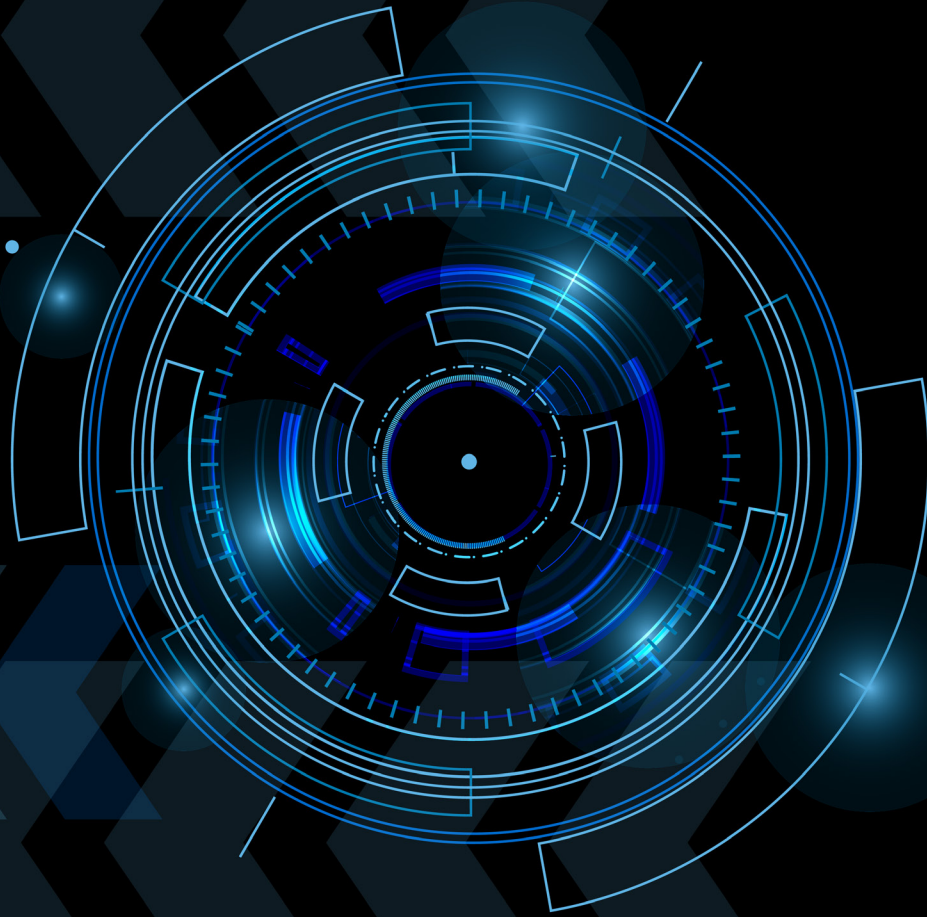


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Legal Entity Management
Corporate filings: Are you
the sorcerer's apprentice?

Those responsible for many corporate filings (corporate secretaries, legal or compliance departments, or others within the organization) might well sympathize with the plight of the sorcerer's apprentice. In the 1797 poem of that name by Goethe, a sorcerer's apprentice, tired of fetching water, uses his master's spells to get a broom to do the work for him. The floor is quickly covered with water, and the apprentice realizes that he is in trouble because he does not know the spell needed to stop what he started. He splits the broom in two, but each piece becomes a whole broom that takes up a pail and continues fetching water, now at twice the speed, and the room begins to flood.

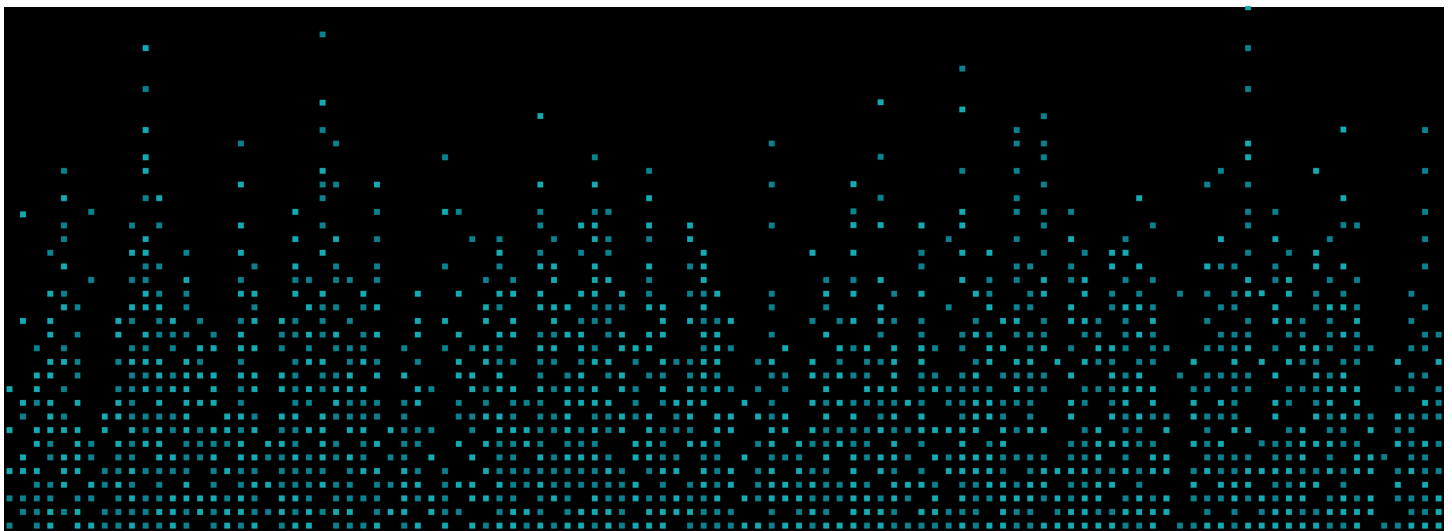
While those responsible for filings do not usually have to fetch water or resort to magic spells, there are times when it seems as though there are two or three new matters to address for every matter that is completed. This is certainly true of the many filings that the office needs to prepare, ranging from annual and other reports that need to be filed with the secretary of state in each state in which each subsidiary is organized and qualified to do business; notices of resignations of officers and directors of subsidiaries and of the election of their successors; similar filings with the countries and other governmental units of other countries where subsidiaries do business; and, for companies listed on the New York Stock Exchange (NYSE), annual "affirmations" of compliance with various NYSE requirements. Depending upon various factors, including competing priorities and the number of subsidiaries and the number of states and countries in which the subsidiaries are qualified to do business, preparing and submitting these filings can be a daunting and time-consuming responsibility, particularly given the need to keep up with constantly changing regulations across jurisdictions. Moreover, they may be due at times that are particularly challenging, such as at the beginning of a fiscal year, when major SEC filings, such as the 10-K and proxy statement, need

to be prepared and when the independent auditor may be seeking information in order to complete an audit of financial statements.

Other, more subtle, factors can also affect the preparation of these filings. Responsibility for these filings may be diffused—spread around the company in functions including legal, tax, and risk. This can be an advantage to the extent that tasks are allocated to the functions with the greatest expertise, but it can also be a disadvantage when accountability is not clear.

Another factor affecting these filings is that others within the company may consider them routine or inconsequential, consisting of filling in blanks and requiring minimal attention or concentration. These perceptions, which can be reflected in budget decisions (e.g., refraining from adding staff or from paying for technology solutions to make the process less onerous), can create an atmosphere in which the person or persons responsible for preparing the filings may feel as though they should be completed only when other, more consequential things have been completed.

Of course, the perception is incorrect. A subsidiary that loses its qualification to do business in a state may be unable to defend litigation brought against it in that state, at least until the necessary filings are made and any fees paid. A company may not be able to make required representations or certifications as to the good standing of corporate entities in connection with business loan and other financing agreements. A major corporate transaction may not be able to close because a subsidiary that is to acquire assets has been dissolved for nonpayment of franchise taxes. Or, all the directors and officers of an entity have left the company or otherwise have ceased to serve, which in turn requires remedial action to elect successors. And so on.



How do organizations handle this responsibility, given the challenge of increasing responsibilities? Here are some suggestions, based upon the premise that, as indicated above, a one-size-fits-all approach may not be the right approach:



Be organized, and leverage technology appropriately.

Preparing and maintaining a detailed calendar of all the organization's required filings, including where and when they need to be made, and the principal information and documentation needed to complete them can help assure that filings do not "slip through the cracks" and are made in a timely manner. A calendar also facilitates sending reminders across the company in advance of filing deadlines to avoid last-minute scrambles. And technology can help, too. Many entity management platforms allow for the calendarization of filing deadlines and will send out reminders and set daily tasks. These platforms also help organizations to maintain the necessary entity information and facilitate the submission of the required filings efficiently—and on time.



Work cross-functionally.

Many filings require collaborative efforts across functions: tax, legal, compliance, finance, risk, talent and human resources, and more. Develop cross-functional teams with people from each necessary function who can be relied upon to prepare their respective "pieces" of the filings.



Be aware of staffing and other resource needs and availability.

It may not be possible to add permanent or even temporary staff to the team, but anticipating staffing needs well in advance, and considering who is available at various times throughout the year, can help you to gather the resources needed to get the job done. Similarly, waiting until the last minute to obtain the technology and other resources needed to prepare these filings means you may not have these resources in time to help—or at all.



Consider outsourcing.

Given the impediments to adding staff (and possibly even to getting existing staff to focus on filing responsibilities in light of conflicting priorities and other challenges), outsourcing may be a more efficient option and can provide additional flexibility in addressing filing responsibilities and other related obligations. Furthermore, it permits those ultimately responsible for corporate filings to focus their and their teams' time on other, more strategic initiatives.

Focusing early and often on the people, processes, and technology needed to prepare and submit "routine" filings on a timely basis can reduce the risk of becoming a sorcerer's apprentice and, at the same time, can also incorporate leading governance and risk elements into the corporate filing process.

Start the conversation



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