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Memorandum

Nevada Adopts Significant Corporate Law Amendments

June 3, 2025

On May 30, 2025, Nevada Governor Joe Lombardo signed into law AB239, which is bipartisan legislation (the "New Legislation") amending the Nevada Revised Statutes ("NRS") governing Nevada corporate law. The Nevada State Bar's Business Law Section, which put forward the New Legislation, explained that the goal of the legislation is to "help maintain Nevada's competitive advantage as a leader in stable, predictable and common-sense corporate law." Nevada has for many years had a strong statutory presumption of business judgment and limits the liability of directors and officers to situations where the presumption has been rebutted, the fiduciary is found to have breached his or her duties and has done so by "intentional misconduct, fraud or a knowing violation of law." This suite of statutory liability protections, along with legislative actions expressly rejecting the so-called "standards of review" commonly applied by Delaware courts (*e.g.*, *Unocal*, *Revlon*, entire fairness) and deemphasizing the use of Delaware caselaw in interpreting Nevada law, form the cornerstone of Nevada's approach to corporate liability matters. The New Legislation follows recent corporate law amendments in Delaware and Texas.[1] As competition for incorporation business intensifies among these jurisdictions, we expect to see further developments.

Controlling Stockholders. The New Legislation defines a controlling stockholder as "a stockholder of a corporation having the voting power . . . to elect at least a majority of the corporation's directors." This bright-line standard is described by the bar committee as an effort to avoid "arbitrary ownership thresholds or ambiguous standards" in favor of a "predictable" rule focused on stockholders who are "truly in a position to control the direction and management of the corporation." The New Legislation further provides that the exclusive fiduciary duty of a controlling stockholder is "to refrain from exerting undue influence over any director or officer of the corporation with the purpose and proximate effect of inducing a breach of fiduciary duty": (i) for which such director or officer is liable; and (ii) which breach directly relates to and results in the controller receiving a material, nonratable financial benefit. The New Legislation further provides that a controlling stockholder is presumed to have not breached its fiduciary duty with respect to a conflict transaction if it has either been authorized or approved, or recommended, by a committee of only disinterested directors.[2] If this safe harbor procedure has been employed, controlling stockholders are only liable where the safe-harbor presumption is

[1] For more on these developments, *see* Delaware Enacts Sweeping Corporate Law Amendments and Texas Adopts Significant Amendments to the Texas Business Organizations Code.

[2] A disinterested director is generally defined by the New Legislation to: (i) neither have a material and nonspeculative financial interest in, nor be a party to, the contract or transaction; and (ii) satisfy the independence standards required to serve on an audit committee of a board of a non-investment company issuer pursuant to section 10A(m) of the Securities Exchange Act and the rules of the national securities exchange on which the corporation's stock is listed.

rebutted and they have been found to have breached the narrow controller fiduciary duty standard. The New Legislation also provides that the exercise or withholding of voting power, or the indication of intention to do so, by controllers does not constitute or indicate a breach of a controller's fiduciary duty.

Opt-Out of Jury Trials. The New Legislation states that a corporation's articles of incorporation may require that any, all or certain "internal actions" (as defined by NRS 78.046(4)(c) to include derivative and breach of fiduciary duty actions) be tried by bench trial in Nevada rather than before a jury. The state bar committee explains that this change is intended to provide additional predictability as to the resolution of internal actions and to provide reassurance to Delaware corporations considering reincorporation in Nevada, as cases in Delaware's Court of Chancery are tried before judges not juries.[3]

Streamlining Approval of Mergers. The New Legislation adopts a number of technical changes that are intended make Nevada law "easier to follow and apply, and to avoid any potential misinterpretation or misapplication" in the execution of corporate transactions. Amongst these changes, the New Legislation confirms that a board may approve, adopt or act upon any agreement, instrument, certificate or other document whether it is in preliminary or final form. The statute permits boards to determine, in their business judgment, the level of finality in a draft agreement that they deem is needed to act. This clarification is intended to maximize business judgment deference to directors and avoid litigation over technicalities in board approval.[4]

Clarifying the Exclusive Nature of Appraisal Remedy, Where Applicable. Appraisal rights are not available to stockholders of publicly traded Nevada corporations, but they are available in certain circumstances to private company stockholders. The New Legislation makes clear that where appraisal rights are available, they are the exclusive remedy for eligible stockholders.

[3] In Delaware, bench trials are mandatory; under Texas's new legislation a public company can "opt in" by board-approved bylaw; Nevada corporations must opt in in their articles of incorporation.

[4] This change addresses the uncertainty surrounding the Delaware Court of Chancery's opinion in *Sjunde AP-Fonden v. Activision Blizzard, Inc.*, 2024 WL 863290 (Del. Ch. Feb. 29, 2024) and Delaware's subsequent legislative fix in S.B. 313. *See* Delaware Governor Signs Corporate Law Amendments Into Law.

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