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Connecticut Updates Its Business Corporation Act

Connecticut has adopted legislation to update the Connecticut Business Corporation Act, which governs stock corporations formed under Connecticut law (the "amendments"). Public Act 11-147 was signed by Governor Malloy on July 8, 2011, and will become effective on October 1, 2011. The amendments were supported by the Business Law Section of the Connecticut Bar Association, which monitors business entity legislation in Connecticut. Among other things, the amendments provide the following:

- ***Separate Record Dates for Notice and Voting*:** Unless otherwise prohibited by a corporation's bylaws, the amendments permit corporations to fix a separate record date, apart from the date for providing notice of a shareholders meeting, for determining the shareholders who are entitled to vote or take other action at such meeting. Under current Connecticut corporate law, the same record date applies to both notice of a shareholders meeting and voting rights at such meeting. As a result, shareholders entitled to vote at a shareholders meeting may not actually own stock at the time of the meeting if they sold their interest in the period between the record date and the meeting date. This is sometimes referred to as "empty voting." The amendments address empty voting by permitting corporations to establish a second, later record date for determining who may vote at a shareholders meeting. The likelihood that voting shareholders would hold stock at the time of a shareholders meeting would increase by adoption of a second record date for voting.
- ***Remote Participation by Shareholders*:** The amendments permit a corporation's board of directors to authorize, and set guidelines and procedures for, a class or series of shareholders to participate remotely in meetings, either by telephone or over the Internet. The corporation must implement reasonable measures
    - to verify that each person participating remotely is a shareholder and
    - to provide such shareholders with a reasonable opportunity to participate in the meeting and to vote on matters submitted to the shareholders, including an opportunity to communicate and read or hear the proceedings, substantially concurrent with the proceedings.
- ***Electronic Transmissions of Documents*:** The amendments set forth greater detail on electronic communications with shareholders. The new rules are intended to be consistent with the federal Electronic Signatures in Global and National Commerce Act (E-SIGN). E-SIGN is designed to facilitate the use of electronic records and signatures by ensuring the validity and legal effect of contracts entered into electronically. The amendments expand the use of electronic documents and technologies in the context of corporate governance. For example, the amendments provide more detail on the use of electronic proxies. Electronic communications with a shareholder are allowed if the shareholder consents and if the electronic transmission allows the shareholder to determine the transmission date and the sender's authorization to forward the communication. Shareholder consent may be revoked upon notice to the person to whom the consent was delivered. Consent will be deemed revoked if the corporation cannot deliver two consecutive electronic transmissions, and the failed deliveries become known to the person responsible for the giving of notice. The amendments include substantial additional detail on electronic transmission of documents.
- ***Technical Amendments*:** The amendments make several technical changes, including adding a requirement that communications be given in English unless otherwise agreed. Conforming changes are made throughout the Business Corporation Act to align current provisions with the updated rules on electronic communications.

With the passing of the amendments, now may be a good time for Connecticut corporations to revisit their corporate bylaws to determine whether any changes are required to reflect current law and best practices. Our corporate law attorneys would be pleased to discuss the impact of the amendments on your corporation.