

New laws help put incs. in the pink

Changes to rules on incorporation help firms, though most don't know it

BY DEAN CHADWIN

DURING THE MID-1990S, JILL Stuart International sidestepped the sluggish domestic economy by selling its sportswear designs only in Asia.

Now, with the local market booming, the company has decided to return to its Manhattan roots. It will open its first store here, in SoHo, just before Labor Day. But even before the cash registers fill, Jill Stuart is already profiting from its decision. It formed a new corporation to run its domestic division, and in so doing became the unwitting beneficiary of major changes to the state's business corporation law.

On Feb. 22, a number of amendments to the law went into effect. Key provisions alter rules concerning corporate finance, corporate governance and shareholder voting.

The amendments are the most important changes to New York's incorporation law since its establishment in 1961. Designed to increase the state's responsiveness to quickly changing business needs, the measures passed only after extended consideration and a battle with labor interests. In the end, not all of the desired changes were enacted: Limits on liability for major corporate shareholders remain as they were.

Most current and prospective small business owners still need to familiarize themselves with the modifications. Despite a six-month notice period before the changes were put in place, many businesspeople are in the dark. "It's frustrating," says Ron Curtis, president of the 45-employee Jill Stuart. "I didn't even know there were any changes in the law."

Better place for small business

While New York will never be mistaken for Delaware, the Empire State is now a better place in which to incorporate, especially for small business owners. For the first time, stock can be issued in exchange for future services or future payments. The amendments also allow more types of shares to be issued.

"The new amendments have increased the flexibility as far as capital formation is concerned," says Richard Langan, a partner in the Manhattan law firm of Nixon Hargrave Devans & Doyle.

The changes in corporate governance are particularly favorable.

The minimum requirement of three directors on a corporate board has been eliminated in favor of a presumption that a board has only one director. Board meetings by telephone call, previously permissible only when authorized in the bylaws or certificate of incorporation, are allowed under the new law. Directors and officers also received greater privacy, as shareholders and government officials no longer have the right to obtain their home addresses.

Shareholder voting restrictions have become more flexible. Proxies can now be sent by telegram, facsimile or other electronic means. The amendments also invite corporations to specify their own rules for conducting shareholder meetings.

While incorporation laws can determine whether a state is "incorporation-friendly," other factors remain important. A long line of pro-business legal decisions and a hospitable secretary of state's office are often critical in creating the proper climate for business. "By and large, New York's secretary of state office is pretty good," says attorney Robert M. Shepard of Ballou Stoll Bader & Nadler, the midtown-based counsel for Jill Stuart. "We don't have a problem with them."

Anyone running a business incor-

porated prior to Feb. 22 who wants to take advantage of the changes in the corporation law may need legal advice. The new laws involve inconsistent application of the recent amendments to pre-existing companies. While some changes are grandfathered in, many amendments will not apply to established companies unless they change their bylaws.

Although confusion could result, the lawmakers did not want to impose fundamental changes on established corporations. For example, the new rules involving management structure will not take effect unless a company amends its bylaws.

One battle was lost

Another key legal concern for all small business owners is liability, especially in areas where the corporate veil can be pierced. But the amendments triggered no changes in the extent of liability. Section 630 of the original corporation law holds a private company's 10 largest shareholders personally liable for wages and debts owed to employees.

New York is the only state that imposes this kind of liability, and it remained in the law despite strenuous lobbying efforts by business groups and the state bar association. Though these groups are dismayed that their efforts were shot down, they maintain that the amendments represent real progress.

"These amendments are the most significant in the history of the law," says Nixon Hargrave's Mr. Langan, "but the (corporation law) requires further amendment. Nevada and Delaware still have more limited liability for major shareholders." ■