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Is Delaware Still the Corporate Domicile of Choice?

On July 9, leading Silicon Valley venture capital firm Andreessen Horowitz rocked the startup and early-stage world by announcing that it was reincorporating from Delaware to Nevada, and urged its portfolio companies to do the same, citing bias by Delaware's preeminent Court of Chancery against startup company founders and their boards.

It is hard to overstate the waves made by the Andreessen announcement. For decades, Delaware has been the incorporation jurisdiction of choice for early stage and mature companies alike, both private and public. Delaware has been valued for its flexible yet minutely interpreted corporation law, the Delaware General Corporation Law, or "DGCL," the acknowledged expertise and experience of the Chancery Court in interpreting it, and its resulting established body of jurisprudence in the most minute questions of corporate law, lending great and valued certainty to corporate decisions. When other states' courts are faced with unfamiliar corporate law issues under their own statutes, they frequently look for guidance to Delaware. The reverse is not true. The majority of U.S. companies are incorporated in Delaware, as are over 60% of Fortune 500 companies. It is common for legal counsel to routinely advise startups to incorporate in Delaware unless the company is to operate in only one jurisdiction or region, or if a particular other state is required to hold a licence.

The Andreessen move comes as other states and offshore jurisdictions challenge Delaware's primacy. Texas and Nevada, the state in which Andreessen is reincorporating, are establishing business

court systems intended to rival Delaware's. Wyoming and Puerto Rico have emerged as favored jurisdictions for cryptocurrency, stablecoin and other digital asset ventures. South Dakota has become a favored jurisdiction for establishment of trusts, owing to innovations in its trusts and estates and tax laws. Offshore, the Caymen Islands are now the favored jurisdiction to incorporate SPACs, as they often are for banks, hedge funds and other alternative investment vehicles. The British Virgin Islands, or "BVI," are home to over 40% of the worlds offshore companies, and the Bahamas offer similar structural separation, tax, bankruptcy protection and corporate secrecy advantages. Singapore has emerged as a favored offshore jurisdiction for Asian-based banks, hedge funds and other investment vehicles. A review of the attributes, advantages and disadvantages of these onshore and offshore alternatives to Delaware incorporation can be found in our **"Special Purpose Vehicles: Uses and Abuses,"** available with other resources at **Kurtin PLLC Venture Capital & Private Equity.**

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For additional information on our professional services, please visit our website at the link below and contact us at info@kurtinlaw.com [+.1.212.554.3373](tel:+12125543373).

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