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A Summary Of The 2015 Amendments To The Nevada Revised Statutes

The following is written by Laura Anthony, Esq., a going public attorney focused on OTC listing requirements, direct public offerings, going public transactions, reverse mergers, Form 10 and Form S-1 registration statements, SEC compliance and OTC Market reporting requirements.

Although the federal government and FINRA have become increasingly active in matters of corporate governance, the states still remain the primary authority and regulator of corporate law. The two most popular states for incorporation by business entities remain Nevada and Delaware, both of which offer corporations a degree of flexibility from a menu of reasonable alternatives that can be tailored to the companies' business sectors, markets and corporate culture.

In 2015 the Nevada Legislature made several changes to the Nevada Revised Statutes (NRS) which impact public and private companies incorporated in Nevada. The changes go into effect on October 1, 2015. I begin this blog by reviewing the benefits offered by Nevada as a choice of state of incorporation and then follow with a summary of the 2015 amendments.

Nevada as a Choice of Corporate Domicile

Together with Delaware, Nevada is one of the most popular state choice for entity domicile. The following is a summary of the most significant business- and management-friendly provisions that bolster Nevada as a choice for state of incorporation. Personally, I also like Delaware very much.

Liability Protection to Officers and Directors

Like Delaware, Nevada has strong protections in place for management decisions, which are presumed, as a matter of law, to have been exercised in good faith, on an informed basis and with a view to the best interests of the corporation. With certain exceptions, unless the corporation's articles provide for greater individual liability, directors and officers of a Nevada corporation will not be individually liable to the corporation, its

stockholders or creditors for any damages as a result of any act or failure to act in their capacity as a director or officer unless it is proven that the act or failure to act breached fiduciary duties as a director or officer and such breach involved intentional misconduct, fraud, or a knowing violation of law. Nevada also has strong indemnification provisions.

Quorum and Voting

In Nevada, generally, a majority of the stockholders with voting power (present in person or by proxy, whether or not the person holding the proxy has authority to vote on all matters), constitutes a quorum for the transaction of business. Action may be taken by written consent as if at a meeting. Vacancies on the board of directors of a Nevada corporation may be filled by vote of a majority of the remaining directors, even if less than a quorum, unless the articles of incorporation provide otherwise. A director may be removed with or without cause by the shareholders.

Stock Issuances

Nevada corporations may purchase, hold, sell, or transfer shares of its own stock, and issue stock for capital, services, personal property, or real estate, including leases and options. Moreover, the directors may determine the value of any of these transactions, and their decision is final in the absence of actual fraud in the transaction.

Amendments to Charter Documents

An amendment to the articles requires a majority vote of the stockholders.

Business Taxes

Nevada's annual filing fees are relatively inexpensive and Nevada imposes no corporate income tax.

Business Courts

Nevada has designated business courts which are modeled after and based on the Delaware Court of Chancery. Civil actions are assigned to the business court docket if, regardless of the nature of relief sought, the primary subject matter of the action is a dispute concerning the validity, control, operation, or governance of business entities created under Nevada statute, a shareholder derivative action, a dispute concerning a trademark or trade name, a claim pursuant to the Nevada Trade Secrets Act, Nevada Securities Act, or Nevada Deceptive Trade Practices Act, a claim involving investment

securities, or any other dispute among business entities that would benefit from the enhanced case management of the business court docket.

Anti-Takeover Provisions

Nevada protects directors' actions taken in response to takeover attempts as long as such actions do not impede the rights of stockholders to vote for or remove directors.

Dissenters' Rights

Under Nevada law, a stockholder is entitled to dissent from, and obtain payment for the fair value of his or her shares in the event of (i) certain acquisitions of a controlling interest in the corporation, (ii) consummation of a plan of merger, if approval by the stockholders is required and the stockholder is entitled to vote on the merger or if the domestic corporation is a subsidiary and is merged with its parent, (iii) a plan of exchange in which the corporation is a party, or (iv) any corporate action taken pursuant to a vote of the stockholders, if the articles of incorporation, bylaws or a resolution of the board of directors provides that voting or nonvoting stockholders are entitled to dissent and obtain payment for their shares.

Holders of securities listed on a national securities exchange or designated as a national market system security on an interdealer quotation system or held by at least 2,000 stockholders of record are generally not entitled to dissenters' rights. This exception is not, however, available if the articles of incorporation of the corporation issuing the shares state that it is not available, or if the holders of the class or series are required under the plan of merger or exchange to accept for the shares anything except cash, shares of stock or a combination thereof. Nevada law prohibits a dissenting shareholder from voting his shares or receiving certain dividends or distributions after his dissent.

Summary of 2015 Changes to NRS

Solely for the summary of the 2015 changes, I reviewed an article written by the Nevada firm of Brownstein, Hyatt Farber and Schreck and thank them for the easy references.

Ratification of Defective Corporate Acts

A new provision in the NRS sets out non-exclusive procedures for a corporation to ratify corporate acts that either did not comply with Nevada corporate law or with the company's charter documents, including their articles or bylaws. In addition to the procedures that must be followed in the ratification, shareholders must be notified of the action within 10 days. This is a non-exclusive provision and does not limit the existing authority of

directors or shareholders to act on, change or ratify prior actions. The new provision cannot be used to circumvent or contravene the NRS takeover provisions.

Remote Communication Stockholder Meetings

The amendments to the NRS expressly permit companies to hold meetings solely by remote communication such as Skype, conference call, webcast and the like, provided the articles and/or bylaws allow for same.

Combinations with Interested Stockholders

Current NRS takeover provisions require an acquirer to negotiate before attempting a takeover and offer protections to the board of directors during a takeover process. The current provisions are designed to assist the company in the face of a hostile takeover. The current amendments clarify the statute's application to friendly transactions and allowing combinations with interested stockholders without the necessity of the current four-year waiting period. In addition, the revised NRS will allow stockholder approval by written consent of combinations with interested stockholders that occur two years after the person became an interested stockholder.

Safe Harbor for Related Transactions

The amendments clarify NRS 78.140 in an effort to make the statute easier to understand.

Record Date for Postponed Meeting of Stockholders

The revised NRS provides that the record dates for postponed meetings will be treated the same as for adjournments.

Consideration for Shares

The NRS has been amended to specifically allow the board of directors to use a formula to determine adequate consideration for the issuance of new shares of equity.

Updating of Stock Ledger

All stock ledgers must be updated within 60 days of the required deadline for filing the annual list of directors and officers with the Nevada Secretary of State.

Definition of “Officers”

The amendment clarifies that a “vice president” is not considered an executive officer of a company and therefore would have no apparent authority to bind the company.

Corporate Trust Companies

Trust companies formed to engage in banking business may now be formed as corporations.

Outstanding vs. Treasury Shares

Treasury shares are not counted as outstanding shares.

The Author

Attorney Laura Anthony
Founding Partner
Legal & Compliance, LLC
Corporate, Securities and Going Public Attorneys
LAnthony@LegalAndCompliance.com

Securities Law Blog is written by Laura Anthony, Esq., a going public lawyer focused on OTC Listing Requirements, Direct Public Offerings, Going Public Transactions, Reverse Mergers, Form 10 Registration Statements, and Form S-1 Registration Statements. Securities Law Blog covers topics ranging from SEC Compliance, FINRA Compliance, DTC Chills, Going Public on the OTC, and OTCQX and OTCQB Reporting Requirements. Ms. Anthony is also the host of LawCast.com, the securities law network.

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