

Date of Hearing: May 1, 2017

ASSEMBLY COMMITTEE ON BANKING AND FINANCE

Matthew Dababneh, Chair

AB 1535 (Maienschein) – As Introduced February 17, 2017

SUBJECT: Corporations: dissolutions: separate shareholder agreements

SUMMARY: Allows a reference to a “separate shareholder agreement” to be included in the articles of incorporation.

EXISTING LAW: Corporations Code Section 2000 governs suits concerning the dissolutions of corporations.

FISCAL EFFECT: Unknown

COMMENTS: This bill allows for the inclusion of a “separate shareholder agreement” to be used in possible future dissolutions or corporate restructuring. According to the author’s office:

AB 1535 simply clarifies in law that a corporations’ articles of incorporation may contain a reference to a separate buyout agreement to be followed in the event dissolution becomes necessary or desirable. This avoids the need for corporations to constantly re-file their articles of incorporation every time a change is made to the buyout agreement, which is wasteful and needlessly expensive.

When corporations initially file their articles of incorporation they typically do not include articles that specifically describe the circumstances of dissolution or restructuring. The rationale for not including such documents is the inability to foresee the complexity of the details surrounding such actions. A common example of this type of corporate action would be a buyout agreement between shareholders. Customary practice is to include a reference to a separate buyout agreement in the articles of incorporation. This buyout agreement would be specifically tailored at the time of the restructuring to include the details of the action taken.

Referencing a separate shareholder agreement has the effect of reducing the size and complexity of the articles of incorporation and avoids the need for continuous amendments to the articles each time an action is required.

The sponsor of this legislation notes that the current practice of the Secretary of State (SOS) is to interpret Corporations Code Section 2000 to allow a reference to a separate shareholder agreement. This, of course, raises the question of the need for the legislation. However, the sponsor also notes that past SOS interpretations of the code have not allowed such references.

The inclusion of separate shareholder agreements in current statute will allow corporations to use these documents to more effectively plan and execute future dissolutions or shareholder restructuring in a manner that is reliably consistent over time.

REGISTERED SUPPORT / OPPOSITION:

Support

Conference of California Bar Associations

Opposition

None on file.

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