

Louisiana Legislature Adopts Amendments To Louisiana Business Corporation Act

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On October 12, 2020, the Louisiana Legislature passed Senate Bill 33 (SB 33) amending several provisions of the Louisiana Business Corporation Act (LBCA).¹ Under SB 33, the board of directors of a Louisiana corporation may elect to call “virtual-only” shareholder meetings, may effect certain limited amendments to a corporation’s articles of incorporation without shareholder approval, and may effect certain mergers between parent and subsidiary corporations without board or shareholder approval at the subsidiary level. Taken together, these amendments broaden the power of boards of Louisiana corporations beyond the current LBCA, albeit in ways largely consistent with a majority of other states’ corporate laws. SB 33 is currently pending Governor John Bel Edwards’ signature to become effective.

1. Virtual-Only Shareholder Meetings (LA R.S. 12:1-709)

SB 33 sanctions virtual-only annual or special shareholder meetings by amending LA R.S. 12:1-709 to add a new subsection (C) allowing a corporation’s board to determine that any such meetings may be conducted solely by means of remote communication, unless otherwise provided in the corporation’s bylaws. As commonly understood, a virtual-only shareholder meeting is one conducted solely using online visual or audio format technology. Prior to this amendment, some commentators suggested that there was uncertainty under Section 709 of the LBCA as to whether a corporation was required to conduct an in-person meeting at a physical location simultaneously with any remote broadcast, which is sometimes referred to as a “hybrid” shareholder meeting. When the Louisiana Legislature adopted Section 709 in 2016, it was identical to the provision in the Model Business Corporation Act (MBCA) then in effect. In 2019, Section 709 of the MBCA was further amended by the addition of a new subsection (C) to allow corporations to conduct shareholder meetings solely by means of remote communication technology. SB 33’s amendment eliminates any negative inference that Louisiana’s law treats virtual-only meetings differently from how the MBCA treats them.

At the onset of the COVID-19 pandemic, Governor Edwards issued Executive Order Number 37 permitting Louisiana corporations to conduct virtual-only shareholder meetings to comply with social

distancing requirements and Louisiana's stay-at-home mandate. SB 33 provides a more permanent solution.

In recent years, virtual-only shareholder meetings have become increasingly common, and this trend is likely to accelerate in the wake of the COVID-19 pandemic. Currently, a majority of states, including Delaware,² allow corporations to conduct virtual-only shareholder meetings. Nonetheless, virtual-only shareholder meetings are not without controversy. Proponents argue that virtual shareholder meetings may enable greater participation by shareholders who are not otherwise able to attend in-person meetings. Others, including proxy advisory firms ISS and Glass Lewis, express concerns that virtual-only shareholder meetings may enable corporations to leverage power or influence over the conduct of the meeting, including the ability to screen questions submitted by shareholders. These groups have consistently encouraged corporations to retain an in-person component to their shareholder meetings; however, it is still too early to tell whether the 2020 shareholder meeting season will cause a shift in practice.³ Despite the ongoing debate about the merits of virtual-only shareholder meetings, most commentators expect more of them in the future.

2. Amendments to the Articles of Incorporation Without Shareholder Approval (LA R.S. 12:1-1005)

SB 33 amends LA R.S. 12:1-1005 to allow boards of directors to adopt amendments to the corporation's articles of incorporation to effect changes in the corporation's name without shareholder approval, unless the articles otherwise restrict the board from doing so. Currently, a board may exercise this authority only in two narrow circumstances: (a) amendments substituting words such as "corporation," "incorporated," "company," or "limited," or abbreviations of those words, with a similar word or abbreviation in the corporate name; and (b) amendments to add, delete, or change a geographical attribution in the corporate name. By removing all such limitations, SB 33 provides boards with unfettered authority to effect name changes without shareholder approval (as long as the articles do not otherwise provide).

3. Parent-Subsidiary Mergers (LA R.S. 12:1-1105)

As amended by SB 33, LA R.S. 12:1-1105 would allow a parent corporation that owns at least 90% of the voting power of any class or series of outstanding shares of a subsidiary corporation to effect a merger without prior board or shareholder approval in two circumstances. First, the parent corporation may merge the subsidiary into itself or into another subsidiary without the approval of the shareholders of either the parent or the subsidiary, and without the approval of the board of the subsidiary corporation. Second, the parent corporation may merge itself into the subsidiary corporation without the approval of the board and shareholders of the subsidiary corporation. Such prior approvals, however, would be required if otherwise mandated by the articles of incorporation or, in the case of a non-Louisiana subsidiary corporation, the law of the state governing such corporation. SB 33 also adds a new subsection (C) to Section 1105, providing that any amendments to the parent corporation's articles of incorporation resulting from a merger under Section 1105 may be adopted by the parent's board only pursuant to Section 1005.

Conclusion

When signed by the Governor as expected, SB 33 promises to broaden the powers of boards of Louisiana corporations beyond current Louisiana law. By adopting SB 33, the Louisiana Legislature is ensuring Louisiana's corporate law remains consistent with both the current MBCA and a majority of

other states' laws. Louisiana corporations may wish to review their articles of incorporation to determine whether any provisions may restrict their ability to take advantage of the flexibility offered by SB 33.

[1] LA R.S. 12:1-101 *et seq.*

[2] Delaware General Corporation Law Section 211 allows a Delaware corporation to conduct a virtual-only shareholder meeting that meets certain requirements, including providing the shareholders and proxy holders with a "reasonable opportunity" to participate in the meeting as it happens and to vote on matters submitted for shareholder approval.

[3] Note that ISS and Glass Lewis will likely release their 2021 voting guidelines in the next month.

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