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LEGAL ADVANTAGES: A COMPARISON WITH DELAWARE

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The summary below is a general guide to certain Nevada laws that apply to Nevada corporations as of September 1, 2008. The information contained in this guide is for general reference only and is not intended to provide legal advice. You should contact a Nevada attorney to advise you prior to conducting business in Nevada.

A. Nevada Provides Stronger Personal Liability Protection To Officers And Directors

While statutes in Nevada and Delaware have codified the business judgment rule and some of the general fiduciary duties owed to a corporation by its directors and officers, senior management in Nevada corporations may enjoy a higher level of protection against personal liability due to Nevada's business-friendly corporate laws.

1. Fiduciary Duty and Business Judgment

Nevada, like most jurisdictions, requires that directors and officers of Nevada corporations exercise their powers in good faith and with a view to the interests of the corporation. NEV. REV. STAT. § 78.138(1). As a matter of law, directors and officers are presumed to act in good faith, on an informed basis, and with a view to the interests of the corporation in making business decisions. NEV. REV. STAT. § 78.138(3). In performing such duties, directors and officers may exercise their business judgment through reliance on information, opinions, reports, financial statements, and other financial data prepared or presented by corporate directors, officers, or employees who are reasonably believed to be reliable and competent. NEV. REV. STAT. § 78.138(2). Professional reliance may also be extended to legal counsel, public accountants, advisers, bankers, or other persons reasonably believed to be competent, and to the work of a committee (on which the particular director or officer does not serve) if the committee was established and empowered by the corporation's board of directors, and if the committee's work was within its designated authority and was about matters on which the committee was reasonably believed to merit confidence. NEV. REV. STAT. §§ 78.138(2), 78.125. However, directors and officers may not rely on such information, opinions, reports, books of account, or similar statements if they have knowledge concerning the matter in question that would make such reliance unwarranted. NEV. REV. STAT. § 78.138(2).

In Delaware, directors and members of any committee designated by the board are similarly entitled to rely in good faith upon the records of the corporation and upon such

information, opinions, reports, and statements presented to the corporation by corporate officers, employees, committees of the board of directors, or other persons as to matters the member reasonably believes are within such other person's professional or expert competence, provided that other person has been selected with reasonable care by or on behalf of the corporation. DEL. CODE ANN. tit. viii, § 141(e). Unlike Nevada, Delaware does not extend the statutory protection for reliance on such persons to corporate officers. See NEV. REV. STAT. § 78.138(2); DEL. CODE ANN. tit. viii, § 141(e).

2. Director Immunity from Lawsuits

With certain exceptions, unless the corporation's articles provide for greater individual liability, directors and officers of a Nevada corporation will not be individually liable to the corporation, its stockholders or creditors for any damages as a result of any act or failure to act in their capacity as a director or officer unless it is proven that the act or failure to act breached fiduciary duties as a director or officer *and* such breach involved intentional misconduct, fraud, or a knowing violation of law. NEV. REV. STAT. § 78.138(7).

The statute does provide exceptions to this general rule, including imposing liability in the following special circumstances: ouster (NEV. REV. STAT. § 35.230), securities violations (NEV. REV. STAT. § 90.660), commodities violations (NEV. REV. STAT. § 91.250), receiving deposits in insolvent banks with knowledge of insolvency (NEV. REV. STAT. § 668.045), and recovery by an insurer of profits realized from transactions made with unfair use of information (NEV. REV. STAT. § 694A.030).

Delaware provides a lower level of protection to corporate directors in that there is no liability protection with respect to the corporation's creditors. In addition, the Delaware statutes do not protect corporate officers. Unlike Nevada, limitations on a director's liability for monetary damages must be included in the corporation's certificate of incorporation to be effective. DEL. CODE ANN. tit. viii, § 102(b)(7).

Moreover, although Nevada generally requires both intentional misconduct, fraud or a knowing violation of the law and a breach of a fiduciary duty to impose liability on a director, under Delaware law, a director may be held liable for a breach of a fiduciary duty absent intentional misconduct, fraud or a knowing violation of the law. NEV. REV. STAT. § 78.138(7); DEL. CODE ANN. tit. viii, § 102(b)(7).

B. Nevada Has Fewer Business Taxes

A further benefit of incorporating in Nevada is that some of the taxes and filing fees paid by a Nevada corporation are lower than the comparable taxes and fees paid by a Delaware corporation. The following is a list of tax benefits enjoyed by Nevada corporations:

- No Corporate Income Tax
- No Taxes on Corporate Shares
- No Franchise Tax

- No Personal Income Tax
- No Franchise Tax on Income
- No Inheritance or Gift Tax
- No Unitary Tax
- No Estate Tax
- Competitive Sales and Property Tax Rates
- Minimal Employer Payroll Tax—0.7% of gross wages with deductions for employer paid health insurance
- Nominal Annual Fees

C. Nevada Now Has a Business Court

The Delaware judiciary is generally recognized as very experienced in corporate law.

However, Nevada has adopted Business Courts (based on the Delaware model) that minimize the time, cost, and risks of commercial litigation by (1) employing early, comprehensive case management, (2) allowing for active judicial participation in settlement, (3) giving priority to hearing settings to avoid business disruption, and (4) providing for predictability of legal decisions in commercial matters. Under local court rules of practice, management of Nevada’s business court docket is the highest case management priority of the presiding judge of the business court docket. Civil actions are assigned to the business court docket if, regardless of the nature of relief sought, the primary subject matter of the action is a dispute concerning the validity, control, operation, or governance of business entities created under Nevada statute, a shareholder derivative action, a dispute concerning a trade-mark or trade name, a claim pursuant to the Nevada Trade Secrets Act, Nevada Securities Act, or Nevada Deceptive Trade Practices Act, a claim involving investment securities, or any other dispute among business entities that would benefit from the enhanced case management of the business court docket.

D. Nevada Grants Directors More Flexibility for Decisions (Including Takeovers)

Nevada provides directors with more discretion than Delaware in making corporate decisions, including decisions made in takeover situations. In Nevada, director and officer actions taken in response to a change or potential change in control that do not disenfranchise stockholders are granted the benefits of the business judgment rule. NEV. REV. STAT. § 78.139(1). However, in the case of an action that impedes the rights of stockholders to vote for or remove directors, directors will only be given the advantages of the business judgment rule if the directors have reasonable grounds to believe a threat to corporate policy and effectiveness exists and the action taken that impedes the exercise of the stockholders’ rights is reasonable in relation to such threat. NEV. REV. STAT. § 78.139(2).

In exercising their powers in response to a change or potential change of control, directors and officers of Nevada corporations may consider the effect of the decision on several corporate constituencies in addition to the stockholders, including the corporation’s employees, the interests of the community, and the economy. NEV. REV. STAT. § 78.139(5).

In contrast, Delaware does not provide a similar list of statutory factors that corporate directors and officers may consider in making decisions. See generally DEL. CODE ANN. tit. viii, § 141(e). In fact, in many cases, Delaware law provides that fiduciary duties require directors to accept an offer from the highest bidder regardless of the effect of such sale on the corporate constituencies other than the stockholders. See generally *Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc.*, 506 A.3d 173 (Del. 1986). Thus, the flexibility granted to directors of Nevada corporations in the context of a hostile takeover are substantially greater than those granted to directors of Delaware corporations.

As an example, if two potential buyers bid for a Delaware corporation and Buyer A offered \$1 more than Buyer B but planned to shut down the operations of the corporation and fire all of its employees, the Delaware directors would likely be required to take the offer from Buyer A. If the same offers were made for a Nevada corporation, the Nevada directors would be able to consider the effect of Buyer A's plans on the employees of the corporation and the corporation's other constituencies as a basis for rejecting the offer from Buyer A.

E. Comparison of Other Key Provisions of Nevada and Delaware Law

1. Classified Board of Directors

In Nevada, a corporation may classify its board of directors provided that at least one-fourth of the total number of directors is elected annually. NEV. REV. STAT. § 78.330(2).

Delaware law permits any Delaware corporation to classify its board of directors into as many as three classes with staggered terms of office. After initial implementation of a classified board, one class will be elected at each annual meeting of the stockholders to serve for a full term or until their successors are elected to take office. DEL. CODE ANN. tit. viii, § 141(d).

2. Quorum and Required Vote for Stock Corporations

In Nevada, generally, a majority of the stockholders with voting power (present in person or by proxy, whether or not the person holding the proxy has authority to vote on all matters), constitutes a quorum for the transaction of business. NEV. REV. STAT. § 78.320(1)(a). Any action (other than the election of directors) taken by stockholders is approved if the number of votes in favor of the action is greater than the number of votes against the action. NEV. REV. STAT. § 78.320(1)(b).

Directors are generally elected at the annual meeting of the stockholders by at least a plurality of the votes cast at the annual meeting unless a larger proportion is specified in the articles or bylaws. NEV. REV. STAT. § 78.330(1). The articles of incorporation may also provide that the voting power of an individual director or classes of directors may be greater or less than any other individual director or classes of directors. NEV. REV. STAT. § 78.330(3).

In Delaware, the certificate of incorporation or bylaws of any corporation authorized to

issue stock may specify the number of shares having voting power and the number of such shares that must be present or represented by proxy at any meeting in order to constitute a quorum for the transaction of any business. DEL. CODE ANN. tit. viii, § 216. A quorum may not consist of less than one-third of the shares entitled to vote at the meeting, except that, where a separate vote by a class or series or classes or series is required, a quorum consists of no less than one-third of the shares of such class or series. DEL. CODE ANN. tit. viii, § 216. In the absence of such specification in the certificate of incorporation or bylaws of the corporation, a majority of the shares entitled to vote constitutes a quorum at a meeting of stockholders; in all matters other than the election of directors, the vote of the majority of shares present at the meeting and entitled to vote on the subject matter is required; and directors are elected by a plurality of the votes of the shares present at the meeting and entitled to vote on the election of directors. Additionally, a bylaw amendment adopted by stockholders that specifies the votes that shall be necessary for the election of directors shall not be further amended or repealed by the board of directors. DEL. CODE ANN. tit. viii, § 216.

3. Cumulative Voting

Cumulative voting for directors entitles stockholders to cast a number of votes that is equal to the number of voting shares held multiplied by the number of directors to be elected. Stockholders may cast all such votes either for one nominee or distribute such votes among up to as many candidates as there are positions to be filled. Cumulative voting may enable a minority stockholder or group of stockholders to elect at least one representative to the board of directors where such stockholders would not otherwise be able to elect any directors.

For Nevada corporations, cumulative voting in the election of directors is permitted only where provided for in the articles of incorporation and if certain notice procedures are followed. NEV. REV. STAT. § 78.360.

Similarly, a Delaware corporation may provide for cumulative voting in the corporation's certificate of incorporation. DEL. CODE ANN. tit. viii, § 214.

4. Vacancies on the Board of Directors

Vacancies on the board of directors of a Nevada corporation may be filled by vote of a majority of the remaining directors, though less than a quorum, unless the articles of incorporation provide otherwise. NEV. REV. STAT. § 78.335(5).

Under Delaware law, vacancies on the board of directors are similarly filled by the affirmative vote of a majority of the remaining directors then in office, even if less than a quorum, unless otherwise provided in the certificate of incorporation or bylaws. DEL. CODE ANN. tit. viii, § 223.

5. Removal of Directors

Under both Nevada and Delaware law, any director or the entire board of directors may

be removed, with or without cause, upon the vote of the shares entitled to vote in the election of directors. *See* NEV. REV. STAT. § 78.335; DEL. CODE ANN. tit. viii, § 141(k).

For Nevada corporations, generally, any director may be removed by the vote of stockholders representing not less than two-thirds of the voting power of the issued and outstanding stock entitled to vote. NEV. REV. STAT. § 78.335(1). For corporations that elect directors with cumulative voting, any director or directors who constitute fewer than all of the directors may not be removed except upon the vote of stockholders owning sufficient shares to prevent each director's election to office at the time of removal. NEV. REV. STAT. § 78.335(2).

Under Delaware law, a majority vote is required to remove a director with or without cause, subject to two exceptions under which a director may be removed only for cause. DEL. CODE ANN. tit. viii, § 141(k)(1-2).

6. Indemnification of Officers and Directors and Advancement of Expenses

Nevada and Delaware have substantially similar provisions regarding indemnification by a corporation of its officers, directors, employees, and agents, except that Nevada provides broader indemnification in connection with stockholder derivative lawsuits. *See* NEV. REV. STAT. §§ 78.7502, 78.751, 78.752; DEL. CODE ANN. tit. viii, § 145.

Under Nevada law, the articles of incorporation, bylaws, or an agreement made by the corporation may provide that the corporation must pay advancements of expenses in advance of the final disposition of the action, suit, or proceedings upon receipt of an undertaking by or on behalf of the director or officer to repay the amount even if it is ultimately determined that he or she is not entitled to be indemnified by the corporation. NEV. REV. STAT. § 78.751(2). Thus, under such circumstances, a Nevada corporation may contractually provide for indemnification without the need for further approval.

Delaware law provides that expenses incurred by an officer or director in defending any civil, criminal, administrative or investigative action, suit or proceeding as the corporation deems appropriate may be paid by the corporation in advance of the final disposition of the action, suit or proceeding upon receipt of an undertaking by or on behalf of the director or officer to repay the amount if it is ultimately determined that he or she is not entitled to be indemnified by the corporation. DEL. CODE ANN. tit. viii, § 145(a)-(e). Thus, absent an agreement to the contrary, a Delaware corporation has the discretion to decide whether or not to advance expenses.

7. Dividends

Nevada law is more permissive than Delaware law insofar as when dividends may be paid. For Nevada corporations, except as otherwise provided in the corporation's articles of incorporation, no distribution (including dividends on, or redemption or repurchases of, shares of capital stock) may be made if, after giving effect to such distribution, the corporation would not be able to pay its debts as they become due in the usual course of business, or the corporation's total assets would be less than the sum of its total liabilities plus the amount that would be

needed at the time of a liquidation to satisfy the preferential rights of preferred stockholders. NEV. REV. STAT. § 78.288.

Under Delaware law, subject to any restrictions provided in the certificate of incorporation, a corporation may declare dividends out of surplus or, if no surplus exists, out of net profits for the fiscal year in which the dividend is declared and/or the preceding fiscal year (provided that the amount of capital of the corporation following the declaration and payment of the dividend is not less than the aggregate amount of the capital represented by the issued and outstanding stock of all classes having a preference upon the distribution of assets). DEL. CODE ANN. tit. viii, § 170.

8. Restrictions on Business Combinations

Both Nevada and Delaware law contain provisions restricting the ability of a corporation to engage in business combinations with an interested stockholder.

In Nevada, the business combination statutes prohibit certain “combinations” between a Nevada corporation and an “interested stockholder” for three years after such a person becomes an interested stockholder. *See* NEV. REV. STAT. §§ 78.411 - 78.444. An interested stockholder is anyone who is the beneficial owner of 10 percent or more of the voting power of the outstanding voting shares of the corporation or an affiliate or associate of the corporation and at any time within 3 years immediately before the date in question was the beneficial owner of 10 percent or more of the then outstanding shares of the corporation. NEV. REV. STAT. § 78.423. The three-year moratorium can be lifted only by advance approval by a corporation’s board of directors. NEV. REV. STAT. § 78.438. Further, after the three-year period, combinations remain prohibited unless (1) they are approved by the board of directors before the date that the person first became an interested stockholder or a majority of the outstanding voting power not beneficially owned by the interested party, or (2) the interested stockholder satisfies certain fair-value requirements. NEV. REV. STAT. §§ 78.439, 78.441. A Nevada corporation may opt out of the statute with appropriate provisions in its articles of incorporation; however, the opt-out would apply only prospectively. NEV. REV. STAT. § 78.434.

Under Delaware law, a corporation is not permitted to engage in a business combination with any interested stockholder for a three-year period following the date such stockholder became an interested stockholder, unless (i) the transaction resulting in a person becoming an interested stockholder, or the business combination, is approved by the board of directors of the corporation before the person becomes an interested stockholder; (ii) upon consummation of the transaction that resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the outstanding voting stock of the corporation outstanding at the time the transaction commenced (excluding shares owned by persons who are both officers and directors of the corporation, and shares held by certain employee stock ownership plans); or (iii) at or after the date the person becomes an interested stockholder, the business combination is approved by the corporation’s board of directors and by the holders of at least two thirds of the corporation’s outstanding voting stock at an annual or special meeting and not by written consent, excluding shares owned by the interested stockholder. DEL. CODE ANN. tit. viii, §

203(a). Delaware law defines “interested stockholder” generally as a person who owns 15% or more of the outstanding shares of a corporation’s voting stock. DEL. CODE ANN. tit. viii, § 203(c)(5). Like Nevada, Delaware allows corporations to “opt out” of the business combinations statutes. DEL. CODE ANN. tit. viii, § 203(b)(1-3).

9. Amendment to Articles / Certificate of Incorporation

Both Nevada and Delaware law provide that, after receipt of payment for stock, or for non-stock corporations, approval of proposed amendments to a corporation’s articles (in Nevada) or certificate (in Delaware) of incorporation requires the affirmative vote of holders of a majority of all outstanding shares entitled to vote, with each such stockholder being entitled to one vote for each share held. *See* NEV. REV. STAT. § 78.390(1)(b); DEL. CODE ANN. tit. viii, § 242(b)(1).

Holders of the outstanding shares of a particular class are entitled to vote as a class on a proposed amendment if the amendment would alter or change the power, preferences, or special rights of one or more series of any class so as to affect them adversely. NEV. REV. STAT. § 78.385; DEL. CODE ANN. tit. viii, § 242(a)(3)-(5). Under Nevada law, but not under Delaware law, an amendment that would adversely alter or change any preference or other right given to any class or series of outstanding shares does not have to be approved by the vote of the holders of shares representing a majority of the voting power of each class or series whose preference or rights are adversely affected by the amendment if the articles of incorporation specifically deny the right to vote on such an amendment. NEV. REV. STAT. § 78.390(2).

10. Actions by Written Consent of Stockholders

Nevada and Delaware statutes provide that, unless the articles (in Nevada) or certificate (in Delaware) of incorporation or the bylaws (in Nevada) provide otherwise, any action required or permitted to be taken at a meeting of the stockholders may be taken without a meeting if the holders of outstanding stock having at least the minimum number of votes that would be necessary to authorize or take such action at a meeting consents to the action in writing. NEV. REV. STAT. § 78.320; DEL. CODE ANN. tit. viii, § 228(a). In addition, Delaware law requires the corporation to give prompt notice of the taking of corporate action without a meeting by less than unanimous written consent to those stockholders who did not consent in writing. DEL. CODE ANN. tit. viii, § 228(e).

11. Stockholder Vote for Mergers and Other Corporate Reorganizations

In general, both jurisdictions provide that the merger of a corporation requires the approval of a majority of outstanding shares entitled to vote as well as approval of the board of directors. *See* NEV. REV. STAT. § 92A.120; Del Code Ann. tit. viii, § 251. Both jurisdictions generally provide that the surviving corporation in a merger does not need to obtain stockholder approval if the articles or certificate, as applicable, of incorporation do not change as a result of the merger, each stockholder of the surviving corporation will hold the same number of shares after the merger, and the surviving corporation issues no more than 20% of its voting stock in connection with the merger. NEV. REV. STAT. § 92A.130; Del Code Ann. tit. viii, § 251(f).

Nevada also requires that the shares of each stockholder in the surviving corporation have the same relative rights, preferences, limitations, and designations after the merger as they did prior to the merger. NEV. REV. STAT. § 92A.130(1)(b).

In addition, both jurisdictions provide that a sale of all of a corporation's assets requires board approval and the approval of a majority of outstanding shares entitled to vote. See NEV. REV. STAT. § 78.565; Del Code Ann. Tit. viii, § 271. Although Delaware requires the same majority stockholder approval for a sale of substantially all of a corporation's assets, Nevada does not have a parallel requirement. Although it is unlikely that a Nevada court would interpret NEV. REV. STAT. § 78.565 literally to permit an unapproved sale of all but a token amount of assets, it is likely that many sales that would require stockholder approval under Delaware law would not require such approval under Nevada law.

12. Dissenters' Rights

In both jurisdictions, dissenting stockholders of a corporation engaged in certain major corporate transactions are entitled to appraisal rights. See NEV. REV. STAT. §§ 78.3793, 92A.300 – 92A.500 inclusive; DEL. CODE ANN. tit. viii, § 262. Appraisal rights permit a stockholder to receive cash equal to the fair market value of the stockholder's shares (as determined by agreement of the parties or by a court) in lieu of the consideration such stockholder would otherwise receive in any such transaction.

Under Nevada law, a stockholder is entitled to dissent from, and obtain payment for the fair value of his or her shares in the event of (i) certain acquisitions of a controlling interest in the corporation, (ii) consummation of a plan of merger, if approval by the stockholders is required and the stockholder is entitled to vote on the merger or if the domestic corporation is a subsidiary and is merged with its parent, (iii) a plan of exchange in which the corporation is a party, or (iv) any corporate action taken pursuant to a vote of the stockholders, if the articles of incorporation, bylaws or a resolution of the board of directors provides that voting or nonvoting stockholders are entitled to dissent and obtain payment for their shares. See NEV. REV. STAT. §§ 78.3793, 92A.300 – 92A.500 inclusive.

Holders of securities listed on a national securities exchange or designated as a national market system security on an interdealer quotation system by the National Association of Securities Dealers, Inc. (the "NASD") or held by at least 2,000 stockholders of record are generally not entitled to dissenters' rights. NEV. REV. STAT. §§ 78.3793, 92A.390. This exception is not, however, available if the articles of incorporation of the corporation issuing the shares state that it is not available, or if the holders of the class or series are required under the plan of merger or exchange to accept for the shares anything except cash, shares of stock as described in NEV. REV. STAT. § 92A.390(b), or a combination thereof. Nevada law prohibits a dissenting shareholder from voting his shares or receiving certain dividends or distributions after his dissent. See NEV. REV. STAT. § 92A.380.

Under Delaware law, appraisal rights are generally available for the shares of any class or series of stock of a Delaware corporation in a merger or consolidation, provided that no appraisal

rights are available for the shares of any class or series of stock that, at the record date for the meeting held to approve such transaction, were either (1) listed on a national securities exchange or designated as a national market system security on an interdealer quotation system by the NASD or (2) held of record by more than 2,000 stockholders. DEL. CODE ANN. tit. viii, § 262(b)(1). Even if the shares of any class or series of stock meet the requirements of subsections (1) or (2) above, appraisal rights are available for such class or series if the holders thereof receive in the merger or consolidation anything except cash, shares of stock as described in DEL. CODE ANN. tit. viii, § 262(b)(2), or a combination thereof.

Recent amendments to Delaware stockholders' appraisal rights allow beneficial owners of shares to file a petition for appraisal without the need to name a nominee as a nominal plaintiff and to make it easier to withdraw from the appraisal process and accept the terms offered in the merger or consolidation. *See* DEL. CODE ANN. tit. viii, § 262(e) and (k). No appraisal rights are available to stockholders of the surviving corporation if the merger did not require their approval. DEL. CODE ANN. tit. viii, § 262(b)(1).

13. Stockholder Inspection Rights

Nevada provides greater privacy for corporate records than Delaware. Under Nevada law, only a stockholder of record who owns at least 15% of the corporation's outstanding shares, or has been authorized in writing by holders of at least 15% of the outstanding shares, is entitled to inspect and make copies of the corporation's financial records. NEV. REV. STAT. § 78.257(1). Only a person who has been a stockholder of record for at least six months, or who owns at least 5% of the corporation's outstanding shares or has been authorized in writing by holders of at least 5% of the outstanding shares, is entitled to inspect and make copies of the corporation's stock ledger, articles of incorporation, and bylaws. NEV. REV. STAT. § 78.105(3).

Delaware law generally grants any stockholder of record the right to inspect and to copy for any proper purpose the corporation's stock ledger, a list of its stockholders, and its other records. A proper purpose is one reasonably related to such person's interest as a stockholder. DEL. CODE ANN. tit. viii, § 220(b). Directors also have the right to examine the corporation's stock ledger, a list of its stockholders and its other records for a purpose reasonably related to their positions as directors. DEL. CODE ANN. tit. viii, § 220(d).

14. Derivative Suits

Under both Nevada and Delaware law, a stockholder may bring a derivative action on behalf of the corporation only if the stockholder was a stockholder of the corporation at the time of the transaction in question or the stockholder acquired the stock thereafter by operation of law. Nev. R. Civ. P. 23.1; DEL. CODE ANN. tit. viii, § 327.

15. Special Meetings of Stockholders

Nevada law permits the entire board of directors, any two directors, or the president to call special meetings of the stockholders and directors, unless the articles of incorporation or

bylaws provide otherwise. NEV. REV. STAT. § 78.310(2). Delaware law permits special meetings of stockholders to be called by the board of directors or by any other one or more persons authorized in the certificate of incorporation or bylaws to call a special stockholder meeting. DEL. CODE ANN. tit. viii, § 211(d).

16. Renunciation of Specific Business Opportunities

Both Nevada and Delaware laws provide that a corporation may renounce specified business opportunities in its articles (Nevada) or certificate (Delaware), or in an action or resolution of the board. NEV. REV. STAT. § 78.070; DEL. CODE ANN. tit. viii, § 122(17). These provisions allow a safe harbor to directors and officers to pursue the renounced businesses where an opportunity to profit therefrom has been presented to the corporation or to one or more of its directors, officers, or stockholders.

17. Other Nevada Laws

Further benefits to businesses electing to incorporate in Nevada include that a Nevada corporation may purchase, hold, sell, or transfer shares of its own stock, and issue stock for capital, services, personal property, or real estate, including leases and options. NEV. REV. STAT. §§ 78.070(3), 78.211(1). Moreover, the directors may determine the value of any of these transactions, and their decision is final in the absence of actual fraud in the transaction. NEV. REV. STAT. § 78.211(1). Finally, Nevada provides more privacy for its corporate business owners.

While non-publicly traded corporations must provide the Secretary of State with an up-to-date list of owners of record or a statement indicating where such a list is maintained, the information provided must be kept confidential. NEV. REV. STAT. § 78.152. Nevertheless, in connection with a law enforcement agency's request in the course of a criminal investigation, the Secretary of State may require a corporation to submit a copy of the list of owners or owner answer interrogatories related to the investigation. NEV. REV. STAT. § 78.152.