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Introduction

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INTRODUCTION

by Anthony R. Pierno*

The new California General Corporation Law¹ (GCL) is not merely an amended statute but an entirely new law. The treatment afforded it in this symposium issue of the *Loyola Law Review* will be invaluable to practitioners, professors and students in their efforts to familiarize themselves with it and its many differences from the prior law. This introduction offers some perspective on the new law and the processes which brought it into being.

The drafters of the GCL did not consider the prior law to be a guide. Rather, they looked to the best of the existing state laws in each of the areas under review and gave thorough consideration to the broad policy considerations and practical implications of each proposal, developing new concepts and provisions when no existing state law appeared sufficient.²

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The author of this Introduction served as Chairman of the Committee on Corporations of the State Bar during the drafting of this law. Brian B. Burns served as Vice Chairman. Other members for the Northern Section included: Neil R. Anderson (Oakland), Donald K. Felt (San Francisco), Michael J. Halloran (San Francisco), Professor Richard W. Jennings (Berkeley), Robert J. MacDonald (San Mateo), Hans A. Mattes (San Francisco), Kurt W. Melchior (San Francisco), Walter G. Olson (San Francisco), J. Ronald Pengilly (San Francisco), Alvin Ziegler (Oakland), Michael C. Hone (San Francisco). Members in the Southern Section included: R. Bradbury Clark (Los Angeles), Gilbert Dreyfuss (Los Angeles), Irving F. Fields (Encino), Geraldine Green (Los Angeles), Grover R. Heyler (Los Angeles), James R. Hutter (Beverly Hills), Russell I. Kully (Los Angeles), William M. McKenzie, Jr. (San Diego), Harold Marsh, Jr. (Los Angeles), Leon Savitch (Los Angeles), Henry L. Stern (Los Angeles), and W. Patrick O'Keefe, Jr. (Santa Ana).

Additionally, Bill Holden, Counsel to the Secretary of State, and Robert E. LaNoue, Assistant Commissioner of Corporations, represented their respective agencies in working with the Committee and each made major contributions to the General Corporation Law.

Mr. Pierno wishes to express his appreciation to all of those mentioned and to the many others whose comments and assistance made the project a reality.

1. Law of Sept. 12, 1975, ch. 682, § 7 [1975] Cal. Stat. — [hereinafter cited as Gen'l Corp. Law and referred to as GCL]. This law will take effect January 1, 1977. References to the new law in later footnotes of this introduction are to sections of the law, as amended by the Technical Amendments Bill, A.B. 2849, which was recently enacted. Law of Aug. 27, 1976, ch. 641 [1976] Cal. Stat. —.

2. See generally CAL. ASSEMBLY COMM. ON CORPS. EXPOSURE DRAFT NO. 2: GEN'L CORP. LAW (Oct. 4, 1974).

From the viewpoint of the State Bar Committee on Corporations, which this writer had the privilege to chair from the inception of the project through the legislative process, certain thoughts and suggestions bear clarification. First, the concept of the GCL was not to achieve adherence to a given philosophy. For example, there was neither an attempt to "out do" Delaware by enacting an enabling corporation law, nor was there an intent to impose rigorous strictures on the corporate form as an end in itself. The philosophy of the new law came after the fact—after each provision and concept was scrutinized, commented upon, debated, amended and rewritten to take into account comments by members of the committee, by other members of the bar, by the academic community and by those who saw fit to offer their wisdom and advice. In short, the philosophy of the law derives pragmatically from its content. Nonetheless, underlying the entire process was a desire to improve the substance and protections of the law while alleviating formalities and non-substantive burdens.

The areas discussed in the following symposium are by no means all of the significantly changed areas of the new law but they are representative. In addition to the significant areas covered in the symposium, the new law makes changes in many other areas. Among them are expanded definitions,³ simplification of the content of articles of incorporation,⁴ elimination of "dummy" directors and providing for a single incorporator,⁵ virtual elimination of the concept of par value,⁶ more realistic indemnification provisions,⁷ modernized provisions relating to derivative actions,⁸ a more realistic approach to and utilization of the concept of dissenters' rights,⁹ and provisions for pseudo-foreign corporations.¹⁰

How those and the other changes in the GCL came about is both interesting and significant. One of the few original source documents, the Report of the Assembly Select Committee on Revision of the Corporations Code,¹¹ gives insight into the nature of the project. The

3. Gen'l Corp. Law, *supra* note 1, §§ 100-95.

4. *Id.* § 202. Cf. CAL. CORP. CODE ANN. §§ 301-05 (West 1955).

5. Gen'l Corp. Law, *supra* note 1, § 200(a).

6. *Id.* § 205. Cf., e.g., CAL. CORP. CODE ANN. §§ 302-03 (West 1955).

7. Gen'l Corp. Law, *supra* note 1, § 317.

8. *Id.* § 800 *et seq.*

9. *Id.* § 1300 *et seq.* See the discussion of dissenters' rights in this volume, Barton, *Business Combinations and the New General Corporation Law*, 9 LOY. L.A.L. REV. 738 (1976).

10. Gen'l Corp. Law, *supra* note 1, § 2115.

11. CAL. ASSEMBLY SELECT COMM., 1975-76 Reg. Sess., REPORT ON THE REVISION OF THE CORPS. CODE (Dec. 1, 1975).

drafting of the GCL was carried on by the Committee on Corporations of the State Bar, working in cooperation with a Select Committee of the California State Assembly appointed for the purpose of participating jointly with the State Bar in revising various divisions of the Corporations Code. Assemblyman John T. Knox, who has chaired that Select Committee since its inception, concurred with the State Bar Committee in the feeling that a joint effort might accomplish the task at hand more rapidly and more thoroughly while achieving input that would not routinely be available to the Legislature. The utilization of an expanded Corporations Committee of the State Bar, and the broad representation of that committee, coupled with the sensitivity and background of the legislators serving on the select committee, made possible the preparation of a law that was not only reflective of divergent and developing points of view, but also made it possible to focus the Legislature on certain key issues and thus direct its attention to such policy issues as cumulative voting¹² and the "pseudo-foreign corporation" provisions.¹³ The drafting process was complex and highly participatory. After many preliminary drafts, the first exposure draft¹⁴ was disseminated among many hundreds of interested persons and their comments were solicited. All comments received were reviewed by the committee in full session and subcommittees were appointed at various times to handle specific aspects of the drafting, to work with comments on specified topics, and to generally expedite the work of the committee.

A second exposure draft¹⁵ was then circulated and the comments were processed in the same manner. The result was the presentation to the Legislature for introduction in early 1975 of a sophisticated, balanced, carefully-reviewed and widely-considered proposal of a General Corporation Law.

The legislative process began with the introduction of the proposal in the State Assembly as Assembly Bill 376 on January 2, 1975. The most significant sessions of the legislative process occurred when the bill was being considered by the Assembly Judiciary Committee. That Committee, under the chairmanship of Assemblyman John Miller, considered the bill as a special order of business in two separate sessions. The Judiciary Committee focused particularly on the issue of

12. Gen'l Corp. Law, *supra* note 1, § 708. Cumulative voting was provided under the prior law by CAL. CORP. CODE ANN. § 2235 (West 1955).

13. Gen'l Corp. Law, *supra* note 1, § 2115.

14. CAL. ASSEMBLY COMM. ON CORPS., EXPOSURE DRAFT NO. 1: GEN'L CORP. LAW (July 12, 1974).

15. CAL. ASSEMBLY COMM. ON CORPS., EXPOSURE DRAFT NO. 2: GEN'L CORP. LAW (Oct. 4, 1974).

cumulative voting which was treated separately in a single session (the drafting committee had recommended the elimination of mandatory cumulative voting). After the deliberations of the Assembly Judiciary Committee, it voted to restore mandatory cumulative voting to the bill and, moreover, elected to tie it to section 2115, the so-called "pseudo-foreign corporation" provision.¹⁶ That decision brought an added dimension to the new law.

The General Corporation Law was to go into effect over fifteen months after the date of its passage in the Legislature and signature by the Governor.¹⁷ That was done for two reasons:

(1) Because of the complexity of the law, to permit an extensive advance educational and revision process, and

(2) The history of the current California Corporation Law¹⁸ indicated that during the year following the effectiveness of any past major revisions there had been a year when many further changes had taken place. Allowing that year to occur without the original law having yet come into effect permitted changes to be made prior to the effective date and thus, made it possible for the law to be "less imperfect" when it became effective. It was the intent of the Committee and of Mr. Knox to accomplish such amendments. A so-called "clean-up" bill¹⁹ was drafted by the State Bar Committee under its current chairman, Walter L. Olson, and has now been enacted into law,²⁰ effective January 1, 1977.

While there is no fair way to give individual credit for a project of this scope and breadth, it would seem that even in an academic review it would not be inappropriate to give credit to two individuals whose time and effort were particularly significant in bringing the project to fruition. Former U.C.L.A. Professor of Law Harold Marsh, Jr. served as the principal drafter of the law and Roy Finkle, Esq. served as Consultant to the Assembly Select Committee. Mr. Marsh worked prodigiously in preparing and revising drafts which reflected the comments and consensus of the committee and which manifested the extraordinary insights and perceptions which he brings to such problems. Mr. Finkle kept pace with him and ably assisted in bringing the drafting phase and the revisions to an early conclusion.

16. Gen'l Corp. Law, *supra* note 1, § 2115.

17. The Gen'l Corp. Law will take effect January 1, 1977.

18. CAL. CORP. CODE ANN. § 1 *et seq.* (West 1955).

19. Technical Amendments Bill, A.B. 2849, 1975-76 Reg. Sess.

20. Law of Aug. 27, 1976, ch. 641, [1976] Cal Stat. —.

Of additional significance is the balance brought to the program through the involvement of two important agencies of state government. At the time when the project began, the offices of the Secretary of State and the Commissioner of Corporations of the State of California became involved. Their participation came early and continued throughout the project. The incumbent in each position agreed to cooperate in the project and to assign a high ranking staff member as a liaison. As was appropriate under the circumstances, neither agency agreed in advance to support any legislation which might ultimately be presented since neither could reasonably, in advance, agree to be bound by a work for which their department could not accept responsibility. In spite of this, both agencies participated extensively and the law reflects many of their thoughts and suggestions.

While the drafting committee drew liberally and without hesitation from the laws of other jurisdictions, the "borrowed" provisions have been blended with so many new provisions that the GCL does not resemble existing law. The Committee has accomplished the sweeping away of many of the useless encumbrances while at the same time introducing significantly new concepts.

The mere chronology of the revision makes the GCL the most modern of state corporate laws. It is to be hoped that its substance will render it the best from the standpoints of both utility and soundness.