



Quarterly Newsletter: Fall 2012

We've highlighted a few notable developments in corporate governance law taking place this fall that may be of interest to you. For more information on any of the topics listed below, please contact your account manager or info@verbatimglobal.com.

United States

The U.S. District Court for the District of Delaware recently ruled in *Delaware Coalition for Open Government vs. Honorable Leo E. Strine, Jr.* that the scheme of confidential judicial arbitration implemented by the Delaware Court of Chancery is unconstitutional. The court held that the First Amendment of the U.S. Constitution protects the right of public access to civil trials.

House bill 338 became effective 1 August 2012, making minor amendments to the law governing limited liability companies in Delaware. Among other changes, the law adds limitations for using "bank" in the company name, requires written consent to use a registered agent as address for service of process, and clarifies the ability of managers to assign a delegate in winding up the company affairs following a dissolution.

House bill 342, which amends state law governing corporations in Delaware, also became effective on 1 August 2012. The bill amends corporations law to add the disclosure of entity types involved in a merger, clarify the type of entities that may serve as registered agent for foreign corporations qualified in Delaware, and require prior written consent to use the address of a registered agent as address for service of process.

India

The Expert Committee on India's General Anti-Avoidance Rules, commonly referred to as the Shome Committee, has recommended a three-year deferral of implementation of the Rules to allow sufficient training of officers charged with enforcement. In addition to many other recommendations, the Committee also seeks to limit application only to tax schemes which have "the main purpose" and not "one of the main purposes of" obtaining tax benefit.

Brazil

The Securities and Exchange Commission of Brazil announced this summer that online general meeting using new technology to permit online voting are permitted. The announcement continues a previous determination permitting online proxy granting. Digital authentication, currently provided by several private services, is required to properly utilize online voting.

Turkey

New provisions of the Turkish Commercial Code ("TCC") reduce the duration of appointment of auditor allowed by law to only one year. Auditors must therefore be appointed annually for companies subject to audit requirements. Further clarification as to which companies will be subject to audit under the new scheme is expected.

Canada

On 7 August 2012, Canada's Office of Superintendent of Financial Institutions made available a draft Guideline on Corporate Governance for Federally-Regulated Financial Institutions, which will update the original Guideline published in 2003. The 2012 Guideline details competency expectations for Boards and relevant committees, encourages a formal Risk Appetite Framework, and suggests increased cooperation between the Audit Committee and internal auditors. The public comment period for the Guidelines closed on 14 September 2012.

In *International Energy and Mineral Resources Investment (Hong Kong) Company Limited v. Mosquito Consolidated Gold Mines Limited* the Supreme Court of British Columbia declared invalid resolutions of an annual general meeting because the method of telephone proxy solicitation failed to provide a contemporaneous, reliable, and verifiable record of proxies and voting instructions. The Court did not prohibit the use of telephone proxy solicitation entirely but held that the particular method employed by management's proxy solicitation firm in this case was oppressive to shareholders.

The new TCC also removes the requirement of physical presence of directors and managers in virtual assemblies and spells out rules for companies applying virtual attendance and voting to general assemblies.

Mauritius

India's Shome Committee in recently recommended in its report that the General Anti-Avoidance Rules shall not extend to challenges of residency of a Mauritius entity, re-enforcing a 2000 Central Board of Direct Taxes statement that a certificate of residency issued by Mauritius authorities in conclusive evidence of residence.

Uruguay

Earlier this year Uruguay entered into a Tax Information Exchange Agreement ("TIEA") with the Republic of Argentina. As part of the TIEA, both parties agree to cooperate in the exchange of information that might be relevant to the assessment and enforcement of any national taxes of either party.

Australia

The Corporations Amendment (Proxy Voting) Act 2012 came into effect on 28 June 2012 to confirm that the Chair may vote undirected proxies for certain company actions pertaining to executive remuneration at the annual general meeting.