Financial and Estate Planning. Review personal financial and estate planning; and
5. Role of Corporation in Estate Planning. Review how the corporation fits into the shareholders' estate planning.

B. Problem Areas for Review.

1. Corporate Tax Problem Areas. Review past or proposed transactions that could be treated as unintended taxable transactions. Review the structure and documentation of the transactions, and consider ways to avoid exposure; and
2. Officer and Director Liability Areas. Review matters which could result in personal liability for the officers and directors;

C. Corporate Planning Opportunities.

1. Financing. Review existing financing arrangements and future financing needs. Consider new financing opportunities (e.g. changing interest rates, loan formulas, limitations on guaranties, Michigan incentive programs) and ways to improve existing loan packages or banking relationships;
2. Michigan Financing Incentives. Review future plans to determine whether the business qualifies for one of a wide variety of relatively low-cost financing opportunities available through state and local government programs;
3. Officer and Director Liability Protection. Review protective measures to insulate officers and directors from personal liability;
4. Employer/Employee Relations. Review to see if any special agreements (confidentiality, non-compete, intellectual property, etc.) with employees are necessary;
5. Insurance. Review insurance arrangements and discuss strategies for reducing insurance costs or consolidating coverages;
6. Important Agreements. Consider advisability of business agreements commonly used by closely held corporations;

7. Minority Shareholders. Review arrangements with minority shareholders, such as restrictions on stock transfers to third parties and requirements to resell stock to the corporation on certain events. Certain arrangements are especially important in the case of S corporations; and
8. Major Contracts and Leases. Review status of major contracts or leases.

D. Documentation and Compliance.

1. Minute Book. Review activities to assure that the corporate minute book is current and reflects appropriate shareholder and director action on required and recommended matters;
2. General Corporate. Review activities to identify areas where changes may be necessary;
3. Regulatory. Discuss state, local and federal regulatory matters; and
4. Compliance. Review with officers and accountant the corporation's compliance with various tax and regulatory filing requirements.

IV. CHECKLIST OF STANDARD CORPORATE ACTIONS REQUIRING RESOLUTIONS.

A. General Matters.

1. Annual Meetings;
2. Any amendments to the Articles or By-Laws of a corporation;
3. Any loans, whether from or to a corporation;
4. Sales or purchases of significant corporate assets (out of the ordinary course of business);
5. Any leases to which the corporation is a party (other than i.e. minor office equipment leases, etc.);
6. Any transactions involving and/or affecting a corporation's interests in real property (purchases, sales, leases, mortgages, encumbrances, etc.);
7. Any significant banking transactions (i.e. loans, opening or losing of accounts, establishing signatories, escrow agreements, etc.);
8. Adoption or amendment of Stock Purchase Agreements to which the corporation is a party (including amendments to articles of incorporation to reflect restrictions on transferability or voting rights of stock);
9. Adoption of or contribution to employee pension and profit sharing plans.
10. Corporate liquidations and reorganizations;

11. Establishing salaries, issuance of stock and cash bonuses and compensation to corporate officers;
12. Acquisition of other corporations; and
13. Approving or ratifying significant actions of officers and directors.

B. Shareholder Resolutions. Pursuant to the Michigan Business Corporation Act, shareholder action is required in any of the following circumstances:

1. Election of directors (MCLA 450.1505);
2. In the event of a merger (MCLA 450.1701, .1703);
3. In the event of a dissolution (MCLA 450.1804);
4. The sale of all or substantially all the assets of the corporation (MCLA 450.1753);
5. Any amendment to the articles of incorporation (MCLA 450.1611); and
6. Annual meetings if action taken by written consent (MCLA 450.1402).

In addition to merely documenting the specific transaction, it may also be necessary to indicate the business purpose of the approved action, especially when dealing with transactions between the corporation and its officers, directors or shareholders. Additionally, shareholder resolutions should also be considered when considering transactions out of the corporation's ordinary course of business, involving major business transactions and policy matters or where questions may arise as to whether directors may be exceeding their authority or using reasonable judgement, especially in potential conflict of interest transactions involving corporate insiders.

C. Director Resolutions. The Michigan Business Corporation Act also specifically requires director action in the following instances:

1. Election of officers (MCLA 450.1531);
2. Change of Registered Office (MCLA 450.1242); and
3. Change of Registered Agent (MCLA 450.1242).

D. By-Laws. In addition to the foregoing, By-Laws typically require director action for any of the following:

1. Determination of site for annual meeting [Article I, §1(a)];
2. Establishment of alternate dates for annual meetings [Article I, §1(b)];
3. Calling of a special shareholder's meeting [Article I, §2];
4. Establishment of record date determining shareholder entitled to vote [Article I, §6(a)];
5. Determining shareholders entitled to dividends [Article I, §6(c)];
6. Appointment of inspector of election [Article I, §9(a)];
7. Filling of board vacancies [Article II, §4(a)(ii)];
8. Establishment of dates for regular and annual meetings [Articles II, §5(a)];

9. Establishment of committees [Articles II, §7(a)];
10. Declaration of dividends/distributions [Article II, §8];
11. Compensation for officers [Article II, §9];
12. Designation of Independent Directors [Article II, §10];
13. Election of officers [Article III, §1];
14. Designation of banks and depositories [Article VI, §1]; and
15. Amendments to articles of incorporation [Article IX].

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