§881. Business opportunities

1. Business opportunity not actionable if standards met. If a director or officer or related person of either pursues or takes advantage, directly or indirectly, of a business opportunity, that action may not be the subject of equitable relief or give rise to an award of damages or other sanctions against the director, officer or related person, in a proceeding by or in the right of the corporation on the ground that such opportunity should have first been offered to the corporation, if :

A. Before the director, officer or related person becomes legally obligated regarding the opportunity, the director or officer brings it to the attention of the corporation and action by qualified directors disclaiming the corporation's interest in the opportunity is taken in compliance with the same procedures set forth in section 873; [PL 2015, c. 259, §16 (AMD).]

B. Before the director, officer or related person becomes legally obligated regarding the opportunity, the director or officer brings it to the attention of the corporation and action by shareholders disclaiming the corporation's interest in the opportunity is taken in compliance with the procedures set forth in section 874, as if the decision being made concerned a director's conflicting-interest transaction as defined in section 871, subsection 2; or [PL 2015, c. 259, §16 (AMD).]

C. The duty to offer the corporation the particular business opportunity has been limited or eliminated pursuant to a provision of the articles of incorporation adopted and in the case of officers and their related persons, made effective by action of qualified directors in accordance with section 202, subsection 2, paragraph F. [PL 2015, c. 259, §16 (NEW).]

In each case under paragraph A or B, the director, rather than making a required disclosure as defined in section 871, subsection 4, must have made prior disclosure to those acting on behalf of the corporation of all material facts concerning the business opportunity that are then known to the director.
[PL 2015, c. 259, §16 (AMD).]

2. No inference or change in burden of proof. In any proceeding seeking equitable relief or other remedies based upon an alleged improper pursuit or taking advantage of a business opportunity by a director or officer, the fact that the director or officer did not employ the procedure described in subsection 1, paragraph A or B before taking advantage of the opportunity does not create an inference that the opportunity should have been first presented to the corporation or alter the burden of proof otherwise applicable to establish that the director breached a duty to the corporation in the circumstances.
[PL 2015, c. 259, §16 (AMD).]

3. Related person. As used in this section, "related person" has the meaning set forth in section 871, subsection 3.
[PL 2015, c. 259, §16 (NEW).]

SECTION HISTORY

PL 2007, c. 289, §31 (NEW). PL 2015, c. 259, §16 (AMD).

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