

DISTRICT OF COLUMBIA

WASHINGTON, D.C. (USA)¹

I. Overview of the District of Columbia

The District of Columbia (“D.C.”) is a federal district under the exclusive jurisdiction of the U.S. Congress. It is not a part of any U.S. state. D.C. operates under a municipal government which is led by a locally-elected mayor and a 13-member council. The U.S. government maintains supreme authority over the city and may overturn local laws. The types of for-profit organizations recognized by D.C. are: Business Corporations, including Professional Corporations and Benefits Corporations; Limited Liability Companies, including Professional Limited Liability Companies; Limited Partnerships including Limited Liability Limited Partnerships; Limited Liability Partnerships; and Limited Cooperative Associations. The types of not-for profit organizations recognized by D.C. are: Nonprofit Corporations; General Cooperative Associations; and Unincorporated Nonprofit Associations. Although D.C. recognizes both “foreign” (formed outside of D.C.) and “domestic” entities (formed in D.C.), all requirements specified in this memorandum apply to “domestic” D.C. entities unless otherwise specified.

II. Registration Procedures

A. For-Profit Organizations

a. Laws

D.C. recognizes multiple different forms of for-profit organizations, such as Business Corporations (including Benefit Corporations); Professional Corporations; Limited Liability Companies (including Professional Limited Liability Companies); General Partnerships; Limited Partnerships (including Limited Liability Limited Partnerships), Limited Liability Partnerships and Limited Cooperative Associations. All D.C. organizations are subject to the D.C. Business Organizational Code² (the “Business Code”). Chapters 1 and 2 of the Business Code are generally applicable to all for-profit and not-for profit organizations, while Chapters 3 through 12 are applicable to specific types of entities. With few exceptions, all D.C. organizations must register with the Superintendent of the Corporations Division (the “Superintendent”) of the D.C. Department of Consumer and Regulatory Affairs (the “DCRA”) and with the D.C. Office of Tax and Revenue (the “OTR”) and must also obtain a Basic Business License (“BBL”).

1. Registration Process for Business Corporations

i. Registration with the DCRA

Chapter 3 of the Business Code applies specifically to Business Corporations. Business Corporations include For-Profit Corporations and Benefit Corporations. D.C. defines For-Profit Corporations as entities organized with the intent of making a profit and required to issue stock shares, where management and control is exercised through shareholders, directors and officers who have very little limited personal liability, the board sets policy and controls the president, and officers conduct day-

¹ The following memorandum was prepared by pro bono counsel for the ABA Center for Human Rights. It is intended as background information only and should not be relied upon as legal advice on a particular case. The views expressed herein have not been approved by the House of Delegates or the Board of Governors of the American Bar Association, and, accordingly, should not be construed as representing the policy of the American Bar Association.

² Title 29 of the D.C. Official Code.

to-day operations. Benefit For-Profit Corporations are defined as a type of For-Profit Corporation that will engage in providing general public benefit, which means a material positive impact on society and the environment, taken as a whole, assessed against a third party standard, from the business and operations of a Benefit Corporation.

Business Corporations must register with the DCRA.³ Registration is separate from, and must be done before, the entity applies for a business license, permit, tax registration or any other registration within D.C. To register a Business Corporation, its founders must deliver articles of incorporation form DBU-1 to the Superintendent for filing. The filing may be submitted by web, mail or in-person. The turnaround time for internet filings is 15 business days from the date of submission and for mail filings is 15 business days from the date that the division receives proof of payment. Walk-in filings will be processed and approved or rejected while the filer waits. However, an additional expedited fee of \$100 for one-day service and \$50 for three-day service will apply to all walk-in filers.

The applicable filing fee for a Business Corporation depends on the amount of authorized capital set forth in its articles of incorporation. A Business Corporation with authorized capital of up to \$100,000 will pay a \$220 filing fee; those with authorized capital between \$100,000 and \$500,000 will pay \$550; those with authorized capital between \$500,001 and \$1,000,000 will pay \$1,100; and those with authorized capital of at least \$1,000,001 will pay \$1,650.

ii. Registration with the OTR

All businesses operating in D.C. must register with the OTR in order to assess the entity's liability for employee taxes, sales tax, franchise tax and whatever other tax consideration may be required of the business. The FR-500, or Combined Tax Registration Form, is used by businesses to register all of their D.C. tax requirements on one form. Whether registering for sales tax, franchise tax, unemployment tax, etc., the business person completes all areas applicable to their business activity either in hard copy or by going online.

iii. Basic Business Licenses

In order to operate legally in D.C., all businesses must be licensed with the DCRA.⁴ A Certificate of Authority, or Certificate of Registration, issued by the Corporations Division is not a BBL. It simply means that the entity has been registered with D.C. and that the entity is recognized accordingly.

BBLs are divided into 16 endorsements and numerous subsequent categories. BBL fees include an application fee of \$77, an additional \$27.50 per endorsement (business activity) fee, and "license category fees" that relate directly to business activities. Fees vary according to business activity and their respective requirements. DCRA's Basic Business Online Application Submission and Issuance (OSUB) allows for submission of an application and payment of the applicable fees for all BBL categories online. Certain types of business license categories are available for immediate issuance/printing. Processing times for BBLs submitted by mail may take up to 30 business days.

2. Registration Process for Professional Corporations

Chapter 5 of the Business Code applies specifically to Professional Corporations. D.C. defines Professional Corporations as corporations organized solely for the specific purposes provided under this chapter and which has, as its shareholders, only individuals who themselves are duly licensed to render

³ D.C. Official Code § 29-302.02.

⁴ D.C. Official Code § 47-2851.02.

the same professional service as the corporation. To register a Professional Corporation, its founders must deliver articles of incorporation form DPR-1 to the Superintendent for filing.⁵ DCRA registration submission procedures, OTR registration requirements and BBL requirements are the same as for a Business Corporation. The applicable filing fee for a Professional Corporation is \$220.

3. Registration Process for Limited Liability Companies

Chapter 8 of the Business Code applies specifically to Limited Liability Companies. D.C. defines Limited Liability Companies as unincorporated associations with one or more members, where the owners risk only their investment and their personal assets are not at risk. Additionally, the owners manage and control the business but it can also be run by only one person. To register a Limited Liability Company, its founders must deliver articles of organization form DLC-1 to the Superintendent for filing.⁶ DCRA registration submission procedures, OTR registration requirements and BBL requirements are the same as for a Business Corporation. The applicable filing fee for a Limited Liability Company is \$220.

4. Registration Process for General Partnerships

Chapter 6 of the Business Code applies specifically to General Partnerships. D.C. defines General Partnerships as an association of two or more people, each with equal control, who carry on as co-owners of a business for profit, where the partners have total unlimited liability which includes their personal assets. General Partnerships are not required to register with the DCRA.

5. Registration Process for Limited Partnerships

Chapter 7 of the Business Code applies specifically to Limited Partnerships. D.C. defines Limited Partnerships (which term includes Limited Liability Limited Partnerships) as a special partnership type with limited legal liabilities, where the general partners are personally liable and the limited partners are liable for their business investment. Management and control are exercised through the general partners, while the limited partners do not have any formal control. The entity can have one or more general partners and one or more limited partners. To register a Limited Partnership, its founders must deliver statement of qualification form DLP-1 to the Superintendent for filing.⁷ DCRA registration submission procedures, OTR registration requirements and BBL requirements are the same as for a Business Corporation. The applicable filing fee for a Limited Partnership is \$220.

6. Registration Process for Limited Liability Partnerships

D.C. defines a Limited Liability Partnership as a special partnership type made up of general partners only, where each general partner has limited legal liability and equal control. To register a Limited Liability Partnership, its founders must deliver statement of qualification form DLLP-1 to the Superintendent for filing.⁸ DCRA registration submission procedures, OTR registration requirements and BBL requirements are the same as for a Business Corporation. The applicable filing fee for a Limited Liability Partnership is \$220.

7. Registration Process for Limited Cooperative Associations

Chapter 10 of the Business Code applies specifically to Limited Cooperative Associations. D.C. defines a Limited Cooperative Association as an autonomous, unincorporated association of persons

⁵ D.C. Official Code § 29-302.02.

⁶ D.C. Official Code § 29-802.01.

⁷ D.C. Official Code § 29-702.01.

⁸ D.C. Official Code § 29-610.01.

united to meet their mutual interests through a jointly owned enterprise primarily controlled by those persons, which permits combining: (1) ownership, financing, and receipt of benefits by the members for whose interests the association is formed; and (2) separate investments in the association by members who may receive returns on their investments and a share of control. A Limited Cooperative Association may be organized for any lawful purpose, whether or not for profit. To register a Limited Cooperative Association, its founders must deliver articles of incorporation form DLCA-1 to the Superintendent for filing.⁹ DCRA registration submission procedures, OTR registration requirements and BBL requirements are the same as for a Business Corporation. The filing fee for a for-profit Limited Cooperative Association is \$220 and the filing fee for a nonprofit Limited Cooperative Association is \$80.

B. Not-For Profit Organizations

D.C. recognizes multiple different forms of not-for profit organizations, including Nonprofit Corporations, General Cooperative Associations and Unincorporated Nonprofit Associations. As stated above, Chapters 1 and 2 of the Business Code are generally applicable to all for-profit and not-for profit organizations, while Chapters 3 through 12 are applicable to specific entities.

a. Laws

1. Registration Process for Nonprofit Corporations

i. Registration with the DCRA

Chapter 4 of the Business Code applies specifically to Nonprofit Corporations. D.C. defines a Nonprofit Corporation as a special type of corporation that has no owners, gives no income (except salaries and/or expenses) to members, directors or officers, provides for personal liability protection, and where management and control is vested in a board of directors and/or voting members. A D.C. Nonprofit Corporation is typically managed by its board of directors and operated by its officers and employees. It does not have shareholders, but it may have voting members. However, no part of the income or surplus of the entity may be distributed to its members, directors or officers (other than reasonable compensation paid for services rendered). A Nonprofit Corporation has an existence of its own, independent of the terms of office or employment of its members, directors and officers. It can sue, be sued and own real estate in its own name. To register a Nonprofit Corporation, its founders must deliver articles of incorporation form DNP-1 to the Superintendent for filing.¹⁰ The DNP-1 is substantially similar to the DBU-1 and the submission procedures and expedited filing fees are the same as for a Business Corporation. The applicable filing fee for a Nonprofit Corporation is \$80.

The Unified Registration Statement (“URS”) represents an effort to consolidate the information and data requirements of all states that require registration of nonprofit organizations performing charitable solicitation within their jurisdictions. The URS is an alternative to filing all of the respective registration forms produced by each of the cooperating states. D.C. recognizes the URS, but the entity will still need to apply for a Charitable Solicitation BBL if it directly or indirectly solicits for any contributions in D.C.

Domestication permits a nonprofit corporation to transfer its jurisdiction of incorporation without having to create or merge into a different legal entity. Domestication must be authorized under the laws of both the new and the old jurisdiction. Potential benefits of domestication include: (1) the entity may be

⁹ D.C. Official Code § 29-1003.02.

¹⁰ D.C. Official Code § 29-402.02.

able to maintain its existing recognition of tax-exempt status by the IRS and (2) it avoids the need to assign contracts.

A charitable corporation must provide a notice to the D.C. Attorney General that it intends to dissolve prior to delivering articles of dissolution to the DCRA. However, the statute provides that the notice should not delay or otherwise affect the dissolution process.

ii. Registration with the OTR

All businesses operating in D.C., including nonprofits, must register with the OTR by submitting Form FR-500. In order to be exempt from taxes under D.C. law, the nonprofit organization must also file Form FR-164 with the OTR. The form is used to request exemption from local income and franchise taxes, and, under certain circumstances, from sales and use taxes and personal property taxes. Each entity must file Form FR-500 (Combined Business Tax Registration Application) with Form FR-164 if not previously registered with the OTR. Additional information regarding nonprofit tax-exempt status is provided in section III below.

iii. Basic Business Licenses

Nonprofit organizations are not categorically exempt from the BBL requirements. A nonprofit organization must apply for a BBL based on the source of the organization's funds. If a nonprofit organization seeks funds from its members only, it is not required to obtain a General Business License. However, if the organization is engaged in business services that derives income beyond its members then they would need a General Business License. Furthermore, if any or all of the nonprofit's funds come from fund raising efforts, grants, bazaars, auctions, or other events from outside of your own members, then it must obtain a Charitable Solicitation License. Solicitation also includes seeking funds through federal, local or private grants.

Even a nonprofit that has IRS 501(c)(3) exempt status will likely be required to apply for a BBL with Charitable Solicitation Registration, unless it is a church or other religious organization. The charitable solicitation requirements do not apply to those organizations who solicit solely for educational, church or religious purposes or to a corporation or an unincorporated association under the supervision and control of any such entity that has been granted exemption from taxation under the provisions of Section 501 of the Internal Revenue Code¹¹ (unless they are engaged in some type of business).

Generally, if a nonprofit is not required to obtain a Charitable Solicitation License, it will need to obtain a General Business License. Post-secondary educational institutions are not required obtain a General Business License because they are required to obtain an Educational Services license endorsement which is issued by the Educational Licensure Commission.

2. Registration Process for General Cooperative Associations

Chapter 9 of the Business Code applies specifically to General Cooperative Associations. D.C. defines a cooperative as a business or organization owned by and operated for the benefit of those using its services, where profits and earnings generated by the cooperative are distributed among the members, also known as user-owners. A General Cooperative Association may be incorporated to engage in any one or more lawful mode or modes of acquiring, producing, building, operating, manufacturing, furnishing, exchanging, or distributing any type or types of property, commodities, goods, or services for the primary and mutual benefit of the patrons of the association, or their patrons, if any, as ultimate consumers. To

¹¹ See D.C. Official Code §44-1703.

register a General Cooperative Association, its founders must deliver articles of incorporation form DGCA-1 to the Superintendent for filing.¹² The applicable filing fee for a General Cooperative Association is \$80. The requirements for registration with the OTR and BBL application are the same as for a Nonprofit Corporation.

C. Analytical Comparison

For-Profit and not-for profit organizations are treated very similarly under the D.C. Code. They register and apply for licenses with the same departments and offices. If anything, it appears that the Business Code favors nonprofit entities, which enjoy lower registration fees and generally less burdensome licensing applications. Although nonprofit entities must file an additional form in order to obtain tax-exempt status, the form seems reasonably tailored to the goal of determining which entities appropriately qualify from the various forms of D.C. taxes.

III. Tax Laws

A. For-Profit Organizations

a. Laws

1. Corporations

For-Profit Corporations will receive either a S Corporation or C Corporation designation, as determined by the IRS. Each type of corporation must meet certain IRS rules depending on the tax designation. For C Corporations, partners are being taxed on profits personally based on ownership percentages while shareholders are being taxed on dividends. Earnings for C Corporations are “double-taxed” - the corporation’s net income is taxed at the corporate level and its shareholders receive dividends out of net income, which dividends may also be taxed at the individual level. S Corporation is the most complex business structure, but an S Corporation can receive “pass-through” taxation so that the corporation’s earnings avoid double taxation. To qualify as an S Corporation, a corporation generally must have no more than 100 shareholders with only one class of stock outstanding, its shareholders must be individuals that are U.S. residents and it must affirmatively elect S Corporation status. It is difficult to qualify for the applicable IRS requirements and S Corporations are subject to stricter government control. Both types of corporations enjoy the tax advantage of tax-deductible fringe benefits.

2. Limited Liability Companies

Limited Liability Companies are usually not taxed as an entity because most choose “pass-through” treatment, whereby the members/owners report profits and losses on their personal tax returns, such that profits and losses pass through the company to its owners for tax purposes. Tax-exempt members/owners treat their share of income as exempt or subject to unrelated business taxable income, depending on the character of the income.

3. Partnerships

General Partnerships have few tax benefits. In terms of taxation, they are generally not taxed as an entity and profits are taxed to partners based on ownership percentages. The partners report profits and losses on their personal tax returns.

¹² D.C. Official Code § 29-906.

Limited Partnership partners are taxed on profits personally based on ownership percentages and they can claim these taxes as personal taxes. Limited Liability Partnerships enjoy the tax advantage of “pass-through” tax treatment for their partners.

B. Not-For Profit Organizations

a. Laws

Generally, a nonprofit corporation will be exempt from federal and D.C. taxes (and donors can deduct their contributions to the organizations) if it receives 501(c)(3) exemption. However, it will remain liable for tax on unrelated business income and other taxes such as property and sales tax (unless local and state exemptions apply).

Most nonprofit organizations that are recognized by the IRS will qualify for tax-exempt status with the OTR. Exempt and nonprofit organizations must establish and maintain their D.C. tax-exempt status. OTR ensures that exempt and nonprofit organizations are registered for taxes and have applied for tax-exempt status by filing form FR-164 and, if required, pay the proper taxes.

A nonprofit organization that has received its determination approval and is recognized tax-exempt under the Internal Revenue Code of 1986 (the “IRS Code”) is classified as a tax-exempt organization. IRS-recognized 501(c)(3) tax-exempt organizations may qualify for D.C. tax-exempt status for income/franchise, sales and use taxes, and some personal property taxes. IRS-recognized, tax-exempt organizations other than 501(c)(3) organizations may qualify for D.C. tax-exempt status for income/franchise.

Income and Franchise Tax Exemption: Most organizations recognized by the Internal Revenue Service will qualify for exemption under the D.C. Income and Franchise Tax Act.¹³ The effective date for all income and franchise tax exemptions generally will be the receipt date of the application for exemption Form FR-164 by the Office of Tax and Revenue.

Sales and Use Tax Exemption: Under the D.C. Sales and Use Tax Act,¹⁴ sales made to any organization which qualifies as a “semipublic institution” are exempt from the tax. A “semipublic” institution is defined under Sec. 47-2001(r) of this Act as “any corporation, and any community chest, fund, or foundation, organized exclusively for religious, scientific, charitable, or educational purposes, including hospitals, no part of the net earnings of which inures to the benefit of any private shareholder or individual.” This exemption is limited to those organizations, which have been recognized as tax exempt under Section 501(c)(3) of the IRS Code (or comparable sections under prior codes). Semipublic institutions are recognized as tax exempt if physically located in D.C. The exemption applies only to those transactions, which occur on or after the date of the issuance of a Certificate of Exemption by the OTR.

Personal Property Tax Exemption: Organizations requesting an exemption from D.C. Personal Property Tax must own the personal property for which the request is being made, and qualify under the D.C. Official Code.¹⁵ Organizations that may qualify for exemption are any corporation, and community

¹³ D.C. Official Code § 47-1802.1.

¹⁴ D.C. Official Code § 47-2005.

¹⁵ D.C. Official Code § 47-1508.

chest, fund or foundation, organized exclusively for religious, scientific, charitable, or educational purposes, including hospitals, no part of the net earnings of which inure to the benefit of any private shareholder or individual. The effective date for personal property tax exemptions will be the July 1 following the date of the initial application request.

C. Analytical Comparison

D.C. itself does not differentiate between for-profit and not-for profit entities with respect to taxation; rather, it places the power to make such distinctions in the hands of the IRS. As discussed above, federal tax exemption is essentially a pre-requisite to D.C. tax exemption, and there are no special D.C.-specific tax provisions which stray from the federal tax treatment of any for-profit or not-for profit organizational forms.

IV. Financial Transaction Laws

A. For-Profit Organizations

a. Financial Transaction Laws Generally

1. For-Profit Corporations

For-Profit Corporations can raise capital by issuing stock (equity) and by borrowing money through loans or other debt instruments. The corporation may be able to accept program related investments (“PRIs”) from foundations in the form of loans or equity.

2. Limited Liability Companies

Limited Liability Companies can raise capital through contributions by members/owners. Like for-profit corporations, they can also raise capital by borrowing money through loans or other debt instruments and may also be able to accept PRIs from foundations in the form of loans or equity.

3. Partnerships

Partnerships can raise capital through contributions by partners and by borrowing money through loans or other debt instruments.

b. Foreign Investment/Foreign Funding Laws

D.C. does not restrict the access of resources from foreign sources or impose additional restrictions or burdens if foreign resources are used by an entity.

c. Political Contribution Laws

Any business “entity” may make contributions in D.C.¹⁶ For these purposes, “entity” is defined as:¹⁷(i) a business corporation; (ii) a nonprofit corporation; (iii) a general partnership, including a limited liability partnership; (iv) a limited partnership, including a limited liability limited partnership; (v) a limited liability company; (vi) a general cooperative association; (vii) a limited cooperative association; (viii) an unincorporated nonprofit association; (ix) a statutory trust, business trust, or common-law business trust; or (x) any other person that has a legal existence separate from any interest holder of that

¹⁶ DCMR § 3-3011.20.

¹⁷ D.C. Official Code § 29.101(10)(A)

person or that has the power to acquire an interest in real property in its own name. However, the term “entity” does not include:¹⁸ (i) an individual; (ii) a testamentary or *inter vivos* trust with a predominantly donative purpose, or a charitable trust; (iii) an association or relationship that is not a partnership under the rules set forth in § 29-602.02(c) of the Business Code or a similar provision of the law of another jurisdiction; (iv) a decedent’s estate; or (v) a government or a governmental subdivision, agency, or instrumentality.

All organizational contributions to political campaigns and other political activities are regulated by the Business Code and the D.C. Municipal Regulations (“DCMR”) promulgated thereunder. The Business Code defines a “contribution” as (1) a gift, subscription (including any assessment, fee, or membership dues), loan (except a loan made in the regular course of business by a business engaged in the business of making loans), advance, or deposit of money or anything of value, made for the purpose of financing, directly or indirectly: (i) the election campaign of a candidate; (ii) any operations of a political, exploratory, inaugural, transition, or legal defense committee; or (iii) the campaign to obtain signatures on any initiative, referendum, or recall measure, or to bring about the ratification or defeat of any initiative, referendum, or recall measure, or any operations of a political committee involved in such a campaign; (2) a contract, promise, or agreement, whether or not legally enforceable, to make a contribution for any such purpose; (3) a transfer of funds between political committees or between an exploratory committee and a political committee; or (4) the payment, by any person other than a candidate or a political, exploratory, inaugural, transition, or legal defense committee, of compensation for the personal services of another person that are rendered to such candidate or committee without charge, or for less than reasonable value, for any such purpose or the furnishing of goods, advertising, or services to a candidate's campaign without charge, or at a rate which is less than the rate normally charged for such services.¹⁹

However, the Business Code specifies that the term “contribution” shall not be construed to include: (i) services provided without compensation by a person (including an accountant or an attorney) volunteering a portion or all of the person’s time on behalf of a candidate or a political, exploratory, inaugural, transition, or legal defense committee; (ii) personal services provided without compensation by a person volunteering a portion or all of the person’s time to a candidate or a political, exploratory, inaugural, or legal defense committee; (iii) communications by an organization, other than a political party, solely to its members and their families on any subject; (iv) communications (including advertisements) to any person on any subject by any organization that is organized solely as an issue-oriented organization, which communications neither endorse nor oppose any candidate for office; (v) normal billing credit for a period not exceeding 30 days; (vi) services of an informational or polling nature, and related thereto, designed to seek the opinion(s) of voters concerning the possible candidacy of a qualified elector for public office, before such qualified elector’s becoming a candidate; (vii) the use of real or personal property, and the costs of invitations, food, and beverages voluntarily provided by a person to a candidate in rendering voluntary personal services on the person’s residential premises for related activities; provided, that expenses do not exceed \$500 with respect to the candidate's election; and (viii) the sale of any food or beverage by a vendor for use in a candidate's campaign at a charge less than the normal comparable charge, if the charge for use in a candidate's campaign is at least equal to the cost of such food or beverage to the vendor; provided, that expenses do not exceed \$500 with respect to the candidate’s election.²⁰

¹⁸ D.C. Official Code § 29.101(10)(B)

¹⁹ D.C. Official Code § 1-1161.01(10)(A).

²⁰ D.C. Official Code § 1-1161.01(10)(B).

A contribution of goods, services or property by the contributor to a campaign's finance committee, candidate, constituent service program or Statehood Fund is an in-kind contribution.²¹ In-kind contributions are treated as any other contribution and are subject to contribution limits. They must be valued at the current local fair market value at the time of the contribution and must be reported and itemized under the appropriate category of receipts.²²

D.C. imposes certain reporting requirements with respect to political contributions. With the exception of candidates for the office of ANC (Advisory Neighborhood Commission) member, all candidates, committee, constituent-service programs and Statehood Funds and their treasurers are required to make best efforts to report all contributions on a Report of Receipts and Expenditures form.²³ Each contribution, rebate, refund or any other receipt of fifteen dollars (\$15) or more shall be reported.²⁴

1. Contribution Limits²⁵

Pursuant to the Business Code and the DCMR, individuals, partnerships, committees, corporations, and labor organizations may make contributions in support of or in opposition to candidates for nomination or election to office. Contributors must be knowledgeable of the limits imposed by the Act on contributions. Contributions made to support or oppose initiative or referendum measures are unaffected by the limits.²⁶ Political action committees are limited to contributions of \$5,000 from any one source, including a business contributor and its affiliated entities, in any one election (including primary and general elections, but excluding special elections).²⁷ Each business entity is deemed to be a separate entity; provided, that a business entity, which is established, financed, maintained, or controlled (51% or more) by another entity, or shares a controller, whether the controller is another entity or an individual, is considered, for the purposes of the contribution limitations, an affiliated entity of the other business entity.²⁸

A "business contributor" consists of a business entity that makes a contribution and each of that business entity's affiliated entities. A business contributor shall certify on a form prescribed by the Director of Campaign Finance and submitted to the committee for each contribution that it makes that none of its affiliated entities have contributed an amount that, when aggregated with the business contributor's contribution to that committee, would exceed the limits imposed by the Campaign Finance Act. A business contributor to a political committee, political action committee, or an independent expenditure committee shall provide the committee with the identities of the contributor's affiliated entities that have also contributed to the committee, the date and amount of each contribution and expenditure made, and the identity of the individual owners of the business contributor and their affiliated entities. A business contributor shall comply with all requests from the D.C. Office of Campaign Finance to provide information about its individual owners, the identity of affiliated entities, the individual owners of affiliated entities, the contributions or expenditures made by such entities, and any other information deemed relevant to enforcing the provisions of the D.C. Campaign Finance Act.²⁹

No person, including a business contributor and its affiliated entities, may make any contribution, and no person may receive any contribution, which, when totaled with all other contributions from the

²¹ DCMR § 3-9900.1.

²² DCMR § 3-3008.9.

²³ DCMR § 3-3008.1 through § 3-3008.2.

²⁴ DCMR § 3-3008.4.

²⁵ DCMR § 3-3011.

²⁶ DCMR § 3-3011.31.

²⁷ DCMR § 3-3011.3.

²⁸ DCMR § 3-3011.22.

²⁹ DCMR § 3-3011.27 through § 3-3011.30.

same person, pertaining to an individual's campaign for nomination as a candidate or election to public office, including both the primary and general elections, or special elections, exceeds the limitations enumerated for each office set forth below. Contributions in support of either individual candidates or their authorized committees, or for the recall of an incumbent, shall be limited to the following:³⁰

- (a) Mayor, U.S. Senator, and U.S. Representative to Congress – two thousand dollars (\$2,000);
- (b) Chairman of the Council and the Attorney General – one thousand five hundred dollars (\$1,500);
- (c) At-large Member of the Council – one thousand dollars (\$1,000);
- (d) Ward Member of the Council and At-large Member of the State Board of Education– five hundred dollars (\$500);
- (e) Ward Member of the State Board of Education – two hundred dollars (\$200);
- (f) Official of a Political Party – two hundred dollars (\$200); and
- (g) Advisory Neighborhood Commissioner – twenty-five dollars (\$25).

There are no limits to what candidates can contribute financially to their own campaigns as long as candidates use their own money, and report the contributions made from personal funds.³¹

2. Corporate Contributions

Any business entity, including a corporation, may make contributions in D.C. However, a corporation, its affiliated entities, including its subsidiaries, and each committee established, financed, maintained or controlled by the corporation and its affiliated entities share a single contribution limitation for purposes of the contribution limits imposed by the Business Code.³²

3. Rules Concerning Contributions Made by Partnerships:³³

All contributions made by partnerships shall be subject to each contributing partner's individual contribution limitations³⁴ and must be attributed to both the partnership and to each partner, on the Report of Receipts and Expenditures.³⁵ No portion of such contribution may be made from the profits of a corporation that is a partner.³⁶

B. Nonprofit Organizations

a. Financial Transaction Laws Generally

1. Nonprofit Corporations

Nonprofit Corporations can accept charitable donations and grants. They are eligible for PRIs by foundations and can borrow money and issue debt instruments, but they cannot raise capital by issuing stock.

2. Restriction on Disposition of Charitable Assets

³⁰ DCMR § 3011.1 through § 3011.2.

³¹ DCMR § 3011.5.

³² DCMR § 3-3011.20 through § 3-3011.21.

³³ D.C. Official Code § 1-1131.02.

³⁴ DCMR § 3-3011.23.

³⁵ DCMR § 3-3008.7.

³⁶ DCMR § 3-3011.25.

Property held in trust or otherwise dedicated to a charitable purpose may not be diverted from its purpose in a sale of assets unless the corporation obtains an appropriate court order to the extent required by and pursuant to the laws of D.C. on *cy pres* or otherwise dealing with the nondiversion of charitable assets.

b. Foreign Investment/Foreign Funding Laws

As with for-profit entities, D.C. does not restrict the access of resources by not-for profit entities from foreign sources or impose additional restrictions or burdens if foreign resources are used by a not-for profit entity.

c. Political Contribution Laws

D.C.'s political contribution laws do not differentiate between for-profit and not-for profit entities.

C. Analytical Comparison

In large part, D.C.'s laws relating to financial transactions do not differentiate between for-profit and not-for profit entities. One exception relates to the fact that nonprofit corporations cannot raise capital by issuing stock. If an organization needs access to the capital markets, it may need to organize as a for-profit corporation (D.C.'s "benefits corporation" option may be an attempt at compromise here) or as a limited liability company. However, a for-profit corporation's directors, even for a benefits corporation, will have a duty first to the production of net income for the shareholders, whereas a not-for profit corporation's directors will have a duty first to the organization's social mission.

The D.C. restriction on disposition of charitable assets noted in section (B)(a)(2) above is not limited to not-for profit entities, although it will likely affect not-for profit entities at a much higher rate than for-profit entities. Although the restriction could theoretically present an unwelcome obstacle to certain not-for profit entities, is generally in line with the purposes of charitable nonprofit organizations, may serve to protect the assets of charitable entities from unwelcome potential acquirers, and preserves the intentions of those who donate to such entities.

V. Auditing/Reporting Requirements

A. For-Profit Organizations

a. Auditing Requirements

D.C. does not impose independent audit requirements on its registered entities.

b. Reporting Requirements

1. Biennial Reporting Requirement with DCRA

Every registered entity is required to file two-year reports with Corporations Division to maintain good standing within D.C. First reports are due April 1 of the very next year from the year of registration. Subsequent reports are due April 1 every two years thereafter. The fees associated with filing a biennial report for a For-Profit Corporation, Limited Liability Company, Limited Partnership, Limited Liability Partnership, General Partnership, and for-profit Limited Cooperative Association are \$300 for filing and an additional \$100 for late filings.

2. Registered Agent Requirement

All registered entities are required to appoint and maintain a registered agent (“RA”).³⁷ The RA is the individual or the entity that performs the following duties: (1) forwards to the represented entity at the address most recently supplied to the agent by the entity any process, notice, or demand that is served on the agent; and (2) provides the notices required by the Business Code to the entity at the address most recently supplied to the agent by the entity. The RA may be either (1) a “commercial registered agent,” which means a person (an individual or domestic or foreign filing entity) who has filed a “listing of commercial registered agent” under D.C. Official Code § 29-104.05 with the DCRA; or (2) a “noncommercial registered agent,” which means a person that is not a commercial registered agent and is: (A) an individual or domestic or foreign entity that serves in D.C. as the agent for service of process of an entity; (B) an individual who holds the office or other position in an entity who is designated as the agent for service of process; or (C) a member in good standing of the D.C. Bar who maintains an office in D.C. Additionally, the filing entity may appoint an individual within the organization to act as its registered agent in D.C. The RA’s address must be a physical street address in D.C.; it may not be a PO Box or address outside D.C.

3. BBL Renewal Requirement

All BBLs are valid for two years. In most cases, the requirements for renewals are similar to the requirements at the time of application.

B. Not-For Profit Organizations

All auditing and reporting requirements discussed above with respect to for-profit organizations also apply to not-for profit organizations, except that the fees associated with filing a biennial report for a Not-for Profit Corporation, General Cooperative Association, and not-for profit Limited Cooperative Association are \$80 for filing and \$50 for late filings.

C. Analytical Comparison

D.C.’s laws relating to auditing and reporting requirements do not differentiate between for-profit and not-for profit entities.

VI. Penalties for Non-Compliance

A. For-Profit Organizations

a. Laws: Penalties for Infractions of the Business Organizations Act Generally

1. Infractions and Fines

Civil fines, penalties, and fees may be imposed on any domestic or foreign filing entity that commits an infraction of any provisions of the Business Code specified under § 29-101.06 and fails to comply with any provisions thereof pursuant to Chapter 18 of Title 2 (“Civil Infractions Act”). An infraction committed by an individual acting as agent, partner, director, officer or employee of a “person” shall be considered to have been committed by that person. For purposes of the Civil Infractions Act, a

³⁷ D.C. Official Code § 29-104.02.

“person” includes a corporation, firm, agency, company, association, organization, partnership, society, or joint stock company, as well as an individual.³⁸

Under the Civil Infractions Act and the DCMR promulgated thereunder, “Class 1” Infractions are “egregious infractions that result from flagrant, fraudulent, or willful conduct, or unlicensed activity, or that are imminently dangerous to the health, safety or welfare of persons within D.C.”³⁹ The following are specified as “Class 1” Infractions: Engaging in business without a BBL or proper license endorsement;⁴⁰ Operating a business without a General Business License endorsement;⁴¹ Operating as a solicitor without a license endorsement;⁴² Submitting a document under the Business Code that contains a false statement; Operating any entity (including nonprofit entities) in D.C. without articles of incorporation/organization filed; Operating in D.C. after an organization has been dissolved, whether voluntarily, judicially or administratively.

Fines for “Class 1” Infractions are as follows: First Offense = \$2,000; Second Offense (within three years of First Offense) = \$4,000; Third Offense (within three years of First Offense) = \$8,000; Fourth and Subsequent Offenses (within three years of First Offense) = \$16,000.⁴³

Under the Civil Infractions Act, “Class 3” Infractions are “infractions that involve a failure to comply with a law or rule requiring periodic renewal of licenses or permits, or infractions that are serious and have an immediate, substantial impact on the health, safety or welfare of persons within D.C.”⁴⁴ The following are specified as “Class 3” Infractions: Failure to prepare an annual report;⁴⁵ Failure to appoint and maintain an RA. Fines for “Class 3” Infractions are as follows: First Offense (within three years of First Offense) = \$500; Second Offense (within three years of First Offense) = \$1,000; Third Offense (within three years of First Offense) = \$2,000; Fourth and Subsequent Offenses (within three years of First Offense) = \$4,000.⁴⁶

2. Administrative Procedures

Chapter 31 of Title 16 of the DCMR sets forth the administrative procedures governing the civil infractions set forth above. The first step is the issuance of a Notice of Infraction (“NOI”) by the Director of the DCRA (including a designee thereof, the “Director”) upon observance of an infraction.⁴⁷ A properly completed NOI signed by the issuing agent shall be prima facie evidence of the validity of the issuance and the truth of the facts alleged in the NOI.⁴⁸ A respondent must answer an NOI in person or by mail within 15 days from the date of service of the NOI.⁴⁹ If a respondent challenges an NOI as defective on its face, an Administrative Law Judge (“ALJ”) may review the NOI prior to a hearing and, if the ALJ determines that the NOI is defective on its face, dismiss the NOI. If the ALJ does not dismiss the NOI, the respondent shall be deemed to have denied the infraction and the Director shall schedule a hearing. The

³⁸ DCMR § 16-3201.3 through DCMR § 16-3201.4.

³⁹ DCMR § 16-3200.1(a).

⁴⁰ DCMR § 16-3301.1 and D.C. Official Code § 47-2851.02)

⁴¹ D.C. Official Code § 47-2851.03d(a).

⁴² D.C. Official Code § 47-2835.

⁴³ DCMR § 16-3201.1(a); 16-3201.2(a).

⁴⁴ DCMR § 16-3200.1(b).

⁴⁵ DCMR § 17-804.

⁴⁶ DCMR § 16-3201.1(a); 3201.2(a).

⁴⁷ DCMR § 16-3101.6.

⁴⁸ DCMR § 16-3101.2.

⁴⁹ DCMR § 16-3103.1; 16-3103.8.

respondent's evidence presented in support of the denial may include evidence on whether the NOI is defective.⁵⁰

Failure to answer the initial NOI in a timely manner without good cause for such failure acts of a forfeiture of the respondent's right to a hearing on the NOI or adjudication of the NOI by mail.⁵¹ If a second NOI is issued and the respondent again fails to answer, the respondent shall be required to appear at a hearing to show cause why the respondent's license or permit should not be suspended for such failure to answer.⁵²

A respondent may choose to adjudicate the NOI by mail by answering the initial NOI in a timely manner and admitting the infraction with explanation along with submission of all evidence of mitigating circumstances or other evidence relevant to the respondent's explanation.⁵³

At a hearing, a partnership may be represented by a general partner and a corporation may be represented by a director or officer of, or attorney for, the corporation. A respondent shall have the following rights at a hearing: (a) to appear and be heard in person or be represented by counsel; (b) to examine the respondent's own witnesses and cross-examine opposing witnesses; (c) to present all relevant evidence; and (d) to have subpoenas issued to compel the attendance of witnesses and the production of relevant documents upon submission of a written request to an ALJ at least five (5) days prior to the hearing. If a respondent denies an infraction, the Director shall have the burden of proving the infraction by a preponderance of the evidence.⁵⁴

All testimony shall be given under oath or affirmation. Parties at a hearing shall make objections in a timely manner and shall briefly state the grounds relied upon. At the conclusion of a hearing, the ALJ may hold open the hearing record for an appropriate period of time to allow for the production of additional documentary evidence or submission of briefs by the parties. A party filing documentary evidence after the hearing but before the record has closed, shall serve a copy of the evidence on the opposing party.⁵⁵ An official record of the hearing shall be maintained, including, but not limited to testimony and exhibits.⁵⁶

A decision of an ALJ shall be final upon issuance.⁵⁷ The decision shall be in writing and contain findings of fact, conclusions of law, an order, and a statement which informs the respondent of the right to appeal.⁵⁸ The respondent has the right to appeal an ALJ's decision pursuant to a notice of appeal submitted or postmarked within 15 days of service of the final decision⁵⁹ and a filing fee of \$10 plus the cost of preparing a transcript.⁶⁰ Appeals regarding the Business Code shall be under the jurisdiction of the Board of Appeals and Review.⁶¹

b. Failure to File Biennial Report or Maintain Registered Agent

⁵⁰ DCMR § 16-3103.14.

⁵¹ DCMR § 16-3103.13.

⁵² DCMR § 16-3105.5.

⁵³ DCMR § 16-3106.

⁵⁴ DCMR § 16-3109.1 through § 16-3109.4.

⁵⁵ DCMR § 16-3109.5 through § 16-3109.8.

⁵⁶ DCMR § 16-3111.1.

⁵⁷ DCMR § 16-3113.1.

⁵⁸ DCMR § 16-3113.2.

⁵⁹ DCMR § 16-3118.3.

⁶⁰ DCMR § 16-3118.12.

⁶¹ DCMR § 16-3118.11.

All entities that do not file a mandatory biennial report for any given reporting period and/or maintain a registered agent with DCRA's Corporation division are subject to revocation of their registration. This revocation takes place by Superintendent of Corporations of DCRA pursuant to D.C. Code § 29-105.11 & 29-106.02.

All domestic entities are subject to administrative dissolution and all foreign entities are subject to have their registration canceled in D.C. Entities that were subject to revocation may not continue to conduct their business except for the purpose of "winding down" (closing out the business). If entity wishes to continue conducting its business it must reinstate immediately. Conducting business in revoked status may subject the entity to potential civil infractions and other penalties. Revocation takes place 1st business day of September of any given year.

If entity's status is revoked, its articles of incorporation/organization shall be void and all powers conferred upon such entity will be declared inoperative. Any entity may file an application for reinstatement and pay all back fees and file all back reports at any time. The fee for reinstatement after administrative dissolution for a For-Profit Corporation, Limited Liability Company, Limited Partnership, Limited Liability Partnership, and for-profit Limited Cooperative Association is \$300. The fee for reinstatement of a General Partnership is \$220.

Once the necessary filings and fees have been accepted by the DCRA, the entity's status will be reinstated, and upon approval of the entity's petition for reinstatement, it shall have such powers, rights, duties, and obligations as it had just prior to the time of the issuance of the administrative dissolution or termination with the same force and effect.

c. Failure to Timely Renew BBL

The BBL renewal application must be postmarked on or before the renewal deadline date. After this date, the entity will be required to pay a late fee of \$250 in addition to its license renewal fees. If payment is submitted 31 days after the renewal deadline, the entity will be required to pay a late fee of \$500 in addition to the license renewal fees.

Before a suspended or revoked license will be reinstated, the entity must comply with the actions required which ultimately provided the reason for the earlier revocation. The licensee may request a hearing. If an entity's BBL was suspended for not being in compliance with another D.C. agency, the entity will have to: (1) correct the situation which brought the business out of compliance; (2) undergo inspections by that agency and any other relative agencies; (3) pay the required fines or penalties; and (4) apply at DCRA for reinstatement of business license with a compliance approval of all relevant agencies.

d. Voluntary Disclosure of Failure to Comply with Tax Laws

The OTR encourages businesses and individuals that are not in compliance with D.C. tax laws to voluntarily come forward to bring their accounts into compliance through the Voluntary Disclosure Program. Voluntary Disclosure Program offers may be submitted anonymously or under the taxpayer's identity. OTR will waive civil penalties if the tax and interest is paid in full. However, if a taxpayer has been contacted by OTR or its representatives, then the taxpayer is not eligible for the Voluntary Disclosure Program. The Audit Division of OTR's Compliance Administration administers the Voluntary Disclosure Program. A voluntary disclosure offer may be submitted to any tax auditor at OTR, but approval authority is vested in the Audit Division Chief, Assistant Audit Division Chief, or the Review and Conference Supervisory Tax Auditor. OTR's position on voluntary disclosure agreements is determined by the facts and circumstances in each separate disclosure.

Any taxpayer can apply to remedy any tax obligation under voluntary disclosure except for tax liability under the authority of the D.C. Real Property Tax Administration. In most cases, OTR will agree to limit the look-back period to the lesser of three years or the date when the taxpayer established nexus in D.C. In egregious situations, however, OTR may require a five-year look-back period. For sales or gross receipts tax cases, if the taxpayer collected sales tax or reimbursement for gross receipts tax from their customers, but did not remit the tax to D.C., the look-back period imposed will be the greater of five years or the date nexus was established in D.C.

If the tax liability in certain cases is a substantial amount, OTR may agree to establish a payment agreement if an adequate amount is paid up-front. However, if the taxpayer fails to make any scheduled payments in a timely manner, the agreement could be considered as null and void. OTR reserves the right to assess additional penalty and interest on the remaining balance of tax due at that time.

e. Failure to Comply with Political Contribution Laws

Chapter 37 of Title 3 of the DCMR sets forth the administrative procedures governing violations of the political contribution laws. An investigation may commence upon referral by the Board of Elections or the filing of a complaint in writing with the Director of Campaign Finance (and his or her designee).⁶² A full investigation regarding any alleged violation shall commence upon a finding of reasonable cause by the Director of Campaign Finance and notice to the respondent that a full investigation has commenced.⁶³ Upon belief that sufficient evidence exists constituting an apparent violation, the Director of Campaign Finance shall institute a formal charge or complaint against the alleged violator.⁶⁴ The Director of Campaign Finance may institute or conduct an informal hearing, including an order to show cause, on alleged violations.⁶⁵ Upon determination pursuant to a full investigation or informal hearing that a violation has occurred, the Director of Campaign Finance may ministerially impose fines upon any person in the following manner: (a) each allegation shall constitute a separate violation; and (b) a fine shall attach for each day of non-compliance for each violation.⁶⁶ The fine for making a political contribution in excess of contribution limitations is \$4,000.⁶⁷

B. Not-For Profit Organizations

a. Laws: Penalties for Infractions of the Business Organizations Act Generally

D.C.'s laws regarding penalties for infractions of the Business Code do not differ between for-profit and not-for profit entities.

b. Failure to File Biennial Report or Maintain Registered Agent

The consequences for failure to file a biennial report or failure to maintain an RA are the same for nonprofit and for-profit organizations in D.C., except that the fee for reinstatement after administrative dissolution for a Nonprofit Corporation, General Cooperative Association, and not-for profit Limited Cooperative Association is only \$80.

c. Failure to Timely Renew BBL

⁶² DCMR § 3-3701.1.

⁶³ DCMR § 3-3704.1.

⁶⁴ DCMR § 3-3706.1.

⁶⁵ DCMR § 3-3709.1.

⁶⁶ DCMR § 3-3711.1.

⁶⁷ DCMR § 3-3711.2(m).

D.C.'s laws regarding penalties for failure to timely renew an entity's BBL do not differ between for-profit and not-for profit entities.

d. Voluntary Disclosure of Failure to Comply with Tax Laws

For nonprofit organizations that already have their tax-exempt status approved by OTR, the Voluntary Disclosure Program may be used to cover unreported Unrelated Business Income ("UBI") from prior years. The UBI reported to D.C. should be the same as the UBI reported or required to be reported to the IRS. Corporations report UBI to D.C. using Form D-20; all others use Form D-30.

If a nonprofit does not already have their tax-exempt status approved by OTR, they must file Form FR-164, Application for Exemption, and report any prior-year UBI. Nonprofits can also use the voluntary disclosure process to report any prior-year taxes (i.e. franchise, personal property, sales, use, arena, etc.) that should have been paid.

e. Failure to Comply with Political Contribution Laws

D.C.'s penalties for failure to comply with its political contribution laws do not differentiate between for-profit and not-for profit entities.

C. Analytical Comparison

There is no significant difference between for-profit and not-for profit organizations with respect to D.C.'s penalties for failure to comply with the laws and regulations discussed above.

VII. Overview Chart

Issue	For-Profit Organizations	Not-For Profit Organizations	Similarities
Registration Procedures	DCRA Registration fees: range from \$220-\$1650	Entity may take advantage of Unified Registration Statement or domestication options DCRA Registration fee: \$80	Registration with DCRA and OTR and licensing requirements
Tax Laws	Corporation subject to double taxation LLCs and most other for-profit entities can elect "pass-through" taxation	Generally exempt from taxation if federally exempt (but still must fill out multiple forms to obtain D.C. exemptions for various taxes)	Nonprofit entities that are not federally exempt or unable to obtain D.C. exemptions are subject to the same D.C. tax laws as for-profit entities
Financial Transaction Laws	Can raise capital through capital markets	Cannot access capital markets Restrictions on disposition of charitable assets	No foreign investment restrictions Subject to political contribution limits

Auditing/Reporting Requirements	Fee to file biennial report with DCRA: \$300	Fee to file biennial report with DCRA: \$80	<p>No independent audit requirement</p> <p>Biennial reporting requirement</p> <p>Registered Agent requirement</p>
Penalties	Fee for reinstatement after administrative dissolution: \$220-\$300	Fee for reinstatement after administrative dissolution: \$80	<p>Infractions covered by fine schedules in Civil Infractions Act and related administrative procedures permit ALJ hearing and appeal to DCRA Board of Appeals and Review</p> <p>Administrative dissolution for failure to file biennial report or maintain Registered Agent</p> <p>Voluntary Disclosure Program available</p> <p>Director of Campaign Finance controls procedures governing failure to comply with political contribution laws</p>