Washington State Bar
Business Law Section Executive Committee
Meeting notes – June 10, 2021

- Attendees:
    1. Diane Lourdes Dick
    2. Shaina Johnson
    3. Christina Catzoela
    4. Jeff Hamilton
    5. Eric DeJong
    6. Annie Robertson
    7. Ronak Chokhani
- Approval of prior meeting minutes, unanimously passed.
- Treasurer's Report: Nothing new to report.
- Old Business:
    - On May 21st we held a privacy law CLE with 240 attendees and the program went well. We also took this opportunity to hold our annual meeting and ask whether anyone has interest in running for open board positions.
    - Diane plans to circulate a survey to solicit feedback on programming; the feedback will be useful to next year's board.
- Do we want to form a new privacy law committee?
    - This is an area of interest to business lawyers. It could be argued the corporate counsel section could be a good fit, but there are some benefits to bringing these activities under the business law section. Our members seem to have an interest in the subject and would benefit from programs and networking opportunities.
    - Although there are many advantages to forming a new committee, we need to be cautious about forming too many committees (and thus expanding our executive committee). This is because certain decisions have strict consent thresholds. For instance, if we expand the executive committee to the point where it is difficult to get quorum, we may have a difficult time advancing legislative proposals.
    - Law of Commerce and Cyberspace Committee already exists. Maybe this committee should be updated and brought into the privacy and cybersecurity space. Diane will reach out to the current chair to see if there can be symbiotic connection.
- Laura and Dalton are interested in creating a new structure for newsletter. They want to solicit input from a wide variety of lawyers from across the state and generate themed issues that spotlight people who have responded to the Q&A. Please reach out to Laura or Dalton if you would like to be spotlighted.
- Section Elections: going on right now. All positions are subject to election but everyone is running unopposed.
- Section Budget: We submit in July or August of this year. Our budget for recent years has pretty much stayed the same. A little adjustment for travel expenses and so forth. Diane does want to seed the new young business lawyers with some funding (~$1k) to hold lunches and what not.
- Young business lawyers update – Ronak expressed interest in perhaps holding a live event once able, given that Washington is about 70% vaccinated at this point.
- Eric spoke about CARC's proposed amendments to the Washington business corporation act.
- Securities committee – Northwest Securities Institute was held by webcast under supervision of the Oregon State Bar; attracted 17 attendees from the state of WA. The committee remains hopeful that the next program can be held in person in Seattle.

TO: WSBA Business Law Section Executive Committee

FROM: Corporate Act Revision Committee

DATE: August 13, 2021

RE: Proposed Changes to Washington Business Corporation Act for 2022 Legislative Session (Record Dates; Merger/Share Exchange)

This memorandum summarizes proposed changes to the Washington Business Corporation Act, Title 23B of the Revised Code of Washington (WBCA), relating to two general topics:

- Record dates (summarized in Section A of this memorandum); and
- Mergers and share exchanges (summarized in Section B of this memorandum).

CARC is also proposing some additional changes to the WBCA that are unrelated to these topics (summarized in Section C of this memorandum).

The specific changes proposed are shown in Appendix A and are marked against the current version of the relevant sections of the WBCA.

A. Record Dates.

Record dates for purposes of determining shareholders of record entitled to notice of meetings, to approve corporate actions by written consent in lieu of meetings, and for other purposes are currently governed by Section 23B.07.070. Chapter 7 of the WBCA generally governs shareholder meetings, shareholder approval by written consent and other matters relating to shareholder voting. Somewhat awkwardly, Section 23B.07.070 includes rules governing the fixing of record dates for corporate actions that are generally governed by sections in other chapters of the WBCA (e.g., share dividends and distributions, which are governed by Sections 23B.06.230 and 06.400, respectively). In contrast, the Model Business Corporation Act (2016 Revision) (MBCA) locates provisions for establishing record dates for those matters within the sections that substantively govern those corporate actions (i.e., Sections 6.23 and 6.40).

Consistent with the approach taken in the MBCA, CARC proposes that (1) Section 23B.07.070 be amended to remove the subsections governing record dates for share dividends and distributions, and (2) Sections 23B.06.230 and 06.400 (governing share dividends and distributions to shareholders, respectively) be amended to include the rules governing the fixing of record dates for those corporate actions within those chapters. This would also require a minor related change to the definition of "record date" in Section 23B.01.400(33).

Section 23B.07.070 also includes the requirement that a record date must be a "future date." This phrase introduces some ambiguity about whether a record date can be fixed as of the date the board adopts the resolution fixing the record date (although CARC believes most practitioners are comfortable setting a record date as of the date the board resolution is adopted). In contrast, the operative provisions of the MBCA state that a record date "*may not be retroactive*" and Section 213 of the Delaware General Corporation Law (DGCL) states that a record date "*shall not precede the date on*

which the resolution fixing the record date is adopted by the board of directors," each of which eliminates that ambiguity. CARC recommends that we follow Delaware's approach and amend Section 23B.07.070 to clarify this ambiguity.

B. <u>Mergers and Share Exchanges</u>.

CARC is proposing a number of changes to Chapter 11 of the WBCA, which governs mergers and share exchanges, and some related changes to Chapter 13 of the WBCA, which governs dissenters' rights.

The most significant change to Chapter 11 would be to add a so-called "medium-form" merger provision similar to Section 251(h) of the DGCL. Currently, the WBCA generally requires that shareholders of a Washington corporation that is a party to a merger approve the plan of merger. A "medium-form" merger provision dispenses with the requirement of shareholder approval of a merger in the case of two-step transactions that involve a front-end tender offer followed by a back-end merger to squeeze out shareholders who do not tender their shares in the tender offer. The MBCA also includes a medium-form merger provision in Section 11.04(j) (which also applies to share exchanges). Although there are few significant substantive variations between Section 251(h) of the DGCL and Section 11.04(j) of the MBCA, CARC believes the MBCA approach feathers seamlessly into Section 23B.11.030 (the WBCA provision that is analogous to Section 11.04 of the MBCA). Accordingly, CARC is proposing to add a new subsection (9) to Section 23B.11.030 that authorizes medium-form mergers (as well as a new subsection (10) that includes associated definitions).

As proposed, to avoid the requirement of shareholder approval of a plan of merger under subsection (9) of Section 23B.11.030:

- the plan of merger must permit or require the merger to be effected under the new subsection;
- the offeror must make an offer (which must remain open at least 10 days) to purchase all of the target corporation's outstanding shares (other than shares owned by the target or the offeror) on the terms and conditions stated in the plan of merger;
- the plan of merger must provide, and the offer information must disclose, that the merger will be effected as soon as practicable after the offer is consummated;
- the offeror must purchase all shares properly tendered in the offer;
- on consummation of the offer, the offeror must own enough shares to approve the merger (through shares already owned, shares purchased in the offer, and shares owned by third parties who have agreed to contribute their shares to the offeror[1]);
- the offeror (or a subsidiary) must merge with or into the target after the offer is consummated; and
- the merger consideration payable in respect of shares not tendered in the offer must be the same (in amount and type) that is paid or exchanged for shares tendered in the offer.

The MBCA provision applies both to mergers and statutory share exchanges. However, CARC has limited proposed subsection (9) of Section 23B.11.030 to mergers on the basis that share exchanges are rarely if ever used in M&A transactions. The MBCA provision does not limit the medium-form provision to public companies. However, Section 251(h) of the DGCL does, and CARC believes it is appropriate to include that limitation in Washington's statute. As a practical matter, CARC felt it would be very unlikely that a

[1] The latter facilitates transactions by private equity funds and other financial buyers in which management or other key shareholders agree to roll over their equity in the target.

two-step structure would make much sense for an acquisition of a non-public company. CARC concluded that the best course of action is to limit medium-form mergers to public companies and not to apply the medium-form provisions to share exchanges.

As the medium-form merger would be an entirely new type of merger transaction under the WBCA, changes to various sections of Chapter 13 of the WBCA (governing dissenters' rights) are also needed. Accordingly, CARC has proposed changes to Sections 23B.13.020, .200, .210, .220 and .230 to layer medium-form mergers into the dissenters' rights chapter. These are largely based on analogous provisions in the MBCA chapter governing appraisal rights.

In addition to the proposed amendments described above, CARC has proposed changes to Section 23B.11.010 that expressly permits the "amendment and restatement" of the surviving corporation's articles of incorporation through the plan of merger. Currently, that section only contemplates "amendments." In the past, this has led the Secretary of State to reject merger filings when the post-closing articles of incorporation attached to the filing are styled as "amended and restated." CARC believes that Washington practitioners have routinely used awkward means to work around this limitation (e.g., by including a full set of new articles as an exhibit to the filing but referring to them as "amended articles of incorporation" rather than "amended and restated"). To avoid that technically awkward designation, CARC is proposing that Section 23B.11.010 be revised to expressly permit restatements that include amendments. This change would also require certain corresponding changes to Sections 23B.11.060, .11.050 and .11.090.

CARC is also proposing revisions to address one problem with the WBCA that Washington practitioners occasionally confront - that is, when the amount of consideration that an acquirer is willing to pay is less than needed to satisfy liquidation preferences on preferred stock, leaving nothing remaining for common shareholders or junior preferred stock (which is not unusual in distressed sales of VC-backed companies). Practitioners currently are left to wonder whether a plan of merger for such a transaction can validly provide for the cancellation the junior stock of the target corporation. In contrast, there is explicit authorization in DGCL § 251(b)(5) for the cancellation of shares in an agreement of merger governed by Delaware law. To eliminate any ambiguity that a plan of merger governed by the WBCA can provide for the cancellation of some shares, CARC has proposed a modest but important modification to Section 23B.11.010(2)(c) that would expressly authorize cancellation of some shares in connection with a plan of merger.

CARC is also proposing changes to sections of Chapter 11 that govern requirements for articles of merger and share exchange (Sections 23B.11.050 and .11.090). These sections currently require that the articles of merger or share exchange filed with the Secretary of State to effect a merger or share exchange include the plan of merger or share exchange itself. This requirement has been a frequent source of concern for Washington practitioners when the parties to a merger do not want the plan of merger to be a matter of public record.[2] The concern arises mostly arises in the context of private company M&A transactions, particularly for financial buyers, private strategic buyers and public strategic buyers for whom the transaction is not material enough to require the merger agreement to be filed with the SEC. These parties are typically reluctant to file the long-form merger agreement as part of the articles of merger. The customary work around has been to prepare a "short-form" plan of merger

[2] The same concern would apply to share exchanges, but in CARC's experience that structure is rarely used in M&A transactions.

that incorporates only the bare minimum of statutory requirements from the long-form merger agreement for purposes of the filing.

In contrast to the WBCA provisions, the MBCA provisions governing the required content of articles of merger and share exchange do not require the plan of merger or share exchange to be included in the filing that effects the transaction.[3] Instead, these provisions require only the identification of the parties to the merger or share exchange (and the surviving corporation in the case of a merger), certain other information relating to satisfaction of shareholder approval requirements and, in the case of mergers, amendments to the surviving corporation's articles of incorporation. CARC is proposing changes to Sections 23B.11.050 and .11.090 that would largely align these provisions to the analogous provisions in the MBCA. This would eliminate the plan of merger or share exchange as a required element of the articles of merger or share exchange.

C. <u>Miscellaneous</u>.

CARC is proposing that some other changes to sections of Chapter 7 of the WBCA that it believes should be made at this time.

The first proposed change would amend Section 23B.07.020 to add a requirement that, when multiple shareholders aggregate their holdings to satisfy the ownership threshold required to call a special meeting, demands for a special meeting must be received within 60 days of the first demand delivered to the corporation. This would align this section with the corresponding section of the MBCA.

The second proposed change would amend Section 23B.07.200 to expressly permit a corporation to maintain the shareholders list required to be prepared and made available to shareholders before and during shareholders meeting on an electronic network. The WBCA is currently ambiguous whether an electronic shareholders list is permissible. A related proposed change would affirmatively require the list to be made available on an electronic network in the case of virtual meetings. These changes are not reflected in the MBCA[4] but are similar to provisions included in the DGCL.

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[3] This is also the case under Sections 251(c) and 252(c) of the DGCL.

[4] However, the language in the MBCA provision is more general and the MBCA commentary specifically states that an electronic list is permissible.

APPENDIX A

Proposed changes to the WBCA related to record dates, merger and share exchanges, and related provisions and miscellaneous changes.

The specific amendments proposed by CARC are shown below, marked to show changes compared to the WBCA provisions as currently in effect.

[Proposed new language is indicated by underscoring and proposed deletions are shown by ~~strikeout~~]

RCW 23B.01.400 Definitions.

Unless the context clearly requires otherwise, the definitions in this section apply throughout this title.

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(33) "Record date" means the date fixed for determining ~~established under chapter 23B.07 RCW on which a corporation determines~~ the identity of ~~its~~ a corporation's shareholders and their shareholdings for purposes of this title. The determinations shall be made as of the close of business on the record date unless another time for doing so is specified when the record date is fixed.

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RCW 23B.06.230 Share dividends.

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(3) The board of directors may fix the record date for determining shareholders entitled to a share dividend, which date may not precede the date on which the resolution fixing the record date is approved by the board of directors. If the board of directors does not fix the record date for determining shareholders entitled to a share dividend, the record date is the date the board of directors authorizes the share dividend.

RCW 23B.06.400 Distributions to shareholders.

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(2) The board of directors may fix the record date for determining shareholders entitled to a distribution, which date may not precede the date on which the resolution fixing the record date is approved by the board of directors. If the board of directors does not fix a record date for determining shareholders entitled to a distribution (other than one involving a purchase, redemption, or other acquisition of the corporation's shares), the record date is the date the board of directors authorizes the distribution.

(~~2~~3) No distribution may be made if, after giving it effect:

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(~~3~~4) For purposes of determinations under subsection (~~2~~3) of this section:

(a) The board of directors may base a determination that a distribution is not prohibited under subsection (~~2~~3) of this section either on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable in the circumstances; and

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(~~4~~5) The effect of a distribution under subsection (~~2~~3) of this section is measured:

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(b) In the case of any other distribution:

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(ii) If the distribution is of indebtedness other than that described in subsection (~~4~~5) (a) and (b)(i) of this section, the effect of the distribution is measured as of the date the indebtedness is distributed; and

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(~~5~~6) A corporation's indebtedness to a shareholder incurred by reason of a distribution made in accordance with this section is at parity with the corporation's indebtedness to its general, unsecured creditors except to the extent provided otherwise by agreement.

(~~6~~7) In circumstances to which this section and related sections of this title are applicable, such provisions supersede the applicability of any other statutes of this state with respect to the legality of distributions.

(~~7~~8) A transfer of the assets of a dissolved corporation to a trust or other successor entity of the type described in RCW 23B.14.030(4) constitutes a distribution subject to subsection (~~2~~3) of this section only when and to the extent that the trust or successor entity distributes assets to shareholders.

RCW 23B.07.020 Special meeting.

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(4) If not otherwise fixed under RCW 23B.07.030 or 23B.07.070, the record date for determining shareholders entitled to demand a special meeting is the first date on which an executed shareholder demand is delivered to the corporation. No written demand for a special meeting will be effective unless, within sixty days after the earliest date on which a demand delivered to the corporation as required by this section was executed, written demands executed by shareholders holding at least the percentage of votes specified in subsection (1)(b) of this section or, if applicable, fixed in accordance with subsection (2) or (3) of this section, have been delivered to the corporation.

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RCW 23B.07.070 Record date.

(1) The bylaws may fix or provide the manner of fixing the record date for one or more voting groups in order to determine the shareholders entitled to notice of a shareholders' meeting, to demand a special meeting, to vote, or to approve any other corporate action. If the bylaws do not fix or provide for fixing a record date, the board of directors of the corporation may fix ~~a future date as~~ the record date, which date may not precede the date on which the resolution fixing the record date is approved by the board of directors.

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~~(3) If the board of directors does not fix the record date for determining shareholders entitled to a share dividend, it is the date the board of directors authorizes the share dividend.~~

~~(4) If the board of directors does not fix the record date for determining shareholders entitled to a distribution, other than one involving a purchase, redemption, or other acquisition of the corporation's shares, it is the date the board of directors authorizes the distribution.~~

(~~5~~3) A record date fixed under this section may not be more than seventy days before the meeting of shareholders or more than ten days prior to the date on which the first shareholder consent is executed under RCW 23B.07.040(1)(b).

(~~6~~4) A determination of shareholders entitled to notice of or to vote at a shareholders' meeting is effective for any adjournment of the meeting unless the board of directors fixes a new record date, which it must do if the meeting is adjourned to a date more than one hundred twenty days after the date fixed for the original meeting.

(~~7~~5) If a court orders a meeting adjourned to a date more than one hundred twenty days after the date fixed for the original meeting, it may provide that the original record date continues in effect or it may fix a new record date.

RCW 23B.07.200 Shareholders' list for meeting.

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(2) The shareholders' list must be available for inspection by any shareholder, beginning ten days prior to the meeting and continuing through the meeting, (a) on a reasonably accessible electronic network, on condition that the information necessary to gain access to the list is provided in or accompanies the notice of the meeting, or (b) at the corporation's principal office or at a place identified in the meeting notice in the city where the meeting will be held. If the corporation elects to make the list available on an electronic network, the corporation may take reasonable steps to ensure that such information is available only to shareholders or their agents or attorneys. A shareholder, the shareholder's agent, or the shareholder's attorney is entitled to inspect the list, during regular business hours and at the shareholder's expense, during the period it is available for inspection.

(3) The corporation must ~~shall~~ make the shareholders' list available at the meeting, and any shareholder, the shareholder's agent, or the shareholder's attorney is entitled to inspect the list at any time during the meeting or any adjournment. If the meeting is held solely by means of remote

communication in accordance with RCW 23B.07.010(4) or RCW 23B.07.020(6), then the list must be available for inspection by any shareholder, the shareholder's agent, or the shareholder's attorney during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access the list must be provided with the notice of the meeting.

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RCW 23B.11.010 Merger.

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(2) The plan of merger must include:

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(c) The manner and basis of converting the shares of each corporation into shares, obligations, or other securities of the surviving or any other corporation or into cash or other property in whole or part, or of cancelling some or all of such shares.

(3) The plan of merger may include:

(a) Amendments to the articles of incorporation of the surviving corporation, or a restatement that includes one or more amendments to the surviving corporation's articles of incorporation; and

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RCW 23B.11.030 Approval of plan of merger or share exchange.

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(4) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with RCW 23B.07.050. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the plan of merger or share exchange and must contain or be accompanied by a copy ~~or summary~~ of the plan or a summary of the material terms and conditions of the proposed merger or share exchange and the consideration to be received by shareholders.

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(9) Unless the articles of incorporation provide otherwise, approval by the shareholders of a public company is not required for a plan of merger if:

(a) The plan of merger expressly (i) permits or requires the merger to be effected under this subsection and (ii) provides that, if the merger is to be effected under this subsection, the merger will be effected as soon as practicable following the satisfaction of the requirements of subsection (9)(f) of this section;

(b) Another party to the merger or a parent of another party to the merger makes an offer to purchase, on the terms stated in the plan of merger, any and all of the outstanding shares of the

corporation that, absent this subsection, would be entitled to vote on the plan of merger, except that the offer may exclude shares of the corporation that are owned at the commencement of the offer by the corporation, the offeror, or any parent of the offeror, or by any wholly owned subsidiary of any of the foregoing;

(c) The offer discloses that the plan of merger states that the merger will be effected as soon as practicable following the satisfaction of the requirements of subsection (9)(f) of this section and that the shares of the corporation that are not tendered in response to the offer will be treated as provided in subsection (9)(h) of this section;

(d) The offer remains open for at least ten days;

(e) The offeror purchases all shares properly tendered in response to the offer and not properly withdrawn;

(f) The (i) shares purchased by the offeror in accordance with the offer, (ii) shares otherwise owned by the offeror or by any parent of the offeror or any wholly owned subsidiary of any of the foregoing, and (iii) shares subject to an agreement that they are to be transferred, contributed or delivered to the offeror, any parent of the offeror, or any wholly owned subsidiary of any of the foregoing in exchange for shares or other interests in that offeror, parent or subsidiary, are collectively entitled to cast at least the minimum number of votes on the merger that, absent this subsection, would be required by chapter 23B.11 RCW for the approval of the merger by the shareholders entitled to vote on the merger at a meeting at which all shares entitled to vote on the approval were present and voted;

(g) The offeror or a wholly owned subsidiary of the offeror merges with or into the corporation; and

(h) Each outstanding share of each class or series of shares of the corporation that the offeror is offering to purchase in accordance with the offer, and which is not purchased in accordance with the offer, is to be converted in the merger into, or into the right to receive, the same amount and kind of securities, eligible interests, obligations, rights, cash, or other property to be paid or exchanged in accordance with the offer for each share of that class or series of shares that is tendered in response to the offer, except that shares of the corporation that are owned by the corporation or that are described in clause (ii) or (iii) of subsection (9)(f) of this section need not be converted into or exchanged for the consideration described in this subsection (9)(h).

(10) As used in subsection (9) of this section:

(a) "Offer" means the offer referred to in subsection (9)(b) of this section;

(b) "Offeror" means the person making the offer;

(c) "Parent" of an entity means a person that owns, directly or indirectly (through one or more wholly owned subsidiaries), all of the outstanding shares of or other interests in that entity;

(d) Shares tendered in response to the offer will be deemed to have been "purchased" in accordance with the offer at the earlier time as of which (i) the offeror has irrevocably accepted those shares for payment, and (ii) either (A) in the case of shares represented by certificates, the offeror, or the offeror's designated depository or other agent, has physically received the certificates representing

those shares, or (B) in the case of shares without certificates, those shares have been transferred into the account of the offeror or its designated depository or other agent, or an agent's message relating to those shares has been received by the offeror or its designated depository or other agent; and

(e) "Wholly owned subsidiary" of a person means an entity of or in which that person owns, directly or indirectly (through one or more wholly owned subsidiaries), all of the outstanding shares or other interests.

(~~9~~11) After a merger or share exchange is approved, and at any time before articles of merger or share exchange are filed, the planned merger or share exchange may be abandoned, subject to any contractual rights, without further shareholder approval, in accordance with the procedure set forth in the plan of merger or share exchange or, if none is set forth, in the manner determined by the board of directors.

RCW 23B.11.050 Articles of merger or share exchange.

(1) After a plan of merger ~~or share exchange~~ is approved by the shareholders, or adopted by the board of directors if shareholder approval is not required, the surviving ~~or acquiring corporation~~ entity shall deliver to the secretary of state for filing articles of merger stating ~~or share exchange setting forth~~:

(~~1~~a) The ~~plan of merger or share exchange~~ name and jurisdiction of organization of each party to the merger;

(b) The name and jurisdiction of organization of the surviving entity;

(c) If the surviving entity of the merger is a domestic corporation and its articles of incorporation are amended or amended and restated, the amendments to the surviving entity's articles of incorporation or the amended and restated articles of incorporation of the surviving entity;

(~~2~~d) If shareholder approval of any domestic corporation party to the merger was not required, a statement to that effect; ~~or~~

(~~3~~e) If approval of the shareholders of one or more domestic corporations party to the merger ~~or share exchange~~ was required, a statement that the merger ~~or share exchange~~ was duly approved by the shareholders of such domestic corporation pursuant to RCW 23B.11.030; and

(f) If approval of the shareholders of one or more other entities party to the merger was required, a statement that the merger was duly approved by the interest holders of such other entity in accordance with the organic law of such other entity.

(2) After a plan of share exchange has been approved by the shareholders of the corporation whose shares will be acquired in the share exchange, the acquiring corporation shall deliver to the secretary of state for filing articles of share exchange, executed by the acquiring corporation and the corporation whose shares will be acquired in the share exchange, stating:

(a) The name of the corporation whose shares will be acquired in the share exchange;

(b) The name of the acquiring corporation; and

(c) A statement that the plan of share exchange was duly approved by the shareholders of the corporation whose shares will be acquired in the share exchange pursuant to RCW 23B.11.030.

(3) The definitions in RCW 23B.09.005 apply in this section unless the context clearly requires otherwise.

RCW 23B.11.060 Effect of merger or share exchange.

(1) When a merger takes effect:

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(e) The articles of incorporation of the surviving corporation are amended, or amended and restated, to the extent provided in the ~~plan of merger~~ articles of merger; and

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RCW 23B.11.090 Articles of merger.

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(1) If the surviving entity is a corporation, file with the secretary of state articles of merger setting forth:

(a) The ~~plan of merger~~ name and jurisdiction of organization of each party to the merger;

(b) The name of the surviving corporation;

(c) If the surviving corporation's articles of incorporation are amended or amended and restated, the amendments to the surviving corporation's articles of incorporation or the amended and restated articles of incorporation of the surviving corporation;

(~~b~~d) A statement that the merger was duly approved by the shareholders of each corporation that is a party to the merger pursuant to RCW 23B.11.030 (or a statement that shareholder approval was not required for a merging corporation); and

(~~c~~e) A statement that the merger was duly approved as required by the organic law of each other party that is a party to the merger ~~by the partners of each limited partnership pursuant to RCW 25.10.781~~.

(2) If the surviving entity is a limited partnership, comply with the requirements in RCW 25.10.786.

(3) If the surviving entity is a partnership, comply with the requirements in RCW 25.05.380.

(4) If the surviving entity is a limited liability company, comply with the requirements in RCW 25.15.426.

(5) The definitions in RCW 23B.09.005 apply in this section unless the context clearly requires otherwise.

RCW 23B.11.100 Merger—Corporation is surviving entity.

When a merger of one or more corporations, or one or more other entities ~~limited partnerships, one or more partnerships, or one or more limited liability companies~~ takes effect, and a corporation is the surviving entity:

(1) Every other corporation and~~,~~ every other entity ~~limited partnership, every partnership, and every limited liability company~~ party to the merger merges into the surviving corporation and the separate existence of every corporation except the surviving corporation, and every other entity ~~limited partnership, partnership, and limited liability company~~, ceases;

(2) The title to all real estate and other property owned by each entity ~~corporation, limited partnership, partnership, and limited liability company~~ party to the merger is vested in the surviving corporation without reversion or impairment;

(3) The surviving corporation has all the liabilities of each entity ~~corporation, limited partnership, partnership, and limited liability company~~ party to the merger;

(4) A proceeding pending against any entity ~~corporation, limited partnership, partnership, or limited liability company~~ party to the merger may be continued as if the merger did not occur or the surviving corporation may be substituted in the proceeding for the entity ~~corporation, limited partnership, partnership, or limited liability company~~ whose existence ceased;

(5) The articles of incorporation of the surviving corporation are amended, or amended and restated, to the extent provided in the ~~plan of merger~~ articles of merger;

(6) The former holders of the shares of every corporation party to the merger are entitled only to the rights provided in the plan of merger or to their rights under chapter 23B.13 RCW; and

(7) The former interest holders of ~~partnership interests~~ of every other entity ~~limited partnership or partnership party to the merger and the former holders of member interests of every limited liability company~~ party to the merger are entitled only to the rights provided in the plan of merger or to their rights under the organic law of that other entity ~~chapter 25.10 RCW~~.

(8) The definitions in RCW 23B.09.005 apply in this section unless the context clearly requires otherwise.

RCW 23B.13.020 Right to dissent.

(1) A shareholder is entitled to dissent from, and obtain payment of the fair value of the shareholder's shares in the event of, any of the following corporate actions:

(a) A plan of merger, which has become effective, to which the corporation is a party (i) if shareholder approval was required for the merger by RCW 23B.11.030, 23B.11.080, or the articles of incorporation, or would have been required but for the provisions of RCW 23B.11.030(9), and the shareholder was, or but for the provisions of RCW 23B.11.030(9) would have been, entitled to vote on

the merger, or (ii) if the corporation was a subsidiary and the plan of merger provided for the merger of the subsidiary with its parent under RCW 23B.11.040;

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RCW 23B.13.200 Notice of dissenters' rights.

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(2) If proposed corporate action creating dissenters' rights under RCW 23B.13.020 would be submitted for approval by a vote at a shareholders' meeting but for the provisions of RCW 23B.11.030(9), the offer made pursuant to RCW 23B.11.030(9) must state that shareholders are or may be entitled to assert dissenters' rights under this chapter and be accompanies by a copy of this chapter.

(~~2~~3) If corporate action creating dissenters' rights under RCW 23B.13.020 is submitted for approval without a vote of shareholders in accordance with RCW 23B.07.040, the shareholder consent described in RCW 23B.07.040(1)(b) and the notice described in RCW 23B.07.040(3)(a) must include a statement that shareholders are or may be entitled to assert dissenters' rights under this chapter and be accompanied by a copy of this chapter.

RCW 23B.13.210 Notice of intent to demand payment.

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(2) If proposed corporate action creating dissenters' rights under RCW 23B.13.020 does not require shareholder approval pursuant to RCW 23B.11.030(9), a shareholder who wishes to assert dissenters' rights with respect to any class or series of shares (a) shall deliver to the corporation before the shares are purchased pursuant to the offer under RCW 23B.11.030(9) written notice of the shareholder's intent to demand payment for the shareholder's shares if the proposed corporate action is effected, and (ii) shall not tender, or cause to be tendered, any shares of such class or series in response to such offer.

(~~2~~3) If proposed corporate action creating dissenters' rights under RCW 23B.13.020 is submitted for approval without a vote of shareholders in accordance with RCW 23B.07.040, a shareholder who wishes to assert dissenters' rights must not execute the consent or otherwise vote such shares in favor of the proposed corporate action.

(~~3~~4) A shareholder who does not satisfy the requirements of subsection (1), ~~or~~ (2), or (3) of this section is not entitled to payment for the shareholder's shares under this chapter.

RCW 23B.13.220 Dissenters' rights—Notice.

(1) If proposed corporate action creating dissenters' rights under RCW 23B.13.020 is approved at a shareholders' meeting, the corporation shall within ten days after the effective date of the corporate action deliver to all shareholders who satisfied the requirements of RCW 23B.13.210(1) a notice in compliance with subsection (~~5~~6) of this section.

(2) If proposed corporate action creating dissenters' rights under RCW 23B.13.020 is approved without a vote of shareholders in accordance with RCW 23B.11.030(9), the corporation shall within ten

days after the effective date of the corporate action deliver to all shareholders who satisfied the requirements of RCW 23B.13.210(2) a notice in compliance with subsection (6) of this section.

(~~2~~3) If proposed corporate action creating dissenters' rights under RCW 23B.13.020 is approved without a vote of shareholders in accordance with RCW 23B.07.040, the notice delivered pursuant to RCW 23B.07.040(3)(b) to shareholders who satisfied the requirements of RCW 23B.13.210(~~2~~3) shall comply with subsection (~~5~~6) of this section.

(~~3~~4) In the case of proposed corporate action creating dissenters' rights under RCW 23B.13.020(1)(a)(ii), the corporation shall within ten days after the effective date of the corporate action deliver to all shareholders of the subsidiary other than the parent a notice in compliance with subsection (~~5~~6) of this section.

(~~4~~5) In the case of proposed corporate action creating dissenters' rights under RCW 23B.13.020(1)(d) that, pursuant to RCW 23B.10.020(4)(b), is not required to be approved by the shareholders of the corporation, the corporation shall within ten days after the effective date of the corporate action deliver to all shareholders entitled to dissent under RCW 23B.13.020(1)(d) a notice in compliance with subsection (~~5~~6) of this section.

(~~5~~6) Any notice under subsection (1), (2), (3), ~~or~~ (4), or (5) of this section must:

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(d) Set a date by which the corporation must receive the payment demand, which date may not be fewer than thirty nor more than sixty days after the date the notice in subsection (1), (2), (3), ~~or~~ (4), or (5) of this section is delivered; and

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RCW 23B.13.230 Duty to demand payment.

(1) A shareholder sent a notice described in RCW 23B.13.220 must demand payment, certify whether the shareholder acquired beneficial ownership of the shares before the date required to be set forth in the notice pursuant to RCW 23B.13.220(~~5~~6)(c), and deposit the shareholder's certificates, all in accordance with the terms of the notice.

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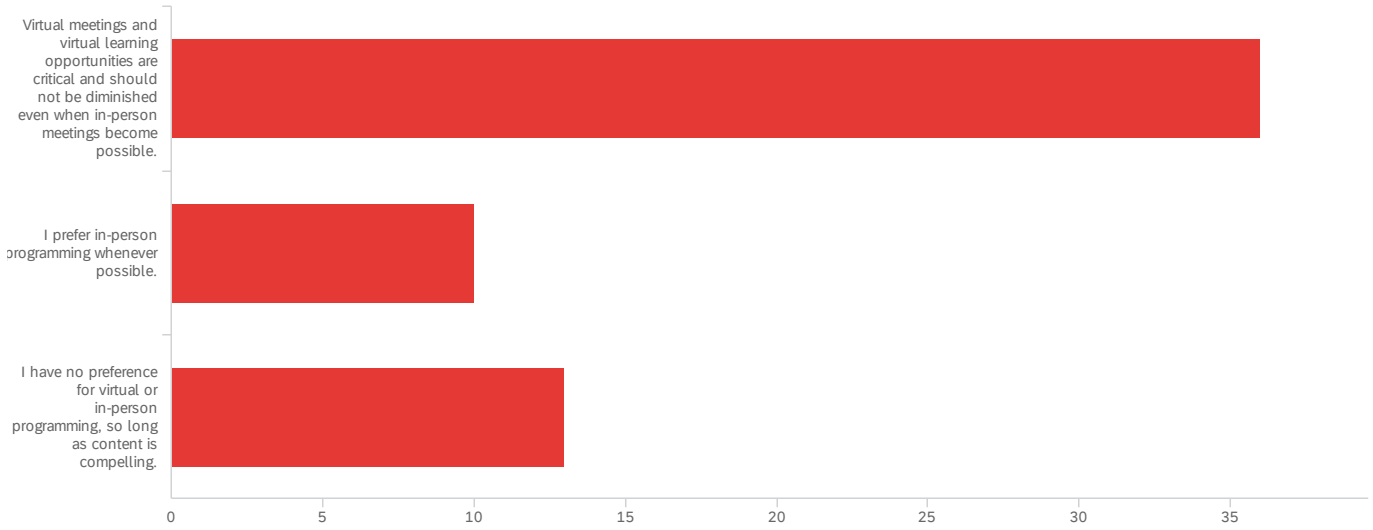
Default Report

WSBA Business Law Section Survey

July 15, 2021 1:15 PM MDT

Q1 - The Business Law Section Executive Committee is planning for the upcoming year and would love your feedback and suggestions. As we look forward to the time when in-person meetings become possible, which statement most closely aligns with your perspective?



#	Field	Minimum	Maximum	Mean	Std Deviation	Variance	Count
1	The Business Law Section Executive Committee is planning for the upcoming year and would love your feedback and suggestions. As we look forward to the time when in-person meetings become possible, which statement most closely aligns with your perspective?	1.00	3.00	1.61	0.82	0.68	59

#	Field		Choice Count
1	Virtual meetings and virtual learning opportunities are critical and should not be diminished even when in-person meetings become possible.	61.02%	36
2	I prefer in-person programming whenever possible.	16.95%	10
3	I have no preference for virtual or in-person programming, so long as content is compelling.	22.03%	13

#	Field	Choice Count
		59

Showing rows 1 - 4 of 4

Q2 - Please feel free to provide ideas and suggestions for virtual (or live) programming in the upcoming year. We welcome your input on all aspects of programming, including topics, format, location, etc.

Please feel free to provide ideas and suggestions for virtual (or live) pro...

I believe that virtual opportunities are important as not every person can or is eager travel in order to receive valuable content. The option should be available.

Business Succession Planning, especially for small business clients. Practical Approaches to advising small online businesses and entrepreneurs with international reach (open databases) on privacy issues in light of the recent Privacy Shield framework invalidation. (maybe this was covered recently? I see I missed a Privacy CLE below!) Unbundled Legal Services, for small firms and solo practices Intellectual Property basics, updates and effects of Trademark Modernization Act of 2020 International Dispute Resolution Mechanisms / processes / best practices, especially for small businesses Business Formation & Support Strategies for Nomadic Entrepreneurs & Online Business Owners

How S-corp elections should impact the drafting of LLC operating agreements and shareholder agreements.

I'm interested in more CLEs surrounding securities, various share or membership classes, and tax provisions in operating agreements

Decentralized finance and the role it can play in business.

1 Virtual makes much more sense for me.

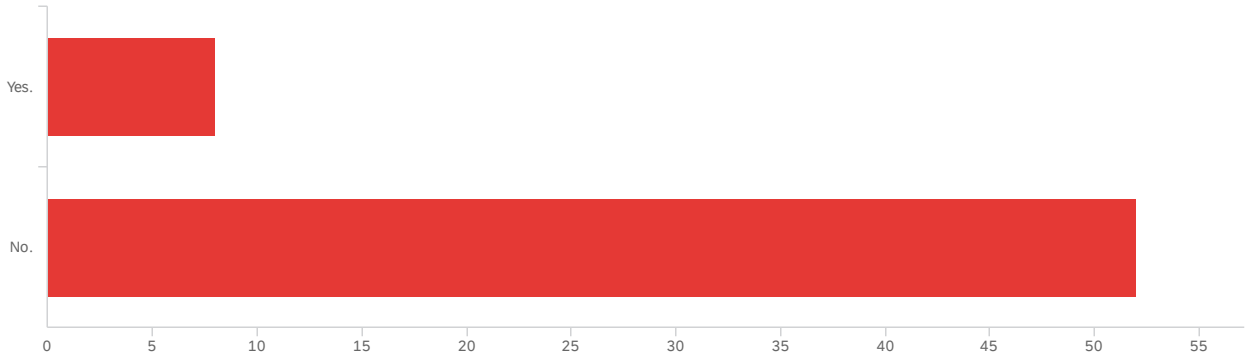
I would like to see the business law section collaborate on presentations with other sections like the Solo and Small Practice section. Perhaps a presentation on entities for law firms.

* Privacy, data security, and technology will continue to be relevant topics for business lawyers. * Opportunities to learn from both in-house and private practice perspectives are valuable. * M&A content would be helpful to many business lawyers' practice. * I appreciate in-person opportunities but not required.

Virtual opportunities are nice options, however, I believe in person formats should be prioritized. CLEs might be good opportunities to have virtual options.

Topics and CLEs in tech law would be beneficial (including privacy, trademarks, licensing, etc.)

Q3 - Did you attend the Business Law Section's free virtual CLE program on privacy law (held May 21, 2021)?



#	Field	Minimum	Maximum	Mean	Std Deviation	Variance	Count
1	Did you attend the Business Law Section's free virtual CLE program on privacy law (held May 21, 2021)?	1.00	2.00	1.87	0.34	0.12	60

#	Field		Choice Count
1	Yes.	13.33%	8
2	No.	86.67%	52
			60

Showing rows 1 - 3 of 3

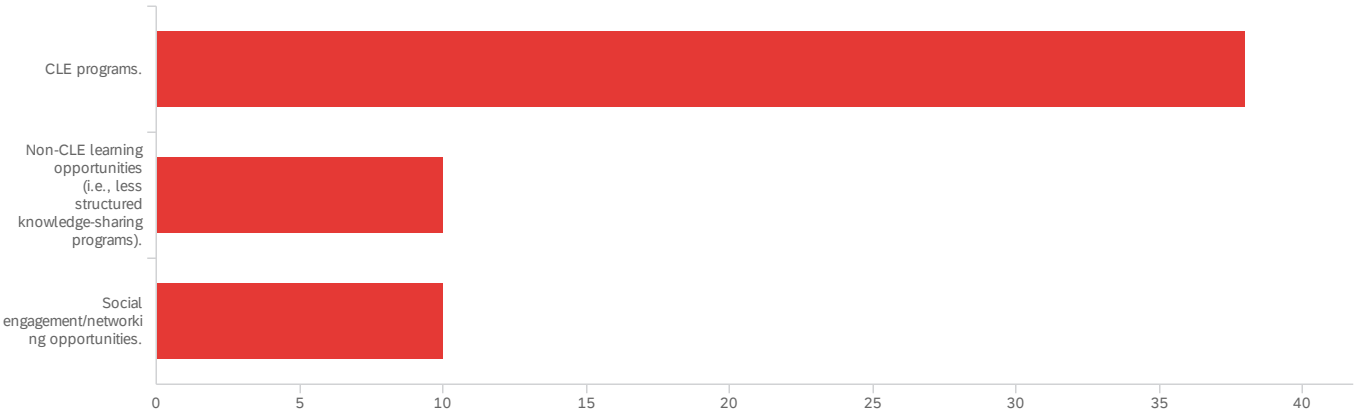
Q4 - If you attended the privacy law CLE on May 21, 2021, please provide any feedback and/or suggestions below. We appreciate your comments!

If you attended the privacy law CLE on May 21, 2021, please provide any fee...

Is there a recording of this CLE? If so, I would be interested! Not sure how I missed this. (Heather@pearcelawservices.com) - thank you!

The format was very good, and content was informative, however its hard to speak to both a big company perspective and one that is relevant to business lawyers generally (most of whom have red flag knowledge about privacy, but not detailed knowledge). In speaking, a little more outline before diving into specific presenters perspective could have been helpful. No complaints, however, it was interesting.

Q5 - Which of the following should the Business Law Section prioritize in the upcoming year (whether virtual or in-person)?



#	Field	Minimum	Maximum	Mean	Std Deviation	Variance	Count
1	Which of the following should the Business Law Section prioritize in the upcoming year (whether virtual or in-person)?	1.00	3.00	1.52	0.77	0.59	58

#	Field		Choice Count
1	CLE programs.	65.52%	38
2	Non-CLE learning opportunities (i.e., less structured knowledge-sharing programs).	17.24%	10
3	Social engagement/networking opportunities.	17.24%	10
			58

Showing rows 1 - 4 of 4

Q6 - Please provide any other feedback for the Business Law Section leadership in the space below. Thank you!

Please provide any other feedback for the Business Law Section leadership i...
I believe that less structured knowledge sharing is valuable as well.
As a lawyer new to the area any opportunities for networking would be appreciated for me, as I am always looking for ways to connect with others (I am the only lawyer in my company currently).
I love the idea above of knowledge-sharing programs. This is especially important for those of us that have small offices / solo practices. But I also love the idea of social engagement & networking opportunities. I think people are really craving this - at least I am! A combo of in person & online would be great. Especially for those of us who are parents of littles and our schedules are a little less flexible / open.
I appreciate the monthly lunch CLE programs and realize they are difficult to organize but the content has been especially valuable.
I would welcome more programming on non-profit corporations law and practice, including considerations for attorneys serving as board members. You've covered this before, but it's an important enough topic to revisit from time to time.
It would be useful to have some cross-section programs combining Business and skill/procedure, such as ADR for Business Disputes.
Social engagement and networking is also important
I really think CLE programs are wonderful through the section, however, I hope there will be more social engagements in the coming year. One or two major CLE opportunities through the section would be ideal in my opinion.
The CLE programs such as the ones with corporate counsel from different companies was very helpful.

End of Report