Companies incorporated outside of California but with significant California contacts (so-called “quasi-California corporations”) have struggled with exactly how to comply with the long-arm statute found in Section 2115 of the California Corporations Code. The statute purports to impose a number of provisions of the California Corporations Code on quasi-California corporations, including the state’s requirement to obtain separate approval from holders of each class of capital stock on a merger “to the exclusion of the law of the jurisdiction in which [the quasi-California corporation] is incorporated.” Section 2115 has been thought to be legally infirm for some time, particularly after a decision by the Delaware Supreme Court in 2005. However, there never has been an acknowledgement by a California court that Section 2115 reaches too far. That changed earlier this year, when a California Court of Appeal stated in dicta that California’s well-established choice of law rules and the federal constitution, “Delaware’s well-established choice of law rules and the federal constitution,” and found “VantagePoint’s voting rights [should] be adjudicated exclusively in accordance with the laws of its state of incorporation” (in this case, Delaware). Going a step beyond the Chancery Court, the Supreme Court found that the internal affairs doctrine was rooted in constitutional principles, with a state having no interest in regulating the internal affairs (that is, “those matters that pertain to the relationships among and between the corporation and its officers, directors and shareholders”) of a foreign corporation, other than in rare circumstances.

\[871 A.2d 1108 (Del. 2005).\]

\[Continued on page 2...\]
instances where the law of the state of incorporation is inconsistent with national policy on foreign or interstate commerce.

VantagePoint provided welcome assurance regarding the applicability of Delaware law to a Delaware corporation's internal affairs. However, Section 2115 remained on the statute books and no California court had adopted the Delaware Supreme Court's reasoning in a published decision. As a result, out of an abundance of caution many practitioners continued to recommend that, whenever possible, a quasi-California corporation comply with Section 2115, including by obtaining the necessary class votes in connection with a merger, in addition to complying with any other applicable provisions of the laws of its state of incorporation to the extent that they are different from those provisions of California law that purport to apply by operation of Section 2115.

At Last, a California Court Acknowledges VantagePoint

In late May 2012, for the first time, a California court signaled that it likely was unwilling to enforce Section 2115. In that case, Lidow v. Superior Court, the Second Appellate District of the California Court of Appeal, in the published portion of an opinion, stated in dicta that matters of internal corporate governance (such as the voting rights of shareholders) fall within a corporation's internal affairs, and that only its state of incorporation's laws should govern such matters.

Lidow involves, among other things, the purported wrongful termination of the chief executive officer of International Rectifier Corporation. In moving for summary judgment, International Rectifier asserted that, because it was a Delaware corporation, the internal affairs doctrine meant that Delaware law governed the claim. Lidow, the former chief executive officer, opposed the motion, arguing that the circumstances underlying his claim did not constitute an internal affair of the corporation and thus California (and not Delaware) law governed.

The court ultimately sided with Lidow on his claim, and in so doing agreed with key portions of the analysis of the Delaware Supreme Court in VantagePoint. Noting that “courts must apply the law of the state of incorporation to issues involving corporate internal affairs,” the court stated its belief that the voting rights of shareholders, the payment of dividends to shareholders, and the procedural requirements for shareholder derivative suits “involve matters of internal corporate governance and thus fall within a corporation's internal affairs.”

Although Lidow does not involve an explicit application of Section 2115, the court’s belief, consistent with VantagePoint, that certain issues, including the voting rights of shareholders and possibly other corporate matters currently covered by Section 2115, involve matters of internal corporate affairs likely signals an unwillingness to enforce Section 2115.

Conclusion

Lidow is not the unequivocal statement of Section 2115's unconstitutionality that many hoped for in the wake of VantagePoint, but it does accept the Delaware Supreme Court’s analysis and should give practitioners and the companies they advise some comfort that VantagePoint will be persuasive to a California court tasked with reviewing Section 2115. That said, the best course for quasi-California corporations remains to comply with Section 2115 whenever possible.

For more information about quasi-California corporations and the implications of the decisions in VantagePoint and Lidow, please contact any member of Wilson Sonsini Goodrich & Rosati's corporate and securities or mergers and acquisitions practices.

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