

Major Changes to Pennsylvania Corporate Law Part 3: Implementing Key Provisions in Your Corporate Documents

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This is Part 3 of a multipart series which will provide a summary of the key changes coming to Pennsylvania as a result of changes to the Pennsylvania Business Corporation Law (Title 15). Part 3 discusses updating your corporate documents to provide flexibility in the operation of your business based on these recent changes. To read Part 2 of this series, which discusses privacy implication, please [click here](#). To read Part 1 of this series, which discusses annual reporting requirements, please [click here](#).

On November 3, 2022, the Pennsylvania legislature implemented a number of changes to Pennsylvania's Business Corporation Law. Several of the changes alter the "default" provisions that are often included in many entities' corporate documents. These changes will give entities more control than the previous laws over significant aspects of their corporate governance, and it is important to consider whether your corporate documents should be changed. Some of the affected areas include:

- The ease with which a tender offer and two-step merger can be completed;
- The authority to control where internal corporate claims are filed;
- The elimination of the requirement to present business opportunities to a corporation when such opportunities are of no interest to the corporation; and
- The ability to reduce the personal liability of officers.

Two-Step Merger and Ownership Interest Exchange Transactions

The Business Corporation Law creates a new avenue for corporations to approve mergers or ownership interest exchanges without shareholder approval (unless stated otherwise in the articles of incorporation), if certain conditions are met. Some of the conditions include a "tender offer" (an offer to purchase the shares or ownership interests in a corporation), the adoption of a board resolution of the plan for the merger/ownership interest exchange, as well as other conditions. This change facilitates a merger or an ownership interest exchange while eliminating the need to follow the tedious process involved with a shareholder vote and satisfying the procedural requirements for approval of the transaction to achieve the same outcome. This method has the ability to streamline the merger and ownership interest exchange process.

Forum Selection Provisions

A forum selection provision within a corporation's bylaws permits the corporation to pick specific courts within the Commonwealth (and in some cases, courts in other jurisdictions) where "internal corporate claims" must be exclusively filed. "Internal corporate claims" include, but are not limited to, an action involving an alleged violation of a duty owed to the corporation by a former or current director, officer or shareholder, acting in

their respective capacity, or an action asserted on behalf of the corporation. Forum selection provisions provide corporations with an advantage in controlling where claims will be litigated should an issue arise. This can be instrumental in reducing additional inconveniences and expenses that are often associated with claims filed in undesirable locations, requiring corporations to travel and obtain counsel licensed within the jurisdiction of that court. It should be noted that forum selection clauses cannot be used to circumvent civil procedure rules because the designated court(s) must have both personal and subject matter jurisdiction over a claim to be applicable.

Renunciation of Business Opportunities

Another major change to the Business Corporation Law is that a corporation may now waive its right to be presented with a business opportunity offered to its directors, officers or shareholders, through the articles of incorporation or by an action of the board of directors. This change can save corporations both time and resources because it eliminates the need to go through the process of having directors, officers and shareholders present each opportunity to the corporation when the opportunity is one that the corporation would not pursue.

Personal Liability of Officers

Through a bylaw adopted by the shareholders, corporations (both for-profit and nonprofit) are able to limit an officer's personal liability for monetary claims that stem from the officer acting within the officer's role. This change grants officers with the same protections afforded to directors. However, this limitation of liability does not extend to situations involving a failure or breach of the officer's duties under the Business Corporation Law, where such failure or breach is considered to be self-dealing, willful misconduct or recklessness on the part of the officer. Furthermore, the new provision does not shield officers from any criminal or tax liability. This change is important, as it can be utilized to counteract the increased exposure to potential claims to which officers may be subject to, given that the names and titles of principal officers must be included in the annual reports, as discussed in more detail in [Part 2](#) of this series.

The items discussed above are only a few of the new provisions that you should consider incorporating into your corporate documents. However, there are many other provisions to take into consideration including the approval of a plan of division without the consent of those holding ownership interests, the allocation of liabilities after the division of an entity, preventing directors from being liable for actions previously protected under the bylaws, changes to various aspects of shareholder meetings, the board of directors' ability to establish the compensation of directors and fill vacancies of offices, increased capabilities during emergency situations and more.

If you have any questions about the Pennsylvania Business Corporation Law updates that went into effect January 2, 2023 or would like assistance in revising the corporate documents for your entity in light of these updates, please contact any member of the [Barley Snyder Business Practice Group](#).

Stay tuned for additional alerts discussing how these changes could impact your entity and how Barley Snyder can help ensure compliance with the Pennsylvania Business Corporation Law. Also, be on the lookout for future alerts regarding how the changes could affect internal corporate governance acts.

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