UPDATING THE OREGON BUSINESS CORPORATION ACT

By Benjamin G. Lenhart

As of January 1, 2004, the Oregon Business Corporation Act (“OBCA”) will be updated to bring portions of the OBCA into conformity with the Model Business Corporation Act on which the OBCA is based.

The Oregon legislature adopted the OBCA in 1987. The 1986 form of the Model Business Corporation Act, adopted by the Committee on Corporate Laws of the American Bar Association’s Section of Business Law (“Model Act”), served as the basis for the OBCA. Since 1986, the Model Act has gone through a series of amendments, most of which went unnoticed by the Oregon legislature. Recognizing the need to update the OBCA, the Oregon State Bar’s Corporation Act Committee recently proposed a number of amendments to address some of the differences between the Model Act and the OBCA, which were recently adopted by the Oregon legislature and approved by the governor. The changes, however, are primarily technical and leave consideration of substantive changes made to the Model Act since 1986 for a later date.

Below is a brief summary of the key changes to the OBCA.

- **Electronic Transmissions for Shareholder Notices and Proxies.** Notices to shareholders may now be in the form of “electronic transmissions,” provided shareholders authorize the corporation in writing to give notice in a particular electronic format (e.g., e-mail). In the absence of written authorization from each shareholder permitting a specific manner of electronic transmission, notice must be provided in the traditional manner. The revisions to the OBCA also permit submission of proxies via electronic transmissions, subject to the specific requirements set forth in the statute.

- **Shareholder Meeting Procedures.** The OBCA now includes a new provision specifying procedures for shareholders meetings. These provisions (a) require that a chairperson, appointed pursuant to the bylaws or in the absence of such a provision by the board, preside at the meeting, (b) empower the chairperson to determine the order of business and the rules governing the meeting (unless the articles of incorporation or bylaws provide otherwise), (c) require that all such rules be “fair” to shareholders, and (d) unless closed earlier by the chairperson, provide that polls close upon final adjournment of the meeting.

- **Authority to Call a Special Meeting of Shareholders.** Prior to the amendments, the OBCA permitted holders of at least 10 percent of all votes entitled to be cast to call a special meeting of shareholders. As revised now, the OBCA allows the articles of incorporation to specify a lower or higher percentage (though in no event may it exceed 25 percent).

- **Inspector of Elections.** The OBCA will now include a new provision mandating the appointment of an inspector of elections for all publicly traded corporations (though...
private corporations may opt to have an inspector of elections). The duties of the inspector of elections include: ascertaining the number of shares outstanding and the voting power of each share, determining the number of shares represented at the meeting as well as the validity of all proxies and ballots, and counting all votes and determining the result. The inspector of elections may be an officer or employee of the corporation (though for publicly traded companies it is fairly common, for purposes of avoiding any real or perceived conflict of interest issues, to have an independent third party serve as the inspector of elections).

- **Changes to Board and Board Committee Provisions.** As revised, the OBCA modifies the statutes relating to the board. The modifications include tweaking the definition of individuals eligible to serve as a member of the board (i.e., any “person” other than the estate of an incompetent or deceased individual), clarifying language with respect to variable size boards and staggered boards, and clarifying the make-up and authority of board committees.

- **Changes to Mergers/Conversions Statutes.** The provisions in the OBCA and other entity-oriented statutes, governing mergers and conversions of business entities of varying forms have been refined, including domestic and foreign corporations, limited liability companies, partnerships, and limited partnerships. For example, existing merger/conversion statutes require that the plan of merger or conversion needs to include the terms and conditions of the conversion or merger. As revised, the OBCA and the statutes governing the other business entities now only require a plan of merger or conversion to include a summary of the material terms and conditions of such merger or conversion.

The foregoing summary is qualified in its entirety by reference to the OBCA as amended (the full text of the amendments to the OBCA is available at www.leg.state.or.us). In addition, readers should be aware the summary does not contain an all-inclusive description of the changes adopted by the Oregon legislature.

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