

**SUPPLEMENT NO. 5 TO THE REPORT OF THE LEGAL
OPINIONS COMMITTEE REGARDING LEGAL OPINIONS
IN BUSINESS TRANSACTIONS:**

**STATEMENT ON ENTITY STATUS, POWER AND
AUTHORITY OPINIONS REGARDING PRE-CODE TEXAS
ENTITIES AND PRE-CODE REGISTERED FOREIGN
ENTITIES UNDER THE TEXAS BUSINESS
ORGANIZATIONS CODE**

**LEGAL OPINIONS COMMITTEE OF THE BUSINESS LAW SECTION
OF THE STATE BAR OF TEXAS**

When the Texas Business Organizations Code (the “Code”) initially became effective on January 1, 2006, it did not apply to the following entities:

- an entity formed under a Predecessor Statute (as defined below) before the Code’s initial effective date that did not voluntarily elect to be governed by the Code before January 1, 2010 (a “Pre-Code Texas Entity”); and
- a foreign (non-Texas) entity that applied for and received a certificate of authority, or took equivalent action, to transact business in Texas before the Code’s initial effective date that did not voluntarily elect to be governed by the Code before January 1, 2010 (a “Pre-Code Registered Foreign Entity”).

Effective January 1, 2010, the Code mandatorily became applicable to Pre-Code Texas Entities and Pre-Code Registered Foreign Entities (collectively, the “Pre-Code Entities”).

This Statement by the Legal Opinions Committee of the Business Law Section of the State Bar of Texas (the “Committee”)¹ addresses whether the Code’s application has affected

¹ This Statement has been prepared by a Subcommittee of the Legal Opinions Committee of the Business Law Section of the State Bar of Texas consisting of the following members: John C. Ale, Byron F. Egan, Frank T. Garcia, Roderick A. Goyne, David R. Keyes, Gail Merel, Scott G. Night, Daryl B. Robertson, Stephen C. Tarry and Richard A. Tulli. This Statement was approved by the Committee on September 5, 2012.

The Committee has published a report and a statement regarding third-party legal opinions under Texas law. See Legal Opinions Committee of the Business Law Section of the State Bar of Texas, *Report of the Legal Opinions Committee Regarding Legal Opinions in Business Transactions*, BULLETIN OF THE BUSINESS LAW SECTION OF THE STATE BAR OF TEXAS, (Special Issue) June–September 1992, at 1 (the “*Texas Legal Opinions Report*”). The Texas Legal Opinions Report has been supplemented on four occasions (collectively, the “*Supplements*”): Legal Opinions Committee of the Business Law Section of the State Bar of Texas, *Supplement No. 1 to the Report of the Legal Opinions Committee Regarding Legal Opinions in Business Transactions*, BULLETIN OF THE BUSINESS LAW SECTION OF THE STATE BAR OF TEXAS, December 1994, at 1 (addressing certain Texas usury law issues); Legal Opinions Committee of the Business Law Section of the State Bar of Texas, *Supplement No. 2 to the Report of the Legal Opinions Committee Regarding Legal Opinions in Business Transactions*, BULLETIN OF THE BUSINESS LAW SECTION OF THE STATE BAR OF TEXAS, Spring 2001, at 1 (addressing Texas opinions regarding security interests in investment property collateral); Legal Opinions Committee of the Business Law Section of the State Bar of Texas, *Supplement No. 3 to the Report of the Legal Opinions Committee Regarding Legal Opinions in Business Transactions: Statement on Legal Opinions Regarding Indemnification and Exculpation Provisions under Texas Law*, 41 TEX. J. BUS. L. 271 (Winter 2006) (addressing Texas legal opinions regarding indemnification and exculpation provisions); and Legal Opinions Committee of the Business Law Section of the State Bar of Texas, *Supplement No. 4 to the Report of the*

certain opinions commonly given in commercial transactions insofar as such opinions relate to Pre-Code Entities, including after amendments to the Code that became effective September 1, 2011 (the “2011 Amendments”).² In summary, the Committee believes that the application of the Code, by itself, would not affect the rendering of customary legal opinions addressing a Pre-Code Entity’s existence (or authority to transact business, in the case of a Pre-Code Registered Foreign Entity), good standing and entity power and authority to execute, deliver and perform obligations under a contract (collectively, the “Status, Power and Authority Opinions”).³

Definitions. Some key terms used in this Statement are defined as follows:

- “Application” means the application filed with the Texas Secretary of State for a Pre-Code Registered Foreign Entity to obtain a certificate of authority, or an equivalent application filed for a Pre-Code Registered Foreign Entity, to transact business in Texas under a Predecessor Statute.
- “Pre-Code Formation Document” means the formation document filed with the Texas Secretary of State to form a Pre-Code Texas Entity under a Predecessor Statute, such as articles of incorporation, certificate of limited partnership or articles of organization.
- “Predecessor Statutes” means the Texas entity statutes that the Code replaced, including the Texas Business Corporation Act (the “TBCA”), the Texas Non-Profit Corporation Act, the Texas Revised Partnership Act, the Texas Revised Limited Partnership Act (the “TRLPA”) and the Texas Limited Liability Company Act.

Background. The Code combined and codified a host of Predecessor Statutes into a single, comprehensive statute. When the Code became effective on January 1, 2006 and until January 1, 2010, a Pre-Code Entity became subject to the Code only if it affirmatively opted

Legal Opinions Committee Regarding Legal Opinions in Business Transactions: Statement on ABA Principles and Guidelines, 43 TEX. J. BUS. L. 1 (Spring 2009) (addressing the *Legal Opinion Principles* and the *Guidelines for the Preparation of Closing Opinions* published by the Committee on Legal Opinions of the Business Law Section of the American Bar Association). The Committee also published a statement regarding the Texas Supreme Court’s decision in 1999 concerning the liability of Texas lawyers for negligent misrepresentation, *Limiting Negligent-Misrepresentation Liability for Third-Party Legal Opinions*, 38 TEX. J. BUS. L. 20 (Winter 2003). The Texas Legal Opinion Report and the Supplements are available electronically at the website of the Business Law Section of the State Bar of Texas at <http://www.texasbusinesslaw.org/committees/legal-opinions>.

² S.B. 748, 82nd Texas Legislature (Regular Session), §§ 59–62. This bill was authored by Senator John Carona, with a parallel bill in the House introduced by Representative Helen Giddings, and signed by Governor Rick Perry on May 27, 2011.

³ The Status, Power and Authority Opinions regarding a Texas corporation are commonly stated as follows:
The Corporation is a corporation validly existing and in good standing under the laws of the State of Texas.
The Corporation has the requisite corporate power and authority to execute and deliver, and perform its obligations under, each of the Transaction Documents to which it is a party.

A customary opinion regarding a foreign corporation that has registered to transact business in Texas is commonly stated as follows:

The Corporation is authorized [or registered] to transact business as a foreign entity in, and is in good standing under the laws of, the State of Texas.

To the extent that Status, Power and Authority Opinions are predicates on which other opinions (such as due authorization, execution and delivery opinions) are explicitly or implicitly based, the principles discussed in this Statement would also apply unless matters regarding status, power and authority are either the subject of assumptions or are otherwise excluded from the scope of such other opinions.

for the Code to govern it.⁴ Effective January 1, 2010, the Code mandatorily began to govern all Pre-Code Entities, and the Predecessor Statutes expired.⁵

The Code's transition provisions do not require a Pre-Code Entity to amend its Pre-Closing Formation Document or Application to comply with, or conform to, the Code. To the contrary, section 402.005(a)(3) of the Code requires a Pre-Code Texas Entity that is a type of "filing entity" under the Code⁶ to amend its Pre-Code Formation Document to conform to the requirements of the Code only when such Pre-Code Texas Entity next files an amendment to its Pre-Code Formation Document. Similarly, section 402.005(a)(4) of the Code requires a Pre-Code Registered Foreign Entity that is a type of "foreign filing entity" under the Code⁷ to amend its Application to conform to the requirements of the Code only when such Pre-Code Registered Foreign Entity next files an amendment to its Application.

Rendering Opinions. Lawyers often are asked to render the Status, Power and Authority Opinions to a third party (such as a lender or a contract counterparty) at the closing of a commercial transaction. The following is the Committee's analysis of the impact, if any, on rendering the Status, Power and Authority Opinions of the Code's becoming applicable to Pre-Code Entities mandatorily, rather than through the opt-in process:⁸

- **Existence.** The provisions of the Code plainly contemplate that a Pre-Code Texas entity continues its entity existence once the Code becomes applicable to it.⁹ Moreover, an entity's continued existence is not impaired by the fact that the entity's Pre-Code Formation Documents differ from what the Code contemplates those documents should provide. In this connection, Pre-Code Formation Documents typically employ terminology used in the Predecessor Statutes that differs from that used in the Code. For example, a corporation incorporated under the TBCA before January 1, 2006, would have filed a document titled "articles of incorporation," and that document might have referred to the corporation as a "business corporation" "incorporated" under the TBCA, rather than referring to the document as a "certificate of formation," which is the document filed under the Code to form any filing entity, and to that kind of entity as a "for-profit corporation" "formed" under the Code, as contemplated by the Code's terminology. Pre-Code Formation Documents may also omit information that the Code now requires for the filing of a certificate of formation or application for registration. For example, articles of incorporation might not have stated that the entity is a

⁴ TEX. BUS. ORGS. CODE ANN. (Vernon Pamphlet 2011) (hereinafter the "Code") §§ 402.003–.004.

⁵ Code § 402.005; H.B. 1156, 78th Texas Legislature (Regular Session), §§ 2-12, 16(b) (amending Predecessor Statutes to set expiration dates and repealing miscellaneous statutes).

⁶ The Code defines a "filing entity" as a Texas entity that is a corporation, limited partnership, limited liability company, professional association, cooperative or real estate investment trust. See Code § 1.002(22). The term "corporation" is, in turn, defined to include a for-profit corporation, nonprofit corporation, and professional corporation. Code § 1.002(14).

⁷ The Code defines a "foreign filing entity" as an organization formed under, or whose internal affairs are governed by, a jurisdiction other than Texas, and that registers or is required to register to transact business in Texas under Chapter 9 of the Code and is not a foreign limited liability partnership. See Code §§ 1.002(29).

⁸ The Committee's analysis is limited to a Pre-Code Entity that is either a "filing entity" or "foreign filing entity," as defined in the Code.

⁹ For example, as noted above, section 402.005(a)(3) of the Code requires a Pre-Code Entity to amend its Pre-Code Formation Document to conform to the requirements of the Code only when such Pre-Code Entity next files an amendment to its Pre-Code Formation Document. The requirement in this section for such an amendment must mean that a Pre-Code Entity's existence would not terminate merely because the Code became applicable to it.

corporation or a business corporation; such a statement was not required by the TBCA because filing articles of incorporation under the TBCA meant by definition that a business (*i.e.*, for-profit) corporation was being incorporated.¹⁰

The Committee does not believe that a failure to use Code terminology or to mention the type of entity in a Pre-Code Formation Document or Application affects the existence of a Pre-Code Texas Entity. The existence¹¹ of a Pre-Code Texas Entity commenced under its applicable Predecessor Statute, and nothing in the Code provides that an entity, whether formed under a Predecessor Statute or the Code, ceases to exist because its governing documents do not comply with the Code, including a failure to comply with section 402.005(a)(3) of the Code, which requires a Pre-Code Texas Entity to conform its Pre-Code Formation Document to applicable Code requirements when it next files an amendment to such document. So long as the Pre-Code Formation Document is not amended, there is no requirement under the Code to conform.¹² If it is amended, the Secretary of State accepts a filing of the amendment only when it finds that the filing conforms to the applicable provisions of the Code.¹³ The 2011 Amendments further provide explicitly that specified inconsistencies with the terminology or requirements of the Code do not constitute failures to conform with the requirements of the Code.¹⁴ As a result, the Committee concludes that a

¹⁰ The Code calls the document filed to form an entity a “certificate of formation.” Because that document is used for any type of filing entity, it must state what type of entity is being formed. Code § 3.005(a)(2). There was no need under the Predecessor Statutes to require that formation documents state the type of entity being formed. If the filing was made under the Predecessor Statute for a particular type of entity, such as the TBCA, then that was the type of entity formed.

¹¹ The Committee notes that in rendering an opinion as to the valid existence of a Texas entity, many opinion givers simply state that their opinion as to existence is based solely on the certificate of existence issued by the Secretary of State and that opinion recipients typically will accept this qualification.

¹² While no requirement exists, some Pre-Code Texas Entities have found it advisable to amend their Pre-Code Formation Documents to conform to the Code in order to avoid uncertainties arising from such non-conformance.

¹³ Code § 4.002(a). Except in a proceeding by the State of Texas to terminate existence, an acknowledgment by the Secretary of State of the filing of a certificate of formation (which includes a Pre-Code Formation Document) is conclusive evidence of the entity’s existence and authority to transact business in Texas. Code § 3.001(d)(1). Article 3.04 of the TBCA contained an analogous provision stating that the Secretary of State’s issuance of a certificate of incorporation that has become effective “shall be conclusive evidence that all conditions precedent required to be performed for valid incorporation have been complied with and that the corporation has been duly incorporated under [the TBCA], except as against the State in a proceeding for involuntary dissolution.” This Committee previously concluded that Article 3.04 relieved “the Opinion Giver of the need to determine whether the requirements for incorporation were met at the time the entity was incorporated so long as the Opinion Giver verifies the issuance of the certificate of incorporation.” Texas Legal Opinions Report, *supra* note 1, at 81.

On a related point, the Committee notes that the Secretary of State may terminate a filing entity’s existence after a finding that certain failures have occurred, such as not filing required reports or failing to maintain a registered agent or registered office, but only after notice and a 90-day opportunity to cure the failure. Code § 11.251(b). The entity’s existence ceases when the Secretary of State issues a certificate of termination for an involuntary winding up by the Secretary of State or, in the case of a voluntary winding-up, upon the filing of a certificate of termination with the Secretary of State. Code §§ 11.252(c), 11.102. Of course, the Secretary of State would not issue a certificate of existence for a filing entity if a certificate of termination had previously been issued by or filed with the Secretary of State with respect to that filing entity.

¹⁴ The 2011 Amendments added subsection (c) to section 402.005. It states that a domestic or foreign filing entity is not considered to have failed to comply with section 402.005(a)(3) or (4) of the Code (*i.e.*, conform its certificate of formation or application for registration to the Code requirements) because: (i) the certificate of formation does not state the type of entity formed, (ii) the application for registration or any amendment thereto does not state the type of entity or appoint the Texas Secretary of State as agent for service of process, notice or demand under the circumstances provided by section 5.251 of the Code, or (iii) a circumstance described by new

failure to conform Pre-Code Formation Documents at the time of an amendment thereto as contemplated by Section 402.005(a)(3) does not affect the rendering of an opinion as to the existence of a Pre-Code Texas Entity.

- *Qualification of Pre-Code Registered Foreign Entities to Transact Business in Texas.* A similar analysis applies with respect to Pre-Code Registered Foreign Entities continuing to have authority to transact business in Texas. The Code nowhere provides that existing authority terminated because of the mandatory application of the Code on January 1, 2010. To the contrary, the qualification or registration of a foreign entity remains in effect until it is terminated, withdrawn or revoked.¹⁵ Although the Code contemplates the use of different terminology and may mandate additional information in filings, section 402.005(a)(4) of the Code requires a Pre-Code Registered Foreign Entity to conform its Application to the Code only when it first files an amendment to the Application. Either the Pre-Code Registered Foreign Entity has not amended its Application, or it filed an amendment that the Secretary of State accepted as conforming to the Code.¹⁶ The 2011 Amendments clarify that certain inconsistencies with the terminology or requirements of the Code do not constitute failures to conform with the requirements of the Code.¹⁷ Thus, the Committee does not believe that a

section 402.0051 of the Code (which is discussed in the next paragraph of this footnote) applies. As a result, the Pre-Code Formation Document of a Pre-Code Texas Entity or the Application of a Pre-Code Registered Foreign Entity is not required to be updated for any of the foregoing matters, even in the next amendment made to its Pre-Code Formation Document or Application.

The 2011 Amendments also added new section 402.0051, which clarifies that none of the following is considered to be a failure to conform to the Code if contained in a governing document or filing instrument, including a certificate of formation or an application for registration: (i) a reference to prior law (which is defined to include the Predecessor Statutes) that was applicable or a provision that was authorized by prior law at the time of its filing or adoption, (ii) a term or phrase described in section 1.006 of the Code (which provides that, when used in governing documents, certain terms and phrases found in the Predecessor Statutes are synonymous with certain terms and phrases used in the Code), or (iii) a term or phrase from prior law that is different from the corresponding term or phrase used in the Code. *See* Code § 402.0051(a). In addition, section 402.0051(c) of the Code provides that an entity is not considered to have failed to comply with the Code if a governing document or filing instrument makes a reference to any of the Predecessor Statutes rather than to the corresponding provisions of the Code.

¹⁵ Code § 9.008(a)-(b). The Secretary of State's issuance of an acknowledgement that a foreign filing entity has filed an Application is conclusive evidence of the authority of the entity to transact business in Texas except in a proceeding to revoke the registration brought by the Secretary of State. Indeed, many opinion givers simply state that their opinion on authority or registration to transact business is based solely on a certificate from the Secretary of State regarding the status of the authority or registration of the foreign filing entity to transact business in Texas, and opinion recipients typically will accept this qualification.

On a related point, the Committee notes that the process for the Secretary of State to revoke a registration of a foreign filing entity under sections 9.101 and 9.102 of the Code is essentially the same as the process for terminating the existence of a Texas domestic filing entity. *See supra*, note 13. The Secretary of State may revoke a foreign filing entity's registration after a finding that certain failures have occurred, such as not filing required reports or failing to maintain a registered agent or registered office, but only after notice and a 90-day opportunity to cure the failure. Code § 9.101. A foreign filing entity's registration terminates (a) when the Secretary of State files a certificate of revocation for an involuntary revocation of the entity's registration by the Secretary of State or (b) upon the filing of (i) a certificate of withdrawal for a voluntary termination of the entity's registration, or (ii) a certificate evidencing termination when the foreign filing entity's existence or separate existence terminates because of dissolution, termination, merger, conversion or other circumstances. Code §§ 9.011(e), 9.102(c). A foreign filing entity's registration may also terminate by judicial action under Subchapter D of Chapter 9 of the Code or by tax forfeiture under the Texas Tax Code. However, in both of those instances as well, a filing evidencing such termination would be filed with the Secretary of State. Of course, the Secretary of State would not issue an acknowledgement that a foreign filing entity has filed an Application if a certificate of revocation, certificate of withdrawal or certificate evidencing termination had previously been filed as to that entity with the Secretary of State.

¹⁶ Code § 4.002(a).

¹⁷ *See supra*, note 14.

failure to use Code terminology or to mention the type of entity in an Application affects the qualification or registration of a Pre-Code Registered Foreign Entity.

Regarding the authority of a Pre-Code Registered Foreign Entity to transact business in Texas, the Predecessor Statutes used differing terminology to address that concept: “procuring a certificate of authority”¹⁸ or “filing an application for registration.”¹⁹ The Code, however, uses the single terminology of “registration” to address a foreign entity’s qualification to transact business in Texas.²⁰ Nevertheless, the Committee believes that the following opinion formulations have the same meaning: “the Corporation is *authorized* to transact business as a foreign entity. . .” and “the Corporation is *registered* to transact business as a foreign entity”

- *Good Standing.* The Committee previously has stated that an opinion with respect to “good standing” of an entity means that the entity is in existence and is not delinquent in its filing of franchise tax returns to the extent that the State of Texas is entitled to revoke its existing charter.²¹ In addition, the Texas Comptroller of Public Accounts states at its website that an entity is in good standing with it if that entity has filed its franchise tax report so that a balance due was correctly computed and if any amount computed to be due has been paid.²² The Committee notes that application of, or compliance with, the Code is entirely separate from whether an entity has filed a franchise tax return, correctly computed the balance due or paid the tax computed to be due, and thus is in good standing. Hence, the mandatory application of the Code to Pre-Code Entities would not affect the rendering of a good standing opinion.
- *Power and Authority.* Subchapter B of chapter 2 of the Code gives all Texas entities broad powers. Neither the meaning of a power and authority opinion nor the nature of the due diligence required to render such an opinion has changed by virtue of the application of the Code. A Texas lawyer should generally review the provisions of the Code and the entity’s governing documents, both filed and unfiled (*e.g.*, by-laws, partnership agreements or limited liability company agreements), in light of the particular transaction before rendering an opinion on whether the entity has the entity (*e.g.*, corporate or partnership) power and authority to execute, deliver and perform its obligations under specified documents.²³ With respect to Texas unregulated²⁴ for-profit corporations, limited liability companies, limited

¹⁸ See *e.g.*, TBCA § 8.01A.

¹⁹ See *e.g.*, TRLPA § 9.02(a).

²⁰ See Code §§ 9.001 *et seq.*

²¹ Texas Legal Opinions Report, *supra* note 1, at 83. For purpose of supporting this opinion, opinion givers commonly rely solely upon, and opinion recipients commonly accept, a current Certificate of Account Status from the Texas Comptroller of Public Accounts (which provides, in part, that the entity “is . . . in good standing with this office having no franchise tax reports or payments due at this time”). See Texas Legal Opinions Report, *supra* note 1, at 84.

²² Texas Comptroller of Public Accounts, Certificates of Account Status, What the Account Status Terms Mean, <http://www.window.texas.gov/taxinfo/coasintr.html>. See also Texas Legal Opinions Report, *supra* note 1, at 83.

²³ See Texas Legal Opinions Report, *supra* note 1, at 86.

²⁴ Section 2.003 of the Code provides that a domestic entity may not operate as a bank, trust company, savings association, insurance company, cemetery organization (except as authorized by Chapter 711, 712 or 715 of the Texas Health and Safety Code) or abstract or title company governed by Title 11 of the Texas Insurance Code.

partnerships and general partnerships, the Committee has not identified any situation in which the application of the Code diminishes the permitted powers of such entities as compared to the powers granted under the Predecessor Statutes.

The Pre-Code Formation Document or other governing documents of a Pre-Code Texas Entity may recite that the Pre-Code Texas Entity is authorized to conduct any business that is authorized by a Predecessor Statute or that it has all of the powers granted by a Predecessor Statute or by a particular provision of a Predecessor Statute. For example, many corporations incorporated under the TBCA included a provision in their articles of incorporation to the effect that the corporation “is authorized to conduct any and all business authorized or permitted by the Texas Business Corporation Act and has the power to take any action and hold any property permitted by that Act.” What does that mean when the referenced statute has expired? Because the Predecessor Statutes expired as of January 1, 2010, would such a reference mean that the Pre-Code Texas Entity is no longer authorized to conduct business at all until it amends its Pre-Code Formation Document to refer to the Code?

The answer can be found in section 402.0051 of the Code, added by the 2011 Amendments. Section 402.0051 provides that a reference in a governing document or filing instrument to a Predecessor Statute or its specific provisions is considered to be a reference to the provision or provisions of the Code that correspond to the Predecessor Statute or provision thereof unless the governing document or filing instrument expressly provides otherwise. Thus, in reviewing provisions in a Pre-Code Formation Document or other governing document that refer to Predecessor Statutes, a Texas lawyer may treat them as referring to the corresponding provisions under the Code.²⁵

Conclusion. For the reasons stated above, the Committee has concluded that the application of the Code, by itself, would not affect the rendering of customary Status, Power and Authority Opinions with respect to Pre-Code Entities. The Committee believes that the same Status, Power and Authority Opinions that could have been rendered as to a Pre-Code Entity under the Predecessor Statutes can continue to be rendered as to a Pre-Code Entity under the Code even though the Pre-Code Entity that has not yet modified its Pre-Code Formation Documents or Application, as the case may be, to comply with the Code. Further, an opinion giver need not consider whether an amendment, if filed, has caused its Pre-Code Formation Documents or Application to conform to the requirements of the Code in order to render any of the typical formulations of the Status, Power and Authority Opinions. Because

²⁵ The Committee believes this was the proper conclusion even before the 2011 Amendments took effect. Section 1.006 of the Code includes a list of terms (*e.g.*, articles of incorporation, certificate of limited partnership) used under Predecessor Statutes and the parallel terms used under the Code (*e.g.*, certificate of formation) and provides that references, in the Code and other Texas statutes, to the old terminology includes use of the corresponding Code term. Section 1.052 of the Code states that references in laws to Predecessor Statutes are considered to be references to the corresponding part of the Code. Although Pre-Code Formation Documents are not a part of laws, these Code provisions manifest a policy of automatically translating the terminology of the Predecessor Statutes into the terminology of the Code. The Committee believes that it was reasonable and appropriate for Texas lawyers, before the adoption of the 2011 Amendments, to have implicitly based their opinions on the analysis set forth in this footnote and on other relevant factors. Further, as noted above, by enacting section 402.005, the Legislature took care to allow Pre-Code Texas Entities to continue without having to make a filing.

any Pre-Code Formation Document—as well as certificates of formation or amendments filed under the Code—may contain provisions beyond those required to form an entity, an opinion giver will want to continue to review, to the same extent as before the Code became applicable, the substance of a Pre-Code Entity’s governing documents (including those not filed, such as by-laws, partnership agreements and limited liability company agreements) in order to assess matters such as power and authority in light of the applicable statutory provisions and the specifics of the transaction.