

**UPDATE TO CONNECTICUT LAW: AMENDMENTS TO BUSINESS LAWS
EFFECTIVE OCTOBER 1, 2015**

Public Act No. 15-48, titled An Act Concerning Revisions to the Connecticut Business Corporation Act, the Uniform Limited Partnership Act and the Connecticut Limited Liability Company Act (the “Act”), has amended the Connecticut Business Corporation Act (“CBCA”), the Uniform Limited Partnership Act (“ULPA”), and the Connecticut Limited Liability Company Act (“CLLCA”). Effective October 1, 2015, the Act amends the CBCA in the following areas: proxies, voting trusts, shareholder agreements, qualifications of directors, and indemnification. In addition, the Act makes changes to provisions of the ULPA and CLLCA that relate to reinstatement of LLCs and LPs following dissolution by the Connecticut Secretary of the State. These changes are discussed in greater detail below.

Proxies

Under current law, a shareholder of a corporation or his or her agent or attorney-in-fact may appoint a proxy to vote or otherwise act on their behalf. This may be done by either signing a form or by electronic transmission. The Act adds a provision requiring one of these electronic submissions to be accompanied by “information” which allows someone to determine that the shareholder or his or her agent or attorney-in-fact authorized the transmission.

The Act also affects the revocability of an appointment of a proxy. Under existing law, the CBCA provides that any appointment of a proxy is revocable unless the appointment form or electronic submission states that it is irrevocable. However, someone who buys shares subject to an irrevocable appointment may revoke the appointment if the buyer did not know of the appointment when he acquired the shares and the appointment was not noted conspicuously on the certificate representing the shares. The Act specifies that irrevocable appointments of proxies continue after a transfer of shares unless the appointment of a proxy provides otherwise.

Voting Trusts

Prior to the passage of this Act, the CBCA conferred upon shareholders the right to create a voting trust that gives a trustee the right to vote on behalf of the shareholder. The CBCA limited the length of these trusts to ten years, but allowed parties to extend the trust for an additional ten years.

This Act establishes new rules regarding the length—or “validity”—of these trusts. In particular, the Act allows parties to set any time limit on voting trusts that become effective on or after October 1, 2015. For all voting trusts that were effective prior to October 1, 2015, the Act retains the old ten-year rule, but allows an extension of the ten-year limit under two circumstances: (1) the parties may unanimously agree to amend the ten-year limit of the trust for a longer limit, or (2) all or some of the parties may extend the trust an additional ten years by following the same extension procedures that already exist under the CBCA.

If you have any questions about the issues addressed here, or any other matters involving Business and Finance issues, please feel free to contact:

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Shareholder Agreements

The CBCA also allows shareholders to enter into agreements that are effective between and among shareholders and the corporation, on a variety of topics addressing the governance and operation of the corporation. A few examples of these topics include eliminating the board of directors, restricting the board's powers or discretion, provisions governing distributions, establishing who shall serve as a director or officer, provisions governing voting power between shareholders and directors, providing for dissolution of the corporation under certain circumstances, and management of corporate affairs or exercise of corporate powers.

Prior to this Act, the CBCA contained a default rule that these agreements were valid for a term of ten years unless provided otherwise. Now, per this Act, agreements entered into on or after October 1, 2015 may provide any time limit or may be perpetual.

Qualifications for Directors and Nominees

The CBCA generally allows corporations, pursuant to its certificate of incorporation or bylaws, to prescribe qualifications for its directors or nominees for directors.

This Act adds a few more requirements for qualifications of directors or nominees for directors. For one, the Act mandates that any such qualifications must be "lawful and reasonable as applied to the corporation." Further, the Act forbids requirements that could limit the ability of a director or nominee to discharge his or her duties. However, the Act does allow corporations to include requirements that a director or nominee not have been subject to criminal, civil, or regulatory sanctions, or not have been removed as a director by judicial action or for cause.

The Act also provides that a qualification for nomination as a director may only apply to a person if it is prescribed before he or she is nominated. Similarly, only a qualification for director that is prescribed before the start of a director's term applies to that director. However, qualifications prescribed during a director's term do not apply during that term.

Indemnification

The Act changes existing CBCA provisions that relate to the indemnification of directors, officers, agents, and employees. The CBCA used to allow corporations to indemnify and advance expenses to an officer, director, employee, or agent of a corporation who is involved in a proceeding. Now, per this Act, the CBCA provides indemnification only to officers and directors, and no longer to employees or agents. The Act, however, does not limit a corporation's ability to indemnify, advance expenses, or provide insurance for an employee or agent. The corporation may still provide these protections to employees or agents through common law rules that may apply and/or contracts between the corporation and the employee or agent.

CBCA also used to allow corporations to indemnify and advance expenses to officers in one of two ways: 1) to the same extent as directors, if the officer is also a director, or 2) as provided by the corporation's certificate of incorporation or bylaws, by contract, or by a board resolution. The Act now prohibits indemnification and advancing expenses based on liability from a legal proceeding by or on behalf of the corporation, other than for expenses incurred connected to the proceeding, if an officer is not also a director. The Act further provides that the corporation may not provide indemnification and advance expenses to an officer if the conduct at issue: (1) constituted a knowing and culpable violation of law by the officer; (2) enabled the officer to receive an improper personal gain; (3) showed a lack of good faith and conscious disregard for the duty of the officer to the corporation under circumstances in which the officer was aware that his conduct or omission created an unjustifiable risk of serious injury to the corporation; or (4) constituted a sustained and unexcused pattern of inattention that amounted to an abdication of the officer's duty to the corporation. However, the Act specifies that indemnification laws do not limit a corporation's power to reimburse expenses that an officer incurs when appearing as a witness in a proceeding when he or she is not a party.

The amendments concerning indemnification essentially accomplish three things. First, they limit the benefit of indemnification to officers and directors only—removing employees and agents. Second, they limit when business corporations can indemnify and advance expenses to officers. Third, they prevent an officer from enjoying corporate indemnification if the conduct at issue involves an officer's wrongful conduct.

Lastly, with respect to indemnification, the Act amends a provision that required directors to submit a written affirmation containing certain information when seeking an advance of funds or reimbursement for reasonable expenses throughout the course of a legal proceeding. Specifically, the Act eliminates the requirement that this written document (1) affirm the director's good faith belief that he or she has followed the relevant standard of conduct, or (2) affirm that the proceeding at issue relates to conduct covered by a liability protection within the certificate of incorporation. The Act retains the requirement that the director submit a signed written undertaking to repay the funds if he or she is not entitled

to mandatory indemnification under the statutes because he or she was wholly successful in defending the proceeding and it is ultimately determined that he or she has not met the relevant standard of conduct to qualify for indemnification.

The ULPA and CLLCA Provisions: Reinstatement of LLCs or LPs

As previously mentioned, this Act also amends provisions relating to Connecticut's ULPA and the CLLCA. Under current law, the Connecticut Secretary of the State may dissolve the legal assistance of an LLC or cancel the legal existence of an LP if either fails to maintain a statutory agent for service of process or fails to file an annual report for over one year. Following such a dissolution or cancellation, however, an LLC or LP may apply for reinstatement. This Act simply provides that, if said reinstatement of an LLC or LP occurs, the reinstatement shall relate back to and take effect as of the effective date of the dissolution or cancellation. Further, the Act provides that the reinstated LP or LLC shall resume its business as if the dissolution or cancellation had never occurred. Currently, when these entities are reinstated, reinstatement takes effect when the certificate of reinstatement is filed with the Office of the Secretary of the State.

If you need additional information or have any questions relating to the recent amendments to the CBCA, ULPA, and CLLCA, please contact any of the following members of the Murtha Cullina LLP Business and Finance Department:

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