Benefits of the 2016 Arizona Business Entities Competitive Omnibus Act

Legislation enables electronic meetings and easier written shareholder consents and corrects common issues affecting Arizona corporations and partnerships

Amendments to the Arizona corporation LLC and partnership laws effective August 6, 2016 will afford clients greater flexibility in online meetings, correct common problems business clients have experienced under prior law, and help avoid litigation and corporate noncompliance. In summary, under the new law:

- Shareholders and directors are legally authorized to conduct meetings and other business *electronically (including online by text, or "chat").* Proxies and shareholder agreements may now last *as long as the parties agree.*

- Shareholders may agree in writing (including electronically) without meeting face-to-face or by telephone, as long as written consents are received from the same number of voting shares as would be required at a face-to-face meeting, which is usually a majority.

  Previously, Arizona law required *unanimous* written consent if the shareholders did not actually have a meeting where all participants can hear each other, thereby forcing shareholders to hold a meeting in person or by phone just to achieve a valid majority vote if there is even one holdout.

  Note: Public companies and corporations existing at the date the legislation becomes effective are "grandfathered" – unanimous written consent is still required for consent without a meeting – unless they affirmatively amend their articles or bylaws to "opt in." So, existing Arizona corporations should consider amending their articles or bylaws to take advantage of the new law. Contact Scott DeWald if you wish to discuss amending your Arizona corporation's articles or bylaws in this way.

- Arizona businesses – and those who deal with them – are now better protected against false or unauthorized corporate filings and false statements by persons pretending to act for corporations that do not exist, because persons who file with the Arizona Corporation Commission materially false, misleading reports relating to an Arizona corporation or LLC, or who falsely state that they are acting for a corporation or LLC that doesn't exist, or who sign documents they are not authorized to sign, are subject to civil liability to those who are harmed.

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Disclosure

Please note that the information provided in this article does not constitute legal advice and is not intended to be and should not be construed as legal advice. Readers with questions specific to the issues raised in this article should consult with qualified legal counsel.

Lewis Roca Rothgerber Christie LLP will continue to monitor developments and progress on the Arizona Business Entities Competitive Omnibus Act and we will provide updated information as it becomes available. In the meantime, if you have any questions, please feel free to reach out to Scott D. DeWald

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- Arizona businesses formed in other states are no longer subject to unreasonable requirements that change applicable laws relating to where they may be served with lawsuits.
- References to the Arizona Benefit Corporations Act (passed three years ago) have been corrected to avoid any "negative inference" that a corporation must be a benefit corporation in order to have the legal "power" to make donations to charity or take actions benefiting the community.
- The Act clarifies that directors, in determining what is in the best interests of the corporation, *must* consider the effect of proposed actions on the shareholders *and* on the *purposes* of the corporation, and that they *may*, in good faith, consider the effects of proposed actions on other factors the directors deem pertinent, such as the long-term and short-term interests of the corporation, its employees, customers, community and environment. Note: Absent a requirement in a corporation's articles, bylaws or resolutions, directors are not required to consider the effect of the corporation's acts on "nonmonetary" factors such as the welfare of the community when determining what is in the corporation's best interest. The Act also gives directors discretion to determine the relative priority of numerous corporate interests by stating that the best interests of the corporation do not require that any particular interests be given priority over other interests unless intended by articles, bylaws, or resolutions. Corporations may now want to consider including a statement of purpose in the articles, bylaws or formal resolutions approved by its directors or shareholders, because doing so will give clear guidance to the directors and officers in considering whether proposed corporate actions further that purpose.

  For example, if shareholders or directors want to include one or more purposes for a corporation in addition to profits for shareholders – or even if they wish to limit the corporation's purpose to only maximize profits – directors, in determining what is in the best interests of the corporation will be expressly required to consider that purpose as long as the purpose is included in the articles, bylaws or a formal resolution of the directors or shareholders.

  Directors of all for-profit corporations, not only benefit corporations, are not personally liable for monetary damages based on their *good faith decision* to take (or not take) actions in pursuit of a purpose other than maximizing profits of the corporation such as, support for charities, buying from U.S. or local suppliers, supporting veterans or implementing green initiatives (of course, veiled self-interest posing as charity does not qualify as good faith). If a corporation has any "nonmonetary" purpose and fails to pursue that purpose, shareholders may enjoin the corporation from continuing that failure, but, again, directors and officers of the corporation have no monetary liability for such failure under the corporate code; one reason for this is that damages to the corporation from such failure cannot be measured in monetary terms.
- The Benefit Corporation Act has also been corrected so that the directors and officers of benefit corporations are entitled to the same strong "business judgment rule" presumption as other Arizona corporations – the presumption that directors have acted in accordance with their duties unless proven otherwise.

If you have any questions about how the Arizona Business Entities Competitive Omnibus Act may affect your organization, or to discuss amending your Arizona corporation's articles or bylaws to take full advantage of the Act, please contact Scott DeWald at Lewis Roca Rothgerber Christie LLP.