

Massachusetts Corporations Now Must Give Financials to Stockholders

The Massachusetts Business Corporation Act, which took effect on July 1, 2004, includes a new requirement that all corporations organized in Massachusetts (whether before or after July 1, 2004) deliver annual financial statements, or written notice of their availability, to their shareholders before the earlier of the annual meeting of shareholders or 120 days after the end of the fiscal year. Any shareholder may request a copy of the financials after receiving notice of their availability.

Financial Statement Requirements

The annual financial statements must include a statement of operations and a statement of shareholders' equity for the year. They must also include a statement of cash flows for the year, if prepared by the corporation. The financial statements may be consolidated or combined if the corporation has subsidiaries.

If the corporation does not prepare annual financial statements, it may substitute federal tax returns or other comparable information that is reasonable under the circumstances.

Certification

If a public accountant reports on a corporation's financial statements, the report must accompany the financial statements. If not, the financial statements must be accompanied by a certificate of the President, Chief Financial Officer or other officer of the corporation in charge of accounting records regarding the accounting basis used to prepare the financial statements and whether the statements are consistent with prior years.

Exception

A corporation is not required to provide its annual financial statements to a shareholder if it can demonstrate a proper reason for withholding the information. For example, a closely held corporation might not be required to send its annual financial statements to a shareholder who works for one of its competitors.

For Further Information

If you have any questions about the information in this Alert, please contact one of the Boston members of the Duane Morris Corporate Practice Group or the lawyer in the firm with whom you are regularly in contact.

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