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New Louisiana Business Corporation Act: A Dozen Key Changes to Consider

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The old Louisiana Business Corporation Law (Old LBCL) was replaced by the new Louisiana Business Corporation Act (New LBCA) on January 1, 2015. The following are a dozen of the more significant changes to keep in mind.

1. Oppressed Shareholder Remedy

- New LBCA provides oppressed shareholder with mechanism to trigger buyout if the corporation's practices over a period of time are "plainly incompatible" with genuine effort by the corporation to deal fairly and in good faith with such shareholder.

2. Voting Standard Modified for Major Corporate Actions

- Required vote for amending articles, mergers and certain other major corporate actions changed from 2/3 of shares present to majority of shares entitled to vote on the issue, unless a higher number is set forth in the Articles.
- Under Old LBCL, threshold was 2/3 voting power present unless lower threshold set forth in Articles.
- Corporations are encouraged to review voting standards set forth in their articles and bylaws in order to ensure that desired voting threshold is still valid under New LBCA (and to amend their bylaws and articles as necessary).

3. Unanimous Governance Agreements

- Intended to provide greater freedom of contract among shareholders by allowing shareholders to override statutory rules that would otherwise be mandatory, including rule that requires a corporation to be managed by a board of directors.
- Available for any Louisiana corporation, except public companies.

4. Dissenters' Rights Enhanced

- New LBCA enhances rights of dissenting shareholders to obtain appraised value of their shares upon occurrence of certain corporate actions such as mergers, share exchanges, certain dispositions of assets and other major corporate actions specified in New LBCA.
- If appraisal rights are available for a certain type of corporate action, then exercise of those appraisal rights is exclusive remedy for shareholders in connection with such corporate action.

5. New Grace Period for Failure to File Annual Reports

- Now 90 days, and no longer three years.

6. Five-day Grace Period for Initial Articles Retained but Otherwise Dropped

- Old LBCL provided that a variety of filings would be effective on date signed as long as they were filed within five days.
- New LBCA retains this feature but only for initial articles of incorporation.
- Pre-filing is still available, and can now be done up to 90 days in advance.

7. Requirement that Shares Have Par Value Eliminated

- Old LBCL allowed shares to be issued for par value or no par value.
- New LBCA does away with par value, and further does away with mandatory statutory equity accounts (i.e., stated capital, capital surplus and earned surplus).
- New LBCA also allows a corporation to make distributions to full extent of positive net worth, provided that corporation retains ability to pay its debts as they become due in usual course of business, and retains enough net worth to cover liquidation preferences of shares senior to shares receiving distribution.

8. Promissory Consideration for Shares Permitted

- Old LBCL did not allow issuance of shares for promissory consideration (e.g., promissory notes or contracts for future services).
- New LBCA allows issuance of shares for promissory consideration.

9. Default Exculpatory Provisions

- Old LBCL allowed a corporation to protect its directors and officers against monetary liability for breaches of duty of care by including certain provisions in the corporation's articles to "opt in" to statutorily provided protections.
- Under New LBCA, default rule is that such protections are automatically available unless Articles provide otherwise.

10. Dissolution and Reinstatement

- Under Old LBCL, if a corporation was dissolved by affidavit, shareholders retained personal liability for certain amount of time.
- New LBCA eliminates this personal liability for dissolution by affidavit.
- New LBCA also allows corporations that have been terminated for any reason (other than corporation that was dissolved by a judgment of dissolution) to be retroactively reinstated within three years of termination.
- New LBCA also eliminates requirement that certificates from various state agencies and departments be filed before dissolution can be effective.

11. Validating Self-Dealing

- New LBCA provides means for validating transactions between a corporation and one or more of its directors.
- Old LBCL did not validate self-dealing transactions but merely provided they were not automatically voidable as long as certain procedures were followed.
- By contrast, New LBCA affirmatively validates such transactions if required procedures are followed.

12. Procedures for Mergers, Conversions, Domestications, Etc. Made More Uniform with Other States

- New LBCA provides consistent procedures for mergers and merger alternatives, such as share exchanges, domestications and entity conversions, that will coordinate more easily with analogous provisions in other states, especially Model Act states.

Should you like to discuss further, you can contact any of our Louisiana corporate attorneys.