



The Strong Firm  
Attorneys P.C.

## STRONG • POINTS • NEWSLETTER

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### The Strong Firm in the News

**The Strong Firm Presenting Sponsor for Montgomery County Hispanic Chamber Business Forum** – Including Representative Kevin Brady and several other key national and local political figures, various experts including Bret Strong present and discuss issues facing Hispanic businesses operating in Montgomery County. Eric Thiergood of the firm is a board member for the Hispanic Chamber.

**Ironman Texas Comes to The Woodlands.** Bret Strong of The Strong Firm was instrumental in the negotiation of a five-year host sponsorship agreement which will bring the ultimate brand in Triathlon to The Woodlands Texas beginning May 21, 2011 and for the next five years.

**Bret Strong among hosts of special reception honoring Governor Rick Perry in The Woodlands.** Governor Perry was hosted by a group of local business leaders, including Bret Strong, as he runs for reelection in November.

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## The Basics of Business Structuring in Texas

By: **Bret L. Strong**

In representing hundreds of clients involved in various types of business activities and ventures, from international business ventures generating hundreds of millions of dollars in revenue to small, one person ventures that have yet to make their first dollar, we are asked virtually every day “How should we structure our business?” It is a very common question with an often not so simple answer. This article will review the basic principals associated with entity formation and assist you in navigating the initial structuring decisions.

### The Three Basic Structural Principals

The basics of structuring your business will generally center around three very simple sets of principals: liability protection, taxation and desired management structure.

#### Liability Protection:

Traditional formal entities such as corporations and limited liability companies are designed to protect its owners (shareholders and members, respectively) from individual liability resulting of acts and omissions of the entity. Limited partnerships, are designed to protect a certain class of inactive investors (called limited partners) from such individual liability as well. In contrast, sole proprietorships and general partnerships, do not provide such liability protection, and therefore, the owners remain individually liable for the sins of their businesses.



**BRET L. STRONG**

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The founder and managing shareholder of The Strong Firm P.C.

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## Issues Facing Companies Formed by Foreign Nationals Operating in Texas

By: **Eric R. Thiergood, Sr.**

If you have had the pleasure of strolling down the scenic walkways lining the Woodlands Waterway or enjoyed quick latté on the patio of your favorite café or restaurant in Market Street, there is a good chance that at least one of the couples or groups within your earshot are speaking a language other than English. While Montgomery County and in particular the Woodlands, has long enjoyed healthy tourism business from visitors from all over the globe, a growing number of companies with headquarters and/or operations outside of the United States are deciding to make Montgomery County “home.” As a firm, we have seen the number of foreign

nationals and foreign companies forming entities in Texas (typically LLCs and corporations) increase over 200% per year for the last 4 years. This tremendous growth in the amount of foreign nationals and foreign companies beginning operations in the US has not shown any signs of slowing down in the near future. Even in the midst of our country’s economic slowdown last year, which obviously resulted in a decrease in the number of new US corporate entities being formed industry-wide, our firm saw a steady increase in the number of foreign-based new entity formations.

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**ERIC R. THIERGOOD, SR.**

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Eric joined the Strong Firm P.C. in 2005 after graduating from South Texas College of Law. He is licensed to practice law in the State of Texas and in the United States Federal District and Bankruptcy Court for the Southern District of Texas. Having lived in Asturias, Oropesa Del Mar and Madrid, Spain, Eric is completely fluent in Spanish and uses these skills in his work with some of the firm's international Spanish-speaking clients.

## Announcing Rachel Tolentino as Law Clerk

Rachel Tolentino joined the Strong Firm as a summer intern through her law school program with the Thomas M. Cooley Law School in Michigan where she was a member of The Business Law Society as well as the Phi Alpha Delta Law Fraternity. She graduated with a Juris Doctor degree in August 2010 as well as holding a Bachelor of Science in Criminal Justice from Roger Williams University in Rhode Island. Tolentino practices in the areas of Business Law and Contracts; Corporations, LLCs and Partnerships; Real estate; Trademarks; and Estate Planning and Probate. Rachel recently moved to Texas with her husband she married this August. Congratulations Rachel!

# Issues Facing Companies Formed by Foreign Nationals

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## Global In Scale

While a many of these foreign nationals and foreign entities are from Mexico, our client roster has grown to include companies throughout Central and South America including El Salvador, Venezuela, Chile, Peru, and Brazil to name a few and also includes a handful of clients from as far as Spain and even Israel. The reasons for setting up operations in Texas and even more specifically South Montgomery County vary from company to company, the two most common goals being immigration purposes and investment purposes.

## Corporate immigration

As you are undoubtedly aware, illegal immigration had become of a "hot button" topic over the last few years. Important distinctions, however, exist between the corporate immigration that is the subject of this article and the personal illegal immigration that has grabbed the headlines lately. The foreign nationals and foreign companies that are the discussed herein are required to comply with the often arduous federal business immigration laws, are often expending significant amounts in legal and other fees during the immigration process, and rather than coming to the US seeking employment (as is often the case of personal illegal immigration) the business or corporate immigrant is oftentimes creating employment opportunities in and bringing significant investment within the US. Many of our foreign clients are surprised to learn the large number of corporate immigration options that are available. Since these options are deemed as corporate or business immigration, it is of critical importance that any new entity formation be done properly and with careful attention being paid to ensure that the resulting new entity will comply with their corporate immigration efforts. As such, when assisting a foreign national or foreign company establish operations in the US, for preliminarily immigration purposes, a significant amount of time is spent with the client to understand the structure of the entity in the client's home country and then strategizing with the client to ensure that the newly formed US entity is optimally formed. Because the US corporate immigration laws are complex and at times arduous, careful attention must be paid from the very onset of the entity formation to ensure that the entity is properly structured to ensure a seamless corporate immigration process.

## Investment Purposes

Increasingly, Texas and specifically Montgomery County have become an attractive destination for foreign nationals looking to expand their operations into the US or even to start up new operations. A relatively favorable tax structure, a solid base of potential employees, "pro business" legislation and statutes, and reasonable property values are all reasons that many businesses, both international and US based, have cited as reason that starting operations in Texas just makes sense. This fact is all the more true when considering the Montgomery County area as the site for new operations. Most of our international clients are delightfully surprised when they learn how welcoming the Montgomery County area is to new foreign businesses.

## State of Formation

While it was once the norm to form a corporation or LLC in Delaware regardless of the state in which you had operations, this is no longer the case. Gone are many of the corporate advantages that once made incorporating in Delaware over Texas the route that most companies took. This is also a decision that a foreign company beginning operations in the US will have to make. While some clients may have specific requirements or needs that make forming their entity in a state other than Texas ideal, a vast majority of our international clients, who are starting operations in Texas opt to form their new entity in Texas. Texas has prided itself as being a "pro-business" state, a fact that many foreign companies commencing operations in the US have picked up on. This obviously creates a "win-win" for both the State of Texas with the creation of jobs and taxable activities and for the new business with the opportunity to operate in a state and under corporate and commercial laws which seek to assist business rather than burden them down with red tape.

## Conclusion

Whether the intent of a foreign company starting operations in the US is for corporate immigration purposes or simply for investment purposes, Texas and specifically Montgomery County have increasingly become an attractive option. While as with any new venture, the foreign company beginning a new venture in the US will have to navigate a host of state and Federal laws, with the guidance of a corporate attorney, these obstacles are manageable and reasonable. With proper legal guidance and structuring from the onset, a foreign company desiring to set up operations in Texas can find the endeavor to be a successful and rewarding one.

# The Basics of Business Structuring in Texas

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## **Taxation:**

Until just a few years ago, the State of Texas taxed only corporations and limited liability companies in the form of a Franchise Tax. In 2008, the Texas legislature implemented a “Margins Tax” generally calculated based on the gross profit margin of the taxed entity. The tax is NOT an income tax (which would be unconstitutional in Texas). The tax now applies to all formal entities operating in Texas including corporations, limited liability companies, limited partnerships, but excludes sole proprietorships, general partnerships directly owned by natural persons, and other specified organizations such as certain financial services businesses, nonprofits, etc. The details of federal and taxation of entities and their owners is well beyond the scope of this article, but suffice it to say that we work very closely with tax planning professionals to choose the entity that will best fit the tax planning goals of each entity and all of its owners.

## **Desired Management Structure:**

The third structural principal of entity selection centers around the owners’ desired structure for management of the entity. We will review the general structural characteristics of each type of entity as a way of reviewing the structural advantages and disadvantages of each.

**A. Sole Proprietorship** – A sole proprietorship is very simply a business being operated by one individual without any formal entity structure. The business operates under the single owner’s social security number and may have an “assumed name” filed of record in the records of the county(ies) in which it operates. This is obviously the simplest of structures with no formal management structure outside the owners as the sole proprietors.

**B. General Partnership** – A general partnership is a business being operated by two or more individuals without any formal entity structure other than an “agreement” to be in business together. This partnership “agreement” does not have to be in writing. As you can probably easily deduce, forming a partnership is very easy and often happens by default when two people get started in business. The structure can be as simple or as complicated as the partners want to make it, but the main concern in a general partnership is that the partners are jointly and severally liable for the businesses’ and for each other’s negligence and obligations. This can be avoided with other types of entity structure.

**C. Limited Partnership** – A Limited partnership is formed through the filing with The Secretary of State a certificate of limited partnership which identifies at least one general partner and at least one limited partner. General Partner(s) are responsible for the day to day operation of the partnership and just like in a general partnership are jointly and severally liable for the actions of the partnership. Limited Partners, because they are NOT involved in the day to day operations of the partnership, have limited liability (only up to the amount invested in the partnership).

**D. Corporation** – The most common of entities historically, a corporation is owned by its shareholders. The shareholders elect a board of directors who are charged with overall management of the company. The board of directors then elects officers who are charged with authority to take on the day to day tasks of operating the company. There can be as few as one shareholder, one director and two officers (President and Secretary) and all positions may (but do not have to be) held by the same person. Corporations are separate “tax payers” for federal income tax purposes unless the owners file for and meet the requirements to become an “S-Corporation” under the tax code, which then allows for pass-through tax status (paying taxes on the profits only at the individual level).

**E. Limited Liability Company** – The limited liability company has become a very popular entity choice based upon its flexibility from both a structural and tax perspective. Structurally, the owners (known as members) can manage the company without any other management structure. However, the entity can select, at formation, to be “Manager-managed” where the managers serve as a sort of board of directors. The entity can choose to be taxed as a partnership (assuming 2 or more members), a corporation, and choose S-Corporation status as detailed above. A single member LLC is considered a disregarded entity and taxed as a sole proprietorship.

Hopefully, we’ve given you a general flavor for the decisions making process and choices available when forming a business entity. Anytime you are looking at starting or participating in a business venture, please be sure to obtain the necessary legal advice to run through these formation issues in detail. We look forward to exploring all of these issues with our clients as they form and grow their businesses.

## Announcing Alicia Lightsey as Paralegal!



Alicia joined **The Strong Firm, P.C.** in May, 2010 and quickly became our full time paralegal in July, 2010.

Lightsey graduated Phi Theta Kappa with an Associate of Applied Science degree in Paralegal Studies in May, 2006 from San Jacinto College North, an American Bar Association approved paralegal program.

Alicia was inducted into Lambda Epsilon Chi (LEX), an honor society nationally recognized by the American Bar Association and statewide by the Texas Higher Education Coordinating Board. We are proud to have her as a part of our team!



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# The Strong Firm



From left: **D. Joe Griffin**, law clerk; **Melanie Edleston**, office manager; **Bret L. Strong**, attorney, founder, and managing shareholder; **Eric R. Thiergood, Sr.**, associate attorney; **Alicia Lightsey**, paralegal; **Meghan Leheny**, legal assistant.

## We provide legal services in the all of the following areas:

- **Business Law and Contracts**
- **Financing, Trademarks, and General Corporate**
- **Corporations, Partnerships, and LLCs**
- **Real Estate**
- **Business Disputes**
- **Wills, Probate, Trusts, and Estates**
- **Mergers, Sales and Acquisitions of Businesses**
- **Oil, Gas and Energy**
- **International Business Investment**



**D. JOE GRIFFIN**

Joe is currently a law clerk with the firm planning on becoming an Associate with the firm in November upon passing the Texas Bar Exam and his licensure to practice in The State of Texas. He received his Juris Doctorate from the University of Houston Law Center in May 2010. He received his undergraduate degree from Brigham Young University in Provo, UT, in International and Latin American Studies. He and his wife have three children.

## A Man Walks into a Bar

**By: D. Joe Griffin**

The variations on this joke are endless; however, I am not referring to a place of imberment but rather to a destination where patrons seem equally inebriated as a result of months of sleepless nights and constant apprehension: the Texas Bar Exam. As its name implies, the Texas Bar Exam, is a block, barricade, or barrier to entry into legal practice in Texas. The Exam itself is consistently ranked among the hardest “Bar” exams in the country as it consists of three days of test taking on over 20 different legal practice areas, every practice area so vast that literally libraries could be filled with the written works addressing each individual topic. The Champ, Muhammad Ali, often said “I run on the road long before I dance under the lights” and I found careful preparation for the Texas Bar Exam to be the only prescription to alleviate the anxiety. In my short time working in the legal field I have found that it is often the case that legal problems arise as a result of situations which have not been adequately prepared for. At The Strong Firm P.C. we help individuals and businesses both prepare and protect themselves against any sucker punches which may be coming their way and succeed when it is their time to “dance under the lights.”

## Clerk’s Corner – Odd Patents or Patently Odd and Green? **By: Rachel Tolentino**

Motorola has recently started designing and marketing phones in the market that have incredibly unique abilities. These newly granted patents are a far cry from the traditional call cell phones many consumers are used to. One phone, the smell-o-phone, generates a scent through the device to perfume any foul scent the user may be experiencing. The smell-o-phone would operate like an electronic air freshener, dispersing a scent at scheduled intervals. There is also a solar powered phone which is entirely powered by the sun. With both the efficiency of a traditional cell phone and its environmentally conscientious approach, the solar powered phone is sure to be a success. With the ever growing mobility of our world, it will be interesting to see how successful these and other products will become in the American market as we move toward a more “green” and environmental conscious society.