



## LEGAL ALERT

January 23, 2023

### SOME NOTABLE CHANGES TO THE PENNSYLVANIA BUSINESS CORPORATION LAW

On January 3, 2023, a number of changes to Pennsylvania's Business Corporation Law ("BCL") became effective and several of these changes reflect similar provisions found in Delaware's General Corporation Law.

**Forum Selection Bylaw.** Section 1513 of the BCL permits corporate bylaws to provide that an internal corporate claim must be brought exclusively in a specified court or courts of this Commonwealth and, if so specified, also in other identified courts sitting in this Commonwealth or identified courts sitting in other jurisdictions with which the corporation has a reasonable relationship. An internal corporate claim includes:

- An action based upon an alleged violation of a duty owed to the corporation under Pennsylvania law by a current or former director, officer or shareholder in that capacity;
- A derivative action or proceeding brought on behalf of the corporation;
- An action asserting a claim arising under the BCL, the corporation's articles or bylaws, an agreement concerning the governance of the corporation, or transfer of shares of the corporation if the corporation and at least one shareholder are parties to the agreement or stated or intended beneficiaries thereof and the agreement is entered into after the adoption of a forum selection provision and the agreement does not contain an inconsistent forum selection provision; and
- Any other action asserting a claim regarding the internal affairs of the corporation.

However, adoption of a forum selection bylaw does not have the effect of conferring jurisdiction on any court or over any person or claim and does not apply if none of the courts specified in the bylaw provision has the requisite personal and subject matter jurisdiction.

There is an automatic default provision which provides that, if a court in this Commonwealth specified in the forum selection bylaw does not have requisite personal and subject matter jurisdiction but another court within the Commonwealth does, then the internal corporate claim may be brought in such court in this Commonwealth even if not specified in the bylaw provision.

In addition to designating an exclusive forum in which to bring an internal corporate claim, Section 1513 of the BCL also permits a corporation to require that any claim arising under the federal Securities Act of 1933, as amended, be brought exclusively in federal court.

**Waiver of Corporate Opportunity.** It has been well-settled that a director owes a duty of loyalty to the corporation and its shareholders. The corporate opportunity doctrine imposes liability on directors who take personal advantage of business opportunities when these opportunities fall within the scope of activities and constitute a present or potential advantage to the corporation. Although directors are not precluded from engaging in other businesses, they may not:

Bybel Rutledge LLP  
1017 Mumma Road, Lemoyne, PA 17043  
Phone: 717-731-1700  
Fax: 717-731-8205  
Website: [www.bybelrutledge.com](http://www.bybelrutledge.com)

- Use their position to prevent the corporation from competing with their other businesses;
- Divert corporate assets to their own use or the uses of their other businesses;
- Disclose the corporation's trade secrets or confidential information to others;
- Lure corporate opportunity, business or personnel away from the corporation; or
- Receive, unbeknownst to the corporation, a commission on a corporate transaction.

Section 1719 of the BCL now allows a Pennsylvania corporation, by its articles of incorporation or an action by the board of directors, to renounce any interest or expectancy of the corporation in, or being offered an opportunity to participate in, a specified business opportunity or specified classes or categories of business opportunities that are presented to the corporation or to one or more of its directors, officers or shareholders.

As the Delaware Court of Chancery explained in describing a similar provision in Delaware law, this waiver provision is intended to eliminate uncertainty regarding the power of a corporation to renounce corporate opportunities in advance. It permits a corporation to determine in advance whether a specified business opportunity or class or category of business opportunity is a corporate opportunity of the corporation rather than to address each opportunity as it arises.

***Filing of an Annual Report.*** Similar to Delaware and other states, Pennsylvania, effective January 3, 2024, now will require domestic corporations and most other entities organized under the BCL to file an annual report with the Pennsylvania Department of State (the "Department") which will include current information relating to:

- Name and jurisdiction of formation;
- Address of its registered office;
- Name of at least one director;
- The names and titles of principal officers;
- Address of its principal place of business wherever located; and
- The entity number assigned by the Department.

The Department must deliver a notice to each entity required to file an annual report at least two months before it is due but failure of the Department to provide such notice does not relieve the entity from its responsibility to file an annual report. It is anticipated that annual reports will be filed electronically with the Department and the Department is permitted to charge a \$7.00 filing fee which is waived for non-profit organizations. This new annual filing replaces the former decennial filing obligation.

For further information concerning the contents of this Legal Alert, please contact any of the following members of Bybel Rutledge LLP at (717) 731-1700 or at their respective email address:

Nicholas Bybel, Jr., Esq.: [bybel@bybelrutledge.com](mailto:bybel@bybelrutledge.com)

Erik Gerhard, Esq.: [gerhard@bybelrutledge.com](mailto:gerhard@bybelrutledge.com)

G. Philip Rutledge, Esq.: [rutledge@bybelrutledge.com](mailto:rutledge@bybelrutledge.com)

Carter Frantz, Esq.: [frantz@bybelrutledge.com](mailto:frantz@bybelrutledge.com)

Louise Hutchinson, Esq.: [hutchinson@bybelrutledge.com](mailto:hutchinson@bybelrutledge.com)



*Trusted Advisors to Companies...Every Step of the Way.<sup>SM</sup>*