

# INSIGHTS

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## STATE CORNER

### **2012 Amendments to the General Corporation Law of the State of Delaware**

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Legislation amending the General Corporation Law of the State of Delaware (DGCL) was adopted by the Delaware General Assembly and was signed by the Governor of the State of Delaware on June 29, 2012. Most of the amendments to the DGCL became effective on August 1, 2012, while the remaining amendments will become effective on August 1, 2013. The DGCL amendments are designed to keep Delaware law current and address issues raised by practitioners, the judiciary, and legislators with respect to the current language or interpretation of the DGCL.

#### **Amendments to the DGCL**

#### **Merger or Consolidation of Domestic Corporation and Joint-stock Corporation or Other Association [Section 254]; Merger or Consolidation of Domestic Corporations and Partnerships**

**[Section 263]; Conversion of Other Entities to a Domestic Corporation [Section 265]; Merger of Parent Entity and Subsidiary Corporation or Corporations [Section 267].**

Section 254(d)(1) of the DGCL has been amended to provide that a certificate of merger effecting the merger of a domestic corporation and a joint-stock corporation or other association must now state the type of entity of each of the constituent entities to the merger. Section 263(c)(1), which governs the merger of a domestic corporation and a partnership, has been amended to require that the certificate of merger state the type of entity of each of the constituent entities to the merger. Section 265(c)(2) has been amended to require that a certificate of conversion effecting a conversion of another entity to a domestic corporation state the type of entity of the other entity converting to a domestic corporation. Section 267, which governs short-form mergers involving a parent entity other than a corporation, also has been amended to require that the certificate of ownership and merger provide the type of entity of each constituent entity to the merger.

#### **Revocation of Voluntary Dissolution [Section 311]**

Section 311 of the DGCL, which governs the revocation of a voluntary dissolution by a Delaware corporation, has been amended to require that the certificate of revocation of dissolution include

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the address of the corporation's registered office in the State of Delaware and the name of its registered agent at such address.

### **Renewal, Rrevival, Extension, and Restoration of Certificate of Incorporation [Section 312]**

Section 312 of the DGCL sets forth the requirements for a Delaware corporation to renew or revive its existence. Section 312(d)(2) has been amended to clarify that the address of the registered office which must be stated in the certificate of renewal or revival must be stated in accordance with Section 131(c) of the DGCL.

### **Change of Registered Agent [Section 377]**

Section 377 of the DGCL addresses how a foreign corporation registered to do business in the State of Delaware may change its registered agent. Sections 377(a) and 377(b) have been amended to clarify the types of entities that may serve as registered agents for foreign corporations registered to do business in the State of Delaware. Section 377(a) now refers to Section 371(b)(2)(i) of the DGCL, which provides that the registered agent may be the foreign corporation itself, an individual resident in the State of Delaware, a domestic corporation, a domestic partnership (whether general (including a limited liability partnership) or limited (including a limited liability limited partnership)), a domestic limited liability company, a domestic statutory trust, a foreign corporation (other than the foreign corporation itself), a foreign partnership (whether general (including a limited liability partnership) or limited (including a limited liability limited partnership)), a foreign limited liability company or a foreign statutory trust. Section 377(b) has been amended to change the reference from "corporation" to "entity."

Section 377 also was amended to add a new requirement for the reinstatement of a foreign corporation when such foreign corporation has been forfeited for failure to appoint a registered agent. New subsections (d) and (e) were added to Section 377 to provide that a foreign

corporation whose qualification to do business has been forfeited may be reinstated if it files a certificate of reinstatement setting forth the name of the foreign corporation, the effective date of the forfeiture, and the name and address of the foreign corporation's registered agent. Upon the filing of the certificate of reinstatement, the qualification of the foreign corporation to do business in the State of Delaware is reinstated with the same force and effect as if it had not been forfeited.

### **Withdrawal of Foreign Corporation from State; Procedure; Service of Process on Secretary of State [Section 381]**

Section 381 of the DGCL, which addresses the withdrawal of a foreign corporation from the State of Delaware, has been amended to eliminate the option of filing a certificate of dissolution issued by the proper official of the other jurisdiction as a means to effect such a withdrawal. As amended, a foreign corporation must file a certificate of withdrawal to withdraw from the State of Delaware. Section 381 also has been amended to remove the requirement that the Secretary of State of the State of Delaware (Secretary of State) issue a certificate of withdrawal to the agent of the withdrawing corporation, which conforms the DGCL to the Secretary of State practice of only providing such certificate to the withdrawing corporation.

### **Transfer, Domestication, or Continuance of Domestic Corporations [Section 390]**

Section 390 of the DGCL permits a Delaware corporation to transfer to a foreign jurisdiction. In connection with a transfer, a Delaware corporation files with the Secretary of State a certificate of transfer which must state, among other things, the address to which service of process may be sent to the corporation that has transferred out of the State of Delaware. Section 390(b)(5) has been amended to provide that such address cannot be the address of the corporation's registered agent

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without the written consent of such registered agent, which consent must be filed with the certificate of transfer.

**Amounts Payable to Secretary of State upon Filing Certificate or Other Paper [Section 391]**

Section 391 of the DGCL, which sets forth the amounts payable to the Secretary of State in connection with the filing of certificates and other documents, has been amended to clarify that charges assessed by the Secretary of State pursuant to

Section 391 are not taxes. In addition, Section 391 was amended to set forth the fee for filing a certificate of reinstatement of a foreign corporation.

**Effective Date**

Except for the amendments to Section 377 of the DGCL adding subsections (d) and (e), all of the foregoing amendments to the DGCL became effective on August 1, 2012. The addition of subsections (d) and (e) to Section 377 of the DGCL will become effective on August 1, 2013.

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