

Limitations on Third Party Review of Corporate Board Actions under California Law

- California law requires that the activities and affairs of a corporation shall be conducted and all corporate powers shall be exercised by or under the direction of the board of directors. *See* Cal. Corp. Code § 5210.
- The board may delegate the management of the activities of the corporation to any person or persons, management company, or committee however composed, provided that all corporate powers shall be exercised under the ultimate direction of the board. *Id.*
- Although the board is broadly empowered to delegate certain management functions to officers, employees, committees and other third parties, the board cannot empower any entity to overturn decisions or actions of the board because that would result in that entity indirectly controlling the activities and affairs of the corporation and thus usurping the legal duties of the board.
- In order to exercise its fiduciary duties to the corporation under California law, the board may not abdicate its ultimate authority to exercise all corporate powers.
- Entering into binding arbitration clauses for certain actions within contractual agreements would be acceptable, but cannot be used as a catch-all waiver of a California corporation board's legal rights and obligations to have final responsibility for actions of the organization.