

June 11, 2015

Nevada Business Entities Law Update

The 78th Session of the Nevada Legislature made a number of changes to provisions of Title 7 of the Nevada Revised Statutes (NRS) governing business entities, including corporations, limited liability companies and limited partnerships. This legislation will be effective October 1, 2015. The following is a summary of the significant changes.

1. Ratification of Defective Corporate Acts. A new provision of NRS Chapter 78 establishes new, nonexclusive procedures for corporations to ratify or validate a corporate act that was not, or may not have been, taken in compliance with Nevada corporate law or the articles of incorporation or bylaws. Certain procedural limitations apply, and corporations are required to give stockholders notice of any such ratification or validation within 10 days. The new statute expressly provides that it does not limit the existing authority of directors or stockholders to act, or ratify prior actions, pursuant to NRS 78.315 and 78.320, respectively. Further, the ratification procedures cannot be used to circumvent or contravene Nevada's takeover statutes.

2. Meetings of Stockholders May Be Held Solely by Remote Communication. Acknowledging modern forms of virtual communication as alternatives to in-person meetings, the amendment to NRS 78.320 expressly permits a corporation, to the extent authorized in its articles or bylaws, to hold a stockholders' meeting solely by means of remote communication.

3. New Durational Limit on "Combinations with Interested Stockholders" Statutes. Nevada's business combinations statutes encourage a potential acquirer to negotiate before attempting a corporate takeover, permitting the target's board of directors to undertake calm deliberation of the proposed transaction without undue coercion. In order to safeguard that important policy without unnecessarily prohibiting, restricting or delaying friendly transactions, NRS 78.411 through 78.444, inclusive, have been amended to provide that the statutes do not apply to prohibit a "combination" with an interested stockholder after the expiration of four years after the person became an interested stockholder. NRS 78.439 has also been amended to eliminate the prohibition on stockholder approval by written consent with respect to combinations undertaken after the two-year prohibition period under the statutes.

4. Clarifications Regarding Safe Harbor for Interested Transactions. NRS 78.140 includes "safe harbor" provisions for transactions involving interested directors or officers. The 2015 amendments add specific references to committees of the board of directors and other clarifications to make the statutes easier to understand and apply.

5. Record Date for Postponed Meeting of Stockholders. The existing provisions of NRS 78.350 address the determination of a record date for an adjourned meeting of stockholders, but do not expressly address a postponement. The 2015 amendments provide that the determination of record dates for postponed meetings will be treated in the same manner as adjournments.

June 11, 2015

6. Consideration for Shares Based on a Prescribed Formula. NRS 78.211(1) has been amended to expressly permit a board of directors to establish a formula to determine the requisite amount of consideration for the issuance of shares.

7. Requirement to Update Stock Ledger. Existing law requires a corporation to revise annually the stock ledger or duplicate stock ledger held at its registered office, but does not specify when the ledger must be updated. The amendment to NRS 78.105 mandates a corporation to update its stock ledger held at its registered office within 60 days of the deadline for the corporation to file its annual list of directors and officers with the Nevada Secretary of State.

8. Clarification of the Definition of “Officers.” Many corporations do not treat vice presidents or similarly titled persons as statutory officers of the corporation. To avoid the concern that a vice president who is not in fact an officer of a corporation may have apparent authority to bind a corporation, the amendment to NRS 78.130(2) removes any implication that a “vice president” is by definition a statutory officer of a corporation.

9. Trust Companies May Now Be Formed as Corporations. Under existing law, a trust company organized in Nevada for the purpose of conducting a banking business was prohibited from being formed as a Nevada corporation. The amendment to NRS 78.020 permits such a trust company to be formed as a Nevada corporation, provided that, if the trust company intends to conduct business in the State of Nevada, the trust company must first comply with existing law governing trust companies, including NRS Chapter 669.

10. Outstanding vs. Treasury Shares. The amendment to NRS 78.211(2) provides that issued shares of stock are outstanding shares unless the shares are treasury shares.

11. Effective Time of Limited Liabilities Companies and Limited Partnerships. The amendments to NRS 86.201(1)(a), 87A.235(3) and 88.350(2) expressly provide that limited liability companies (LLCs) and limited partnerships (LPs) are legally organized as of the time their respective organizational documents are filed with the Nevada Secretary of State. LLCs and LPs will no longer be able to set forth a time later than the time of the filing of organizational documents as the effective time of such entities’ legal existence.

12. Liabilities of Owners of Entities Subject to Merger. The amendment to NRS 92A.250(1) adds a provision to expressly clarify that upon the consummation of a merger, an owner of a constituent (or merged) entity remains liable for all of the constituent entity’s obligations existing at the time of the merger to the extent the owner was liable before the merger.

The corporate transactional and litigation lawyers in Brownstein Hyatt Farber Schreck’s Las Vegas office understand the distinctive aspects and advantages of Nevada’s business laws and possess broad experience in the application of Nevada’s business laws to a wide range of corporate matters, whether in the boardroom or the courtroom. In addition, Brownstein has a proven track record of helping clients

June 11, 2015

navigate the maze of politics and policy in Nevada, across the West and in Washington, D.C. We understand that successful representation means our clients need advocates who understand both complex legal issues and the intricacies of political issues and opportunities. Our deep background representing clients before the Office of the Governor, the Nevada Legislature, the Nevada Attorney General's Office, and the Nevada Department of Taxation, among other administrative agencies, gives us the experience to develop and execute winning strategies on behalf of our clients.

If you have any questions about how Nevada's business laws could affect you, or how Nevada may provide an advantageous alternative to other jurisdictions, please contact Ellen Schulhofer (eschulhofer@bhfs.com), Albert Kovacs (akovacs@bhfs.com), Jeffrey Rugg (jrugg@bhfs.com) or Alisa Nave-Worth (anave-worth@bhfs.com) in the firm's Las Vegas office.

Ellen Schulhofer

Shareholder

eschulhofer@bhfs.com

702.464.7059

Albert Z. Kovacs

Shareholder

akovacs@bhfs.com

702.464.7076

Jeffrey S. Rugg

Shareholder

jrugg@bhfs.com

702.464.7011

Alisa Nave-Worth

Senior Policy Advisor and Counsel

anave-worth@bhfs.com

702.464.7061

This document is intended to provide you with general information regarding Nevada legislation concerning business entities. The contents of this document are not intended to provide specific legal advice. If you have any questions about the contents of this document or if you need legal advice as to an issue, please contact the attorneys listed or your regular Brownstein Hyatt Farber Schreck, LLP attorney. This communication may be considered advertising in some jurisdictions.