

# ALERT

## Proposed Changes to the California Corporations Code

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### SUMMARY

The Corporations Committee of the California State Bar has proposed two (2) significant changes to the California Corporations Code (the "Code"). These were introduced in the Senate on January 21, 2020 as SB 870 and on February 3, 2020 as SB 913.

SB 870, proposed Code Section 119, would permit a corporation to ratify or validate an otherwise lawful corporate act or document that was not in compliance with the law at the time the act was done or was not in compliance with the corporation's bylaws or articles. The ratification or validation could be accomplished by the superior court, or by a resolution or written consent of the shareholders or board of directors of the corporation.

SB 913 would amend Code Section 1150 in order to permit a California corporation to convert to a non-California corporation or other type of non-California business entity, by filing a certificate of conversion with the California Secretary of State.

#### **Ratification and Validation of Noncompliant Corporate Actions**

SB 870 proposes to add Section 119 to the Code. This new law would allow the superior court to validate or ratify an otherwise lawful corporate action or correct a corporate record that was not in compliance with law or the corporation's bylaws or articles. The validation or ratification would be conclusive absent actual fraud in the process.

Court approval would not be the exclusive means for ratification or validation of the action. A corporation would also be permitted to ratify or validate the corporate action or correct the record through resolution or written consent of the board of directors or the shareholders, or by filing a certificate of correction pursuant to Section 109 of the Code. A ratification by the board and/or the shareholders would be required to be in accordance with the Code and the articles and bylaws in effect at the time of ratification. If a higher approval standard was or would have been applicable to the original taking of the corporate action, the ratification must be approved in accordance with such higher approval standard. The corporation would be required to provide notice of the ratification to its shareholders, either before or promptly after ratification.

Ratification or validation would not be permitted if it would cause an instrument previously filed with the Secretary of State to become incorrect or incomplete.

A corporation would be permitted to file a Certificate of Ratification if a ratification or validation of a corporate action affirms an instrument previously filed with the Secretary of State as long as the previous instrument at the time of its filing was not in compliance with law or the corporation's article or bylaws and it accurately reflected the action that is being ratified or validated. The Certificate of Ratification shall consist of an officer's certificate setting forth all of the following:

- (A) The name of the corporation and the Secretary of State's file number of the corporation;
- (B) The title of the agreement, certificate, or other instrument being ratified or validated;

(C) The date the agreement, certificate, or other instrument being ratified or validated was filed with the Secretary of State;

(D) A statement relating to both of the following:

(i) That the necessary approvals of the ratification pursuant to subdivision (B) were obtained and, if applicable, the total number of outstanding shares of each class entitled to vote with respect to the ratification; and

(ii) That the number of shares of each class voting in favor of the ratification equaled or exceeded the vote required, specifying the percentage vote required of each class entitled to vote; and

(E) A statement that the agreement, certificate, or other instrument or provisions listed therein have been ratified or validated pursuant to this section and that a copy of the notice required pursuant to subdivision (c) has been given.

A Certificate of Ratification may not have a future effective date, but would be effective retroactively to the date of the record being ratified, provided that the ratified corporate action is effective when filed with respect to persons that previously relied on the original record and would be adversely affected by the retroactive effect.

### **Conversion to Foreign Corporation or Foreign Business Entity**

Currently, Section 1150 of the Code permits the conversion of a domestic (i.e., California) corporation into an other domestic business entity, including, but not limited to, a limited liability company or a partnership, but does not permit the conversion into a foreign (i.e., a jurisdiction other than California) corporation or other foreign entity. SB 870 proposes to amend Section 1150 in order to permit the conversion of a domestic corporation into a foreign corporation or an other foreign business entity.

A conversion of a domestic corporation to a foreign entity would require the converting corporation to file a certificate of conversion with the Secretary of State. In addition to the filing of a certificate of conversion, the entity will still be required to adopt a plan of conversion, which plan of conversion is not required to be filed but must be kept at the entity's principal place of business.

With respect to the conversion of other types of domestic business entities to foreign business entities, Corporations Code Section 17710 already permits the conversion of a domestic limited liability company to a foreign limited liability company or foreign other business entity. Corporations Code 15911 already permits the conversion of a domestic limited partnership to a foreign limited partnership or foreign other business entity.

If you have any questions about these proposed changes to the California corporate laws, please do not hesitate to contact us.

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