

ALERTS

Corporate Law Alert - Indiana Adopts Revisions To Business Corporation Law

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Senate Bill 487, which became effective on July 1, 2015, contains a variety of revisions to Indiana's Business Corporation Law. While many revisions can be viewed as technical corrections or clarifications, there are two provisions that provide important new options to Indiana corporations.

Shareholder Meetings by Remote Communication

Previously, Indiana Code Section 23-1-29 required an annual meeting of shareholders be held at a physical location where shareholders could attend in person or by conference telephone. The revisions to Indiana Code Section 23-1-29 provide the option for Indiana corporations to hold shareholder meetings solely by means of remote communication (a so-called "virtual meeting") or to allow shareholders to participate online in an in-person shareholder meeting. Because the bylaws of an Indiana corporation typically provide for a shareholders' meeting to be held at a place, corporations will likely have to amend their bylaws in order to avail themselves of the option to hold shareholder meetings solely by means of remote communication. The revised statute now establishes specific conditions, and authorizes the board of directors to adopt guidelines and procedures, for shareholder participation by remote communication. These guidelines and procedures must provide shareholders with a reasonable opportunity to participate in the meeting and vote on matters submitted to shareholders, including the opportunity to read or hear proceedings of the meeting and to communicate with the other persons present at the meeting substantially concurrently with such proceedings. Indiana Code Section 23-1-30-1, which contains the requirement to make available a list of shareholders in connection with a meeting of shareholders, has also been amended to require that such information be made accessible to shareholders when a meeting is being held solely by means of remote communication. Indiana now joins a number of other states that allow corporations to hold shareholder meetings solely by means of remote communications.

Formation of Holding Companies

New Indiana Code Section 23-1-40-9 adds the ability of an Indiana corporation to create a holding company by means of a merger without requiring shareholder approval. This provision will be of particular interest to Indiana domiciled public companies or private companies with a large number of shareholders. The statute is intended to permit corporations to reorganize to a holding company structure more efficiently by eliminating the need for a shareholder vote. A key requirement of the statute is that the holding company must provide the same shareholder rights as the

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former parent company. The statute provides that numerous conditions must be met to insure shareholder rights are protected, including: the articles of incorporation and bylaws of the holding company must contain provisions identical to the articles of incorporation and bylaws of the parent corporation immediately prior to the merger and that the directors of the parent company must become directors of the holding company. The statute also provides that such a transaction does not extinguish any standing to pursue derivative litigation against the parent which existed prior to such a merger or to eliminate any applicable restrictions which existed prior to such merger under Indiana's Control Share Act or Business Combination Act. In addition, the statute requires the creation of the holding company be tax-free to shareholders for federal income tax purposes.

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