

THE FLORIDA BAR BUSINESS LAW SECTION
CORPORATIONS, SECURITIES & FINANCIAL SERVICES
COMMITTEE MEETING

January 10, 2013
Orlando Airport Marriott
Orlando, Florida

MINUTES

1. Call to Order and Welcome. Meeting was called to order by Laurie Green, Chair of the Committee, who presided at the meeting.
2. Introduction of Members and Guests Present. All members present at the meeting, and all guests attending the meeting, introduced themselves and signed an attendance sheet.
3. Approval of Minutes. Upon motion, duly seconded, the minutes of the September 1, 2012 Committee meeting were unanimously approved.
4. Public Benefit Corporations. Professor Stuart Cohn led a discussion about public benefit corporations (B corps). A B corp is essentially a for-profit corporation that elects to be governed by extra statutes regarding social responsibility. While most corporate statutes allow directors to consider social factors, among others, in making decisions, a B-corp typically places a greater emphasis and/or requirements on considering such factors. Currently about 10-12 states have enacted some type of B corp legislation, and a recent search revealed over 600 registered B-corps in the United States. In the 2011 Florida legislative session a special interest group introduced a bill to allow B corps to be formed in Florida. A special task force of the Committee reviewed the proposed legislation, compared it against the model B corp act and select states' statutes, and proposed changes to the legislation. The Committee discussed some of the critical areas of concern (e.g. derivative actions, appraisal rights, affect of a sale of all assets, approval necessary to merge or sell assets, etc.), and provided guidance to the special task force. The Committee voted to authorize the special task force to provide input on Senator Clemens' bill, but specifically did not request authorization to put forward a separate bill of the Business Law Section. Although some states have also authorized, or considered, allowing LLCs to be established for such purposes (a/k/a L3), the current proposal in Florida is only for corporations.

5. Limited Liability Company Act Revision.

(a) Status: The LLC Act Revision Committee announced that bill drafting is almost complete. They will be requesting the BLS Executive Council convene by telephone in late January 2013 to consider triple motion approval to submit the bill for this 2013 legislative session.

(b) Open Issues:

(a) The Model LLC Act requires unanimous member consent for an LLC merger. Thus, there is no need for appraisal rights. Florida's current statute does not require unanimous consent, and thus requires appraisal rights.

(b) What should the statutes require for service of process on an LLC? The LLC Act Revision Committee met with the Business Litigation Committee to seek input on this issue, and they preferred a waterfall type approach that offers multiple tiered methods to serve process. It was also discussed whether this should appear in the LLC Act or the civil procedure statutes.

(c) There has been no suggested changes to the Olmstead patch that was previously enacted in Florida.

(d) Should derivative actions include demand futility? Should a special litigation committee be required or just permitted in a derivative action?

(e) Clarifying that a domestication only applies to a non-US entity coming to Florida.

6. Upcoming Events. Upon request of Greg Yadley, Laurie Green advised the Committee that the Federal Securities/M&A Institute will be holding their annual two-day event in Miami on February 14-15, 2013 and encouraged members to attend.

7. Meeting Adjourned.