



**October 1, 2012**

## **UPDATE TO CONNECTICUT LAW: AMENDMENTS TO THE CONNECTICUT BUSINESS CORPORATION ACT ARE NOW EFFECTIVE**

Public Act No. 12-32 (the “Act”) has updated Connecticut’s business corporation statutes. Effective as of October 1, 2012, the Connecticut Business Corporation Act (“CBCA”) has been revised to expand the scope of permitted bylaw provisions and to update the CBCA’s provisions with respect to three areas – indemnification, voting group requirements, and appraisal rights, as briefly summarized below.

First, the Act amended Sections 33-640 and § 33-806 of the CBCA to broaden the scope of provisions that may be included in the bylaws of a corporation. Under prior law, bylaws could contain any provisions for managing the business and regulating the corporation’s affairs that are not inconsistent with law or the corporation’s certificate of incorporation. The Act retains this standard but also specifically allows the bylaws to contain a requirement that: (1) if the corporation solicits proxies or consents with respect to an election of directors, the corporation must include in its proxy statement and forms, one or more individuals nominated by a shareholder in addition to individuals nominated by the board of directors, to the extent allowed in the bylaws; and (2) the corporation reimburse the expenses a shareholder incurs from soliciting proxies or consents in connection with an election of directors, to the extent allowed in the bylaws.

Additionally, under prior law, the board of directors was prohibited from amending or repealing a bylaw adopted by shareholders that expressly prohibited the board from amending, repealing, or reinstating it. The Act prevents a corporation’s shareholders – when amending, repealing, or adopting a bylaw relating to director elections described in (1) and (2) above – from limiting the board’s authority to amend or repeal any condition or procedure in or add any procedure or condition to a bylaw in order to provide for a reasonable, practicable, and orderly election process.

Under the CBCA, a corporation can obligate itself through its certificate of incorporation, bylaws, resolution, or contract to indemnify directors, officers, employees, and agents or advance them funds to pay for or reimburse lawsuit expenses or other losses. The Act also amended CBCA Section 33-778 to prevent shareholders and/or directors from amending the certificate of incorporation, bylaws, or passing a resolution which is intended to retroactively eliminate the corporation’s



If you have any questions about the issues addressed here, or any other matters involving Corporate law, please contact:

**Marcel J. Bernier**  
860.240.6087  
mbernier@murthalaw.com

**James W. McLaughlin**  
860.240.6118  
jmclaughlin@murthalaw.com

**David A. Menard**  
860.240.6047  
dmenard@murthalaw.com

**Willard F. Pinney, Jr.**  
860.240.6016  
wpinney@murthalaw.com

**Edward B. Whittemore**  
860.240.6075  
ewhittemore@murthalaw.com

obligation to indemnify a director, officer, employee or agent for an action that has already taken place. However, if the certificate or bylaws provision or resolution in effect at the time of the act or omission specifically permits the later elimination of indemnification rights (or other impairment of such rights) after the act or omission has occurred, then the indemnification rights can be so eliminated or impaired.

The CBCA previously provided that when there is a proposed amendment to a certificate of incorporation allowing the shareholders of two or more classes to vote as potentially separate voting groups, unless otherwise specified in the certificate of incorporation, all the affected shareholders must vote together as a single voting group. The Act extended this voting requirement to all provisions for voting of classes as separate groups. Additionally, under Section 33-798 the holders of the outstanding shares of a class of stock can vote as a separate voting group on a proposed amendment to the certificate of incorporation if the amendment would have certain effects listed in the statute. The Act eliminated the right to vote as a separate group when the amendment would: (1) create a new class of shares having rights or preferences with respect to dissolutions that are prior or superior to the shares of the class; or (2) increase the rights, preferences, or number of authorized shares of any class that, after giving effect to the amendment, have rights or preferences with respect to dissolutions that are prior to or superior to the shares of the class.

Under the CBCA, a shareholder has been and continues to be entitled to appraisal rights – to obtain the “fair value” of such shares, in accordance with a statutory appraisal process. However, the Act specifically denies appraisal rights if: (1) under the terms of the corporate action approved by the shareholders, they will receive a distribution of the corporation’s net assets in cash, in excess of a reasonable amount reserved for legal claims against the corporation under the dissolution statutes, (a) within one year after the shareholders’ approval of the action, and (b) according to their respective interests determined at the time of the distribution; and (2) the disposition of assets is not an interested transaction, meaning generally that the director will not gain a benefit that is not available to other shareholders.

If you need additional information concerning the recent amendments to the CBCA or business law matters generally, please contact any of the following members of the Murtha Cullina LLP Business and Finance Department:

Marcel Bernier at 860.240.6087 / [mbernier@murthalaw.com](mailto:mbernier@murthalaw.com)

James McLaughlin at 860.240.6118 / [jmclaughlin@murthalaw.com](mailto:jmclaughlin@murthalaw.com)

David Menard at 860.240.6047 / [dmenard@murthalaw.com](mailto:dmenard@murthalaw.com)

Bill Pinney at 860.240.6016 / [wpinney@murthalaw.com](mailto:wpinney@murthalaw.com)

Ted Whittemore at 860.240.6075 / [ewhittemore@murthalaw.com](mailto:ewhittemore@murthalaw.com)

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