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MEMORANDUM

TO: Helder Gil
FROM: James M. Goldberg
DATE: March 21, 2013
SUBJECT: Comments on Proposed Business Organizations Regulations

Following are my comments on the proposed Chapter 7 (Business Organizations) regulations as noticed in the District of Columbia Register on February 8, 2013.

Section 702.2(a) – The proposal to require an entity’s date of formation or registration on the biennial report goes beyond what the statute mandates be included. Further, it goes beyond the Department’s long-standing practice (see current version of Form BRA-25) and, in my opinion, serves no relevant purpose as such information is already available on the Department’s website.

Section 704.4(a) – The proposal states that the required resolution must be adopted by the corporation’s shareholders or members, if any. However, the Action Sheet currently in use by the Department states that the resolution should be adopted by the Board of Directors. Language in the regulations should be changed to permit adoption of the resolution by the Board if the entity so desires.

Section 704.6 – The proposal seems to require that pre-1962 nonprofit corporations which do not elect to comply with current law prior to January 1, 2014, must nevertheless “elect” to comply with the law after that date by filing a resolution with DCRA, along with “restated” articles of incorporation.

I believe that this provision clearly exceeds the statutory language, which does not require a resolution or “restated” articles of incorporation, but which simply requires filing of the entity’s articles of incorporation (which may or may not be “restated”), the names and addresses of directors and officers and the name of its registered agent.

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Further, the proposal does not offer guidance as to what a pre-1962 nonprofit corporation which (a) has not elected to comply with the new law prior to January 1, 2014 and (b) which does not desire to do business in the District of Columbia must do in order to avoid administrative dissolution. [see 29-107.01(b)(4)] There may well be corporations which wish to retain their status as DC corporations but which do not wish to do business within the District. Guidance should be provided to them.

Section 705 – In both subsections, language should be added indicating the date on which administrative dissolution or termination will take place.

Section 711 – The title of this section uses the word “or” to describe a commercial registered agent, while Section 711.1 uses the word “and.” It would appear that “or” is the proper term since an individual or organization serving as a commercial registered agent for less than 50 business entities has been, and should continue to be permitted to register as a commercial registered agent.

I would be happy to meet with you to discuss these comments in greater detail.