

CLIENT ALERT | September 23, 2025

A New Era of Corporate Law in Texas

Texas has reshaped its corporate landscape through four landmark laws designed to provide businesses in Texas with greater governance flexibility and reduced litigation risk.

Delaware has long been considered the default state of incorporation for startups seeking to raise institutional capital. It is also the state of organization for more than two-thirds of Fortune 500 companies organized in the United States. A series of recent moves by high-profile public companies and investors has, however, called Delaware's previously unchallenged status as the nation's de facto corporate law into question.

Against this backdrop, the Texas legislature has adopted sweeping amendments to the Texas Business Organizations Code (the TBOC) designed make Texas a more attractive destination for businesses.

This Client Alert analyzes these four new laws and considers the practical impacts for corporations that are currently (or are considering becoming) organized in Texas, listed on a Texas stock exchange, or in certain cases headquartered in Texas.

Senate Bill 29

On May 14, 2025, Texas Governor Greg Abbott signed [Senate Bill 29](#), "Relating to the formation, governance, and internal management of domestic entities." SB 29, which took effect the day it was signed, is designed to strengthen Texas as a corporate hub by limiting shareholder litigation, codifying management-friendly governance rules, and providing greater flexibility to businesses in establishing internal rules and procedures in their governing documents. The key changes addressed in SB 29 are discussed below.

Codified and Newly Expanded Business Judgment Rule¹

SB 29 added Section 21.419 of the TBOC, which codifies and expands the scope of the deferential "business judgment rule," a judicially created standard of review that protects corporate directors and officers from liability for decisions made in good faith and with due care, provided they are not self-dealing and do not involve fraud. Section 21.419 also imposes onerous pleading requirements on those seeking to challenge actions taken by management. Section 21.419 applies to all publicly traded corporations incorporated in Texas, as well as all private corporations that affirmatively elect to be governed by this section of the TBOC in their governing documents.²³

Section 21.419 mandates that no cause of action may be brought against such a corporation's directors or officers based on any alleged act or omission unless the claimant proves that the act or omission

Latham & Watkins operates worldwide as a limited liability partnership organized under the laws of the State of Delaware (USA) with affiliated limited liability partnerships conducting the practice in France, Hong Kong, Italy, Singapore, and the United Kingdom and as an affiliated partnership conducting the practice in Japan. Latham & Watkins operates in Israel through a limited liability company, in South Korea as a Foreign Legal Consultant Office, and in Saudi Arabia through a limited liability company. © Copyright 2025 Latham & Watkins. All Rights Reserved. Under New York's Code of Professional Responsibility, portions of this communication contain attorney advertising. Prior results do not guarantee a similar outcome. Results depend upon a variety of factors unique to each representation. Please direct all inquiries regarding our conduct under New York's Disciplinary Rules to Latham & Watkins LLP, 1271 Avenue of the Americas, New York, NY 10020-1401, Phone: +1.212.906.1200.

constituted a breach of the person's fiduciary duties involving fraud, intentional misconduct, an *ultra vires* act, or a knowing violation of law. Section 21.419 further requires that the claimant plead with particularity the circumstances constituting the fraud, intentional misconduct, *ultra vires* act, or knowing violation of law. In addition, all directors and officers are entitled to a presumption that their actions or omissions on behalf of the corporation were made in good faith, on an informed basis, in furtherance of the interests of the corporation, and in obedience to the law and the corporation's governing documents.

Practical Impact

These new protections impose significant hurdles on prospective plaintiffs bringing derivative lawsuits against Texas corporations. We expect the heightened pleading standards imposed by Section 21.419 to be a strong defense for corporate defendants to defeat derivative claims before they reach the discovery stage.

Section 21.419 expressly covers claims asserting the breach of the duty of loyalty, as well as breaches of the duty of care. For that reason, the adoption of Section 21.419 materially expands the reach of the business judgment rule, which has historically governed only claims asserting breaches of the duty of care. As such, the adoption of Section 21.419 reflects a substantial shift in Texas' corporate law in favor of protecting actions taken by management against those who would seek to challenge them — even on duty-of-loyalty grounds.

The enactment of Section 21.419 also represents a rejection of the “enhanced scrutiny” and “entire fairness” standards of review employed by Delaware courts to analyze sale-of-the-company and conflict-of-interest transactions, respectively.

Elimination of Required Class Voting for Fundamental Business Transactions⁴

Texas corporations now may eliminate separate class and series voting in their certificates of formation. Before SB 29, the separate approval of each class and series was required for any “Fundamental Business Transaction” or “Fundamental Action,” as those terms are defined in the TBOC. Now, Texas corporations may waive class-by-class share voting in their certificates of formation for the purposes of approving any matter, including in connection with any fundamental business transaction.

Practical Impact

This change is particularly noteworthy for venture capital-backed companies, which typically have multiple series of preferred stock, each with differing economic incentives in an acquisition scenario. Instead of being statutorily required to provide class voting, Texas corporations now have the flexibility to modify the default rule in their certificate of formation to reflect the particular approval rights for each class and series that are negotiated by the parties at the time of an investment.

Increased Flexibility to Increase and Decrease Authorized Shares⁵

SB 29 addresses a longstanding gap between the TBOC and Delaware's General Corporation Law (the DGCL) with respect to approval requirements for changes to the corporation's authorized shares. Section 242(b)(2) of the DGCL allows corporations to include language in their certificates of incorporation permitting the holders of a majority of a corporation's stock to increase or decrease the number of authorized shares of any class or series, without the separate vote of that class or series, whereas the TBOC historically required a separate vote of that class or series in all cases. Under SB 29, the TBOC now grants substantially the same right to Texas corporations in Section 21.364(d)(1) to provide for approval of changes in authorized shares by the holders of a majority of the corporation's stock if so provided in the certificate of formation.

Practical Impact

This change is welcome for the many corporations that use a separate class or series of common stock when making equity grants to employees, as well as venture-backed companies that routinely face the need to increase the authorized number of their common or preferred stock to raise additional capital.

Any Texas corporation seeking increased flexibility and reduced administrative costs when creating additional authorized shares, whether in connection with mergers and acquisitions, joint ventures, or raising capital, may now include language in its certificate of formation to provide for approval of additional authorized shares by the holders of a majority of the stock of the corporation entitled to vote.

Optional Pre-Approval Process for Independent Committees⁶

A committee of independent and disinterested directors is frequently used to resolve potential conflicts of interest in transactions involving a corporation and a controlling shareholder, director, or officer. Publicly traded corporations organized in Texas, as well as private corporations that opt in via their governing documents, now have the option to petition the Texas Business Courts to affirmatively determine the independence of the directors appointed to that committee with respect to any transactions involving the corporation and a controlling shareholder, director, or officer.

To do so, the eligible corporation must file a public petition requesting that the court hold an evidentiary hearing to determine whether the directors appointed to the committee are independent and disinterested, and give notice to the corporation's shareholders (which must be filed on a current report with the SEC). The court will then be required to hold a preliminary hearing within 10 days and "promptly" thereafter hold an evidentiary hearing, after which the court will rule on the independence and disinterest of the directors on the committee. As long as all relevant facts are presented to the court, the court's decision that the directors on the committee are independent and disinterested is final.

Practical Impact

While still untested, these new procedures offer a novel path by which a corporation's board of directors may seek judicial confirmation of the independence of a committee formed to review a transaction involving a controlling shareholder. If this "pre-approval" process is utilized, challenges to a transaction with a controlling shareholder solely on the grounds that the committee approving the transaction was not sufficiently independent would be effectively cut off.

Although the public nature of the petition process and the required shareholder notice may discourage some corporations from taking advantage of this process in connection with highly confidential transactions, the certainty provided by judicially confirmed independence could prove an attractive option for more routine transactions with a controlling shareholder, director, or officer, or transactions that have already been publicly disclosed.

Narrowing of Books and Records Inspection Rights⁷

SB 29 narrows shareholders' traditional right to inspect a corporation's books and records. Under the amended Section 21.218 of the TBOC, a shareholder's right to make records demands no longer includes access to emails, texts, social media posts, and similar electronic communication unless those communications effectuate an official action by the corporation. SB 29 parallels a recent change to Section 220 of the DGCL, which limits the books and records that a shareholder can inspect to a list of formal corporate documents.⁸ In addition, under SB 29, if the corporation is publicly traded or affirmatively elects in its governing documents to be governed by this newly enacted law, the corporation may deny inspection demands if there is either active or anticipated derivative litigation or other litigation adverse to the shareholder attempting to assert inspection rights.

New Limitations on Derivative Claims and Attorney Fee Awards⁹

Publicly traded Texas corporations, as well as private Texas corporations with more than 500 shareholders who opt in via their governing documents, may now impose an ownership threshold for shareholder derivative actions in their governing documents of up to 3%. As a result, eligible corporations in Texas are able to increase protections against so-called "nuisance" litigation brought by shareholders with insignificant ownership. This change marks another significant departure from previous Texas law as well as the current law governing corporations in both Delaware and Nevada, which allows any shareholder, regardless of its percentage ownership, to initiate a derivative suit.

Expanded Rights to Designate Exclusive Forum for Dispute Resolution¹⁰

The governing documents of a Texas corporation may designate one or more courts to serve as the exclusive forum and venue for the resolution of internal entity claims. Before SB 29, a corporation's governing documents could require internal claims to be litigated in Texas but could not specify a particular court or single venue. Now, Texas corporations may require that all internal entity claims be brought in a specific venue, such as the Texas Business Courts, which the Texas legislature recently

created to provide businesses with a specialized forum to resolve high-stakes commercial disputes in a more predictable and reliable manner.

Power to Include Jury Trial Waivers in Governing Documents¹¹

New Section 2.116 of the TBOC enables Texas entities to include jury trial waivers for all internal entity claims in their governing documents. These waivers purport to be enforceable even if the corporation's shareholders or governing persons do not individually sign the waiver. Instead, persons asserting internal entity claims are generally deemed to have been informed of the jury trial waiver when they either (i) vote to approve the governing document containing the waiver or (ii) acquire equity in the corporation at a time when the jury trial waiver is included in the governing documents.

Persons who hold the equity securities of publicly traded corporations are also deemed to be informed of the waiver if they continue to hold those securities after the waiver is included in the corporation's governing documents. The statute leaves the door open for entities to present additional evidence to show that a person has knowingly and informedly waived their jury trial rights.

Practical Impact

This statute, which is the first of its kind,¹² has yet to be tested in practice. Corporations considering incorporating a jury trial waiver in the entity's governing documents may consider other mechanisms to clearly inform equity holders of the presence of the waiver, such as including a conspicuous legend on the share certificates (or the equivalent) to serve as additional evidence that equity holders have knowingly and informedly waived their jury trial rights.

By permitting such waivers, the statute provides an avenue to further align the Texas Business Courts with the Delaware Court of Chancery, where jury trials are unavailable.

Senate Bill 1057

Five days after approving SB 29, Governor Abbott signed [Senate Bill 1057](#), "Relating to the submission and approval of certain proposals by shareholders of nationally listed corporations," empowering Texas public companies to impose additional eligibility restrictions on shareholder proposals.

Unlike SB 29, SB 1057 applies only to publicly traded companies that are either headquartered in Texas or admitted to list on an eligible Texas Stock Exchange.¹³ But, like SB 29, SB 1057 requires corporations that seek to avail themselves of the benefits of this new law to affirmatively opt in via their governing documents.

For publicly traded companies that opt in, Section 21.373 of the TBOC provides that no shareholder (or group of shareholders) may submit a shareholder proposal unless they meet the following requirements:

- **Ownership threshold:** The shareholder (or group of shareholders) must hold an amount of voting shares equal to at least \$1 million in market value or 3% of the corporation's voting shares, for a continuous period of at least six months before the date of the meeting.
- **Solicitation requirements:** The shareholder (or group of shareholders) must solicit the holders of shares representing at least 67% of the voting power of shares entitled to vote on the proposal.

These requirements would apply to all shareholder proposals on which shareholders are entitled to vote except for director nominations and ancillary matters.

Practical Impact

The heightened ownership threshold permitted by Section 21.373 represents a dramatic increase from the federal standards contained in Rule 14a-8 of the Securities Exchange Act of 1934 (Rule 14a-8), which governs the eligibility requirements for shareholder proposals by companies listed on a national stock exchange and other companies subject to the federal proxy rules.

The current thresholds established by Rule 14a-8 range from \$2,000 to \$25,000 in market value, depending on the length of time a holder has continuously held the relevant public company's equity securities. Rule 14a-8 also contains no analogous solicitation requirement.

Section 21.373 took effect on September 1, 2025. While no lawsuits challenging Section 21.373 have been filed to date, Section 21.373 sits on untested legal grounds, as no court has yet ruled on the question of whether state-level proposal thresholds are federally preempted by Rule 14a-8. The SEC has similarly remained silent on the issue of whether states may establish higher thresholds than those set forth in Rule 14a-8, though Commissioner Mark T. Uyeda publicly expressed his support for state-level thresholds in his 2023 Remarks at the Society for Corporate Governance's National Conference.

As the upcoming proxy season unfolds, corporations will be watching closely for reactions from investors and the SEC to proposals to adopt, and ultimately take advantage of, the heightened ownership thresholds under Section 21.373. These changes have the potential to create a powerful new tool for eligible corporations that seek to limit unwanted shareholder proposals and could provide a strong incentive for public companies to consider either listing on a Texas Stock Exchange or moving their headquarters to Texas.

Senate Bill 2411

On May 27, 2025, Governor Abbot signed [Senate Bill 2411](#), approving a second set of general updates to the TBOC. SB 2411 took effect on September 1, 2025, alongside SB 1057 discussed above and SB 2337 discussed below.

Rather than impose broad substantive changes like SB 29, SB 2411 modernizes the TBOC through a series of technical updates that reduce or eliminate procedural traps and grant entities formed in Texas increased flexibility and clarity when dealmaking. Below are key changes included in SB 2411:

- Expanding Section 7.001 of the TBOC to allow for the exculpation of corporate officers from monetary damages¹⁴
- Confirming that the applicable governing authorities of Texas entities may approve merger agreements and other corporate documents in substantially final form and without the accompanying disclosure schedules and other ancillary documents¹⁵
- Authorizing merger agreements to irrevocably designate shareholder representatives with the sole and exclusive power to enforce the post-transaction rights of shareholders following an acquisition who have their shares extinguished in connection with such transaction¹⁶
- Granting publicly traded companies the ability to effect forward or reverse stock splits without the need for shareholder approval, so long as the primary purpose of such forward or reverse split is to maintain listing eligibility on a national securities exchange¹⁷
- Streamlining the delivery of required notices by permitting companies to direct the applicable persons to a publicly available electronic resource, such as a website¹⁸

Senate Bill 2337

On June 20, 2025, Governor Abbott signed [Senate Bill 2337](#), which imposes sweeping disclosure requirements on proxy advisory firms engaging with Texas-based public companies. At its core, SB 2337 aims to curb the influence of non-financial factors, such as environmental, social, and governance (ESG) principles or diversity, equity, and inclusion (DEI) practices in proxy-voting advice.

Originally set to take effect on September 1, 2025, SB 2337 applies to all publicly traded companies that are organized in Texas or headquartered in Texas, as well as any out-of-state companies that have made a proposal to move to Texas in their proxy statement. However, on August 29, 2025, a federal district judge in the Western District of Texas granted preliminary injunctions enjoining the Texas Attorney General from enforcing SB 2337 against ISS and Glass Lewis — the two largest providers of proxy advisory services — until challenges to the new law are resolved.

Sweeping New Disclosure Requirements

Under SB 2337, if a proxy advisor delivers advice that is not solely in the financial interest of shareholders, they must include a disclosure to each applicable shareholder that:

- conspicuously states that such advisor's services are not being provided solely in the financial interests of shareholders;

- explains with particularity the basis of the advisor's advice concerning each recommendation; and
- explains with particularity that the advice subordinates the financial interests of shareholders to other objectives and sacrifices investment returns or undertakes additional risk to promote non-financial factors.

In addition to the shareholder disclosures described above, SB 2337 requires proxy advisors who consider non-financial factors when making shareholder recommendations to publicly and conspicuously disclose on the front page of such advisor's website that the advisors' proxy advisory services include advice and recommendations that are not based solely on the financial interest of shareholders.

SB 2337 contains a broad definition of non-financial factors. In addition to ESG and DEI factors, the relevant statutory definition also relates to voting recommendations that are inconsistent with the recommendations of the company's board of directors, unless the advisor's recommendations are accompanied by a detailed "written economic analysis" that complies with the new statutory requirements.¹⁹

Further, SB 2337 targets the provision of materially different advice or voting recommendations to distinct clients who have not expressly requested services for a non-financial purpose. If a proxy advisor provides such advice, it must comply with the disclosure requirements for non-financial proxy advisory services described above, notify the company to which the advisory services relate, the attorney general, and each shareholder receiving the advice, and disclose which of the conflicting recommendations is provided solely for the financial interests of shareholders and supported by specific financial analysis.

ISS and Glass Lewis immediately filed lawsuits challenging the constitutionality of SB 2337. On August 29, 2025, the federal district court in the Western District of Texas issued preliminary injunctions enjoining the Attorney General of the State of Texas and his office from enforcing SB 2337 against ISS and Glass Lewis until the litigation is resolved. Notably, private persons, who are authorized by SB 2337 to seek injunctive or declaratory relief for violations of this statute, are not covered by the scope of the court's existing injunctions. Nor do the injunctions extend to other providers of proxy advisory services.

Practical Impact

If upheld, SB 2337 will have significant consequences for proxy advisors, public companies headquartered or organized in Texas, their boards of directors, and institutional shareholders. Proxy advisors who make recommendations against the wishes of a company's board of directors or consider non-financial factors will face increased compliance costs and litigation risk. Texas-based public companies will be empowered to directly challenge proxy recommendations under SB 2337, creating additional leverage for companies that desire to limit outside influence on their shareholders. Boards of directors will likely see increased shareholder support on measures that proxy advisors may have otherwise opposed. Further, institutional investors committed to considering non-financial factors may face tensions with proxy advisors who are no longer willing to do the same in Texas.

Key Takeaways

The combined changes implemented through these four Texas laws represent a dramatic shift in the legal landscape for entities organized in Texas, listed on a Texas stock exchange, or in certain cases headquartered in Texas.

The most notable amendments to the TBOC are intended to reduce litigation risk and provide greater certainty for corporate decisionmaking through the codification and expansion of the business judgment rule, increased legal protections for directors and officers against shareholder lawsuits, higher thresholds for shareholder proposals and derivative litigation, and greater flexibility to modify default governance rules in a corporation's organizational documents.

While these laws already have taken effect, the majority of the changes provided in the TBOC will require a corporation to affirmatively opt in by amending its certificate of formation. As a result, amendments by existing Texas corporations and proposals to re-domesticate by publicly traded corporations are expected to be a key area of focus in the upcoming proxy season, providing an initial indication of the true impact of the new era of corporate law in Texas.

Contacts

Scott Craig

scott.craig@lw.com
+1.737.910.7304
Austin / Houston

Mollie Duckworth

mollie.duckworth@lw.com
+1.737.910.7325
Austin

Ryan J. Lynch

ryan.lynch@lw.com
+1.713.546.7404
Houston

Ryan J. Maieron

ryan.maieron@lw.com
+1.713.546.7420
Houston

Jefferson (Jeff) Serfass

jeff.serfass@lw.com
+1.737.910.7329
Austin

This publication is produced by Latham & Watkins as a news reporting service to clients and other friends. The information contained in this publication should not be construed as legal advice. Should further analysis or explanation of the subject matter be required, please contact the lawyer with whom you normally consult. The invitation to contact is not a solicitation for legal work under the laws of any jurisdiction in which Latham lawyers are not authorized to practice. See our [Attorney Advertising and Terms of Use](#).

Endnotes

¹ Tex. Bus. Orgs. Code Ann. § 21.419.

² For the purposes of this Client Alert, a "publicly traded corporation" is one that has a class or series of voting shares listed on a national securities exchange.

- ³ The term “governing documents” is defined by statute and for corporations generally includes both the corporation’s certificate of formation and bylaws. Tex. Bus. Orgs. Code Ann. § 1.002(36).
- ⁴ Tex. Bus. Orgs. Code Ann. § 21.365(b).
- ⁵ Tex. Bus. Orgs. Code Ann. § 21.364.
- ⁶ Tex. Bus. Orgs. Code Ann. § 21.4161.
- ⁷ Tex. Bus. Orgs. Code Ann. § 21.552(a).
- ⁸ Delaware SB 21 restricts the “books and records” that a stockholder may inspect, with limited exceptions, to specific corporate documents, such as the certificate of incorporation, bylaws, stockholder and board meeting minutes, board action records, and recent financial statements. 8 Del. C. § 220(a)(1).
- ⁹ Tex. Bus. Orgs. Code Ann. § 21.218.
- ¹⁰ Tex. Bus. Orgs. Code Ann. § 2.115(b).
- ¹¹ Tex. Bus. Orgs. Code Ann. § 2.116.
- ¹² In May 2025, shortly after the adoption of Section 2.116, the Nevada Senate voted to adopt a similar amendment allowing a corporation to include an enforceable waiver of the right to a jury trial in its articles of incorporation. Nev. Rev. Stat. § 78.9406(4).
- ¹³ A “Texas Stock Exchange” is defined in the TBOC as a stock exchange that has its principal office in Texas and has received approval by the securities commissioner under Subchapter C, Chapter 4005, of the Texas Government Code. As of the date of this Client Alert, NYSE Texas is the only stock exchange that meets the TBOC’s statutory requirements. The Texas Stock Exchange (TXSE) is currently seeking approval from the SEC and has publicly announced that it expects to start accepting listings in 2026.
- ¹⁴ Tex. Bus. Orgs. Code Ann. § 7.001.
- ¹⁵ Tex. Bus. Orgs. Code Ann. § 10.002(e); the term “governing authority” is defined by Section 1.002(35) of the TBOC and generally includes the board of directors of a corporation, the general partners of a general or limited partnership, the members of a member-managed limited liability company, and the managers of a manager-managed limited liability company.
- ¹⁶ Tex. Bus. Orgs. Code Ann. § 10.004(b).
- ¹⁷ Tex. Bus. Orgs. Code Ann. § 21.053(c).
- ¹⁸ Tex. Bus. Orgs. Code Ann. § 6.202(d).
- ¹⁹ These requirements include the economic benefits and costs of implementing the proposal, an analysis of the consistency with the investment objectives and policies of the client, the projected quantifiable impact on the investment returns of the client, and an explanation of the methods used to prepare the analysis. Tex. Bus. Orgs. Code Ann. § 6A.101(c).