California Creates Two New Business Entities

SB 201: The Flexible Purpose Corporation

A flexible purpose corporation is a corporation that designates in its articles of incorporation a special purpose, which may include charitable and public purpose activities sometimes carried out by for-profit corporations but traditionally carried out by nonprofit public benefit corporations .

A flexible purpose corporation empowers its shareholders to customize its special purpose. The special purpose designation allows the board of directors to consider not only the best interest of the corporation and the shareholders but also whether the corporation's actions will further its special purpose. In most instances, the flexible purpose corporation must prepare an annual report to shareholders to specify how it measures its success in carrying out its special purpose and report all material actions to carry out the special purpose. It must also prepare a current report on expenditures made in pursuit of a special purpose if the expenditures will have a material adverse impact on the flexible purpose corporation. Current reports and portions of the annual report must be made publicly available on the corporation's website. An existing corporation or other business entity may convert to a flexible purpose corporation by a two-thirds vote, subject to dissenters' rights.

Senate Bill No. 201 goes into effect January 1, 2012. The Corporations Committee supported passage of the bill.

AB 361: The Benefit Corporation

A benefit corporation must adopt the purpose of creating general public benefit, which is defined as a material positive impact on society and the environment. A benefit corporation may also adopt a specific public benefit from a list of seven categories identified in the bill. In carrying out their fiduciary duties, directors are permitted to consider the best interest of the benefit corporation, which is deemed to include the impact on employees, customers, shareholders, the community and society, and the environment. In making its assessment, a benefit corporation must use a third-party standard selected by the board of directors. A benefit corporation must prepare an annual benefit report explaining, among other things, whether the corporation pursued a general public benefit, the ways in which it pursued that public benefit, and the extent to which those benefits were created, as measured by the third-party standard. The corporation's annual benefit report must be made publicly available through its website. Existing corporations and other business entities may convert to a benefit corporation by a two-thirds vote, subject to dissenters' rights.

Assembly Bill No. 361 goes into effect January 1, 2012. The Corporations Committee opposed passage of the bill, in part because in the view of the Corporations Committee it overdelegates authority to directors without a corresponding increase in protections for shareholders.

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