

Client Alert

April 2015

2015 Amendments to the Virginia Stock Corporation Act

Introduction

The General Assembly recently approved legislation amending the Virginia Stock Corporation Act (the “VSCA”), including conforming changes to the Nonstock Corporation Act. The bill ([House Bill 1878](#)) has been signed by the Governor, and the laws will become effective July 1, 2015. Many of the changes are technical in nature and reflect recent changes to the Model Business Corporation Act (the “MBCA”). Below is a summary of the more substantive changes to the VSCA.

Exclusive Forum Bylaw

An amendment to § 13.1-624 confirms that a corporation may adopt a bylaw that makes a circuit court or federal court the exclusive forum for derivative suits and other breach of fiduciary duty claims against the corporation’s officers and directors. To date, at least two publicly traded Virginia corporations have adopted exclusive forum bylaws.

Effective Time of Shareholder and Director Written Consents

Amendments to §§ 13.1-657 and 13.1-685 authorize written consents of shareholders or directors, respectively, to be held in escrow and to be effective at a later date, even if the person is not a shareholder or director at the time such written consent is executed. In order to have any effect, however, such person must be a shareholder or director at the time the consent is to take effect and such consent must not have been revoked. The proposed amendments are based on recent amendments to the General Corporation Law of the State of Delaware.

Authority of Inspectors of Elections; Review of Elections and Shareholder Votes

An amendment to § 13.1-664.1 expands the scope of information that may be considered by inspectors of elections and grants them broader authority to determine the validity of proxies and ballots. Additionally, an amendment to § 13.1-669.1 clarifies the authority granted to a court to make a judicial determination of the results of elections and shareholder votes. These amendments are based on similar changes in the MBCA.

Voting Trusts and Shareholder Agreements

Amendments to §§ 13.1-670 and 13.1-671.1 remove the automatic 10-year termination of voting trusts and shareholder agreements. These amendments reflect similar changes in the MBCA.

Qualifications of Directors

An amendment to § 13.1-674 clarifies the scope of permissible qualifications for directors and for director nominees. The amendment provides that any requirements that relate to and limit the ability of a director to discharge his or her duties as a director are not authorized. The amendment also addresses the effective time of newly adopted qualifications. These additions are similar to recent changes in the MBCA.

Certification for Advancement of Expenses

An amendment to § 13.1-699 removes the requirement that a director seeking advancement or reimbursement of expenses incurred in a proceeding against the director must provide a written statement claiming that he or she believes in good faith that he or she met the standard of conduct that is the prerequisite to indemnity by the corporation. This amendment mirrors a recent change to the MBCA.

“Median Form” Mergers

An amendment to § 13.1-718 dispenses with the need to hold a shareholder vote of a public corporation to approve a merger or share exchange if the transaction follows a tender offer in which the acquiring entity obtained the requisite number of shares to approve the plan of merger or share exchange. The amendment facilitates such “two-step” transactions and is based on similar changes to the Delaware General Corporation Law.

Shareholder’s Demand Notice for Appraisal Rights

An amendment to § 13.1-733 provides that, when a corporate action is approved by shareholders via written consent, dissenting shareholders must provide notice of their intent to assert appraisal rights before the proposed action becomes effective. This amendment allows parties to structure transactions so that they can know the number of dissenting shares prior to closing.

Appraisal Rights in Domestications

An amendment to § 13.1-730 provides that shareholders are entitled to appraisal rights where a domestic corporation becomes a foreign corporation by domestication if the shareholder does not receive shares of the foreign corporation that have terms as favorable to the shareholder in all material respects and represent the same percentage interest in the total voting rights as the shareholder held in the domestic corporation immediately before the domestication.

Factors for Determination of Fair Value in Dissolution Proceeding

An amendment to § 13.1-749.1 provides that when a shareholder has petitioned for court-ordered dissolution and the corporation or the other shareholders have exercised their option to buy the petitioner’s shares in lieu of dissolution, the court in determining the fair value of the shares shall consider all relevant facts and circumstances, including, unless the court determines that considering such facts or circumstances would be unjust or inequitable, (i) the petitioner’s minority status, (ii) the marketability of the petitioner’s shares, (iii) the relevant terms of any shareholders’ agreement and (iv) the petitioner’s proportionate claim for compensable corporate injury due to wrongful conduct of controlling shareholders, if any.

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