



Aug 20, 2025

Categories:

[Publications](#)

Authors:

[Jason Villalba](#)

[Edward W. Moore, Jr.](#)

[Austin S. Conner](#)

Is Delaware's Reign Over? Why Texas Is Challenging the Status Quo for Private Equity Funds

With increasing competition among states to create the most business-friendly corporate legal ecosystem in the United States, private equity funds across the country are reevaluating the state of incorporation for their portfolio company investments. While Delaware has been the traditional state of incorporation for private equity-owned portfolio companies, Texas has recently gained national attention for its efforts to provide a corporate legal environment for public and private corporations that (1) strengthens the board's ability to direct company operations without fear of obstruction from corporate activists, (2) proactively limits taxation on certain corporate transactions, and (3) provides more certainty with respect to potential legal conflicts.

Delaware Legal History

For over two centuries, Delaware has been the preeminent state in the country to incorporate a business. This is largely the result of Delaware's historically business-friendly corporate legal environment and its predictable court system. Private equity funds, recognizing that legal conflicts between their portfolio companies and other parties are often inevitable, seek the certainty that the Delaware court system has provided.

Recently, however, the esteemed Delaware Chancery Court has periodically [abandoned its business-friendly focus](#) to advance agendas that are not in consonance with board or shareholder expectations.

Texas Makes Its Move

The Texas Legislature, observing that social and economic forces were creating shifting allegiances in the corporate legal terrain, sought to provide a robust alternative for public and private companies. To compete directly with the Delaware Chancery Court,

in 2023, the Texas Legislature created the [Texas Business Court](#). The new court began accepting cases in September of 2023.

In the recently completed 2025 legislative session, the Texas Legislature, seeking to strengthen Texas' new business court by adding additional legal support, supplemented its corporate law and [adopted a slate of laws](#) that will significantly benefit public and private business owners and create the [most business-friendly corporate legal ecosystem](#) in the country.

Maximizing the ROI of Private Equity Investments

A private equity fund that is seeking an M&A exit for its portfolio companies might consider evaluating the business and economic benefits of reincorporating from Delaware to Texas, including, but not limited to:

- The codification of the Business Judgement Rule into statute ([89\(R\) SB 29 – Enrolled version](#));
- A strengthened Texas Business Court comparable, and in many cases superior to, the Delaware Chancery Court ([89\(R\) HB 40 – Enrolled version](#)); and
- Pre-clearance of board members' independence prior to expensive and time-consuming litigation ([89\(R\) SB 29 – Enrolled version](#)).

A private equity fund that is seeking an IPO exit for its portfolio companies might consider evaluating the business and economic benefits of reincorporating from Delaware to Texas, including, but not limited to:

- A 3% minimum ownership threshold for shareholder activism ([89\(R\) SB 1057 – Enrolled version](#));
- Limitation of a non-business-related proxy solicitor considerations ([89\(R\) SB 1057 – Enrolled version](#));
- Assurance that certain stock transactions will remain tax-free ([89\(R\) HJR 4 – Enrolled version](#)); and
- Assurance that market exchange transactions will exclude the value of market-making incentives for franchise tax purposes ([89\(R\) SB 1058 – Enrolled version](#)).

For more information, please contact the authors or any attorney with the firm's [Private Equity and Venture Practice](#).

© 2026 FBT Gibbons LLP. May be considered attorney advertising in some jurisdictions.