

## Delaware Corporate Law Update

Wednesday, March 26, 2025

### Delaware Enacts Landmark Amendments to the General Corporation Law

On March 25, 2025, Governor Matt Meyer signed bipartisan legislation effecting important changes to the Delaware General Corporation Law (“DGCL”). This landmark legislation, widely endorsed by business groups and leading national law firms, is designed to reduce excessive stockholder litigation and reaffirm a foundational public policy of Delaware corporate law: deference to the decisions of independent directors and disinterested stockholders.

Among other changes, the legislation amends Section 144 of the DGCL to provide transaction planners with procedural safe harbors for acts or transactions involving corporations and their directors, officers, and controlling stockholders. New Section 144 also establishes specific parameters for identifying “controlling stockholders” and limits this classification to only those that (i) control a majority in voting power of the outstanding stock entitled to vote generally in the election of directors, (ii) control the election of directors possessing a majority of the board’s total voting power, or (iii) possess the functional equivalent of majority control by having both control of at least one-third in voting power of the outstanding stock entitled to vote generally in the election of directors and the power to exercise managerial authority. Additionally, the amendments to Section 144 establish a heightened presumption of independence for directors whom a board determines to be independent under the rules of a national stock exchange. By setting forth clear rules for transactions involving an actual or potential conflict of interest, new Section 144 will give good-faith corporate actors greater ability to either obtain dismissal of stockholder litigation at the pleading stage or avoid having to face litigation in the first instance.

The legislation also amends Section 220 of the DGCL to, among other things, narrow stockholders’ right to inspect “books and records” of the corporation, including for purposes of investigating claims against corporate actors. Under revised Section 220, stockholders are generally only entitled to inspect a discrete set of formal corporate documents, such as board minutes, board books relating to corporate actions, and financial statements. A stockholder may only inspect informal corporate documents, such as internal emails, upon a heightened showing that there is a compelling reason to conduct the inspection. These amendments respond to the growing volume of books-and-records demands and follow-on litigation brought by stockholders in recent years, which have imposed substantial costs on Delaware corporations.

The legislation embodies Delaware’s balanced, responsive, and business-friendly approach to corporate law that has long made it the globally preeminent jurisdiction for



incorporation. Delaware offers corporations and stockholders a suite of benefits, carefully developed and refined for decades, that no other jurisdiction can match. Among others:

- Developed Case Law. Delaware has a deep body of case law that not only addresses the common law of fiduciary duties but also interprets common corporate agreements, including merger agreements and the NVCA Model Legal Documents.
- Specialized Judges, Not Juries. Corporate cases are resolved by the Court of Chancery, a specialized trial court of judges with corporate-law expertise. Juries do not decide corporate cases.
- No Punitive Damages. The Court of Chancery cannot award punitive damages in corporate cases.
- Non-Partisan Judiciary. Judges serving on the Court of Chancery and Delaware Supreme Court are not subject to political elections and are instead appointed by the Governor with the advice and consent of the Senate. Delaware has a long tradition, enshrined in its Constitution, of dividing the judicial positions on each court among major political parties.
- Unparalleled Speed. The Court of Chancery and Delaware Supreme Court have a long track record of resolving disputes quickly to meet the business needs of litigants. Just this year, the Court of Chancery held an expedited trial to promptly resolve a dispute over an investor's attempt to block an IPO, and the Delaware Supreme Court expedited an appeal of the case and held oral argument just two weeks after the Court of Chancery's ruling. In a recent busted deal case, the Court of Chancery held an expedited trial earlier this month and issued a 112-page decision ordering specific enforcement less than two weeks later.
- Expert and Expedited Processing of Corporate Filings. The Delaware Secretary of State's Office is highly sophisticated and processes corporate filings with a speed unmatched by other jurisdictions, which can be especially important for mergers, IPOs, and other significant corporate actions.
- Flexible Corporate Statute. The DGCL is a broad enabling act offering businesses great freedom to implement the terms best suited for the organization, governance, and operation of their enterprise.
- Freedom of Contract. Delaware law has a strong public policy of enforcing business agreements as written. As a result, Delaware is a contractually designated forum for resolving many types of commercial disputes.
- Knowledgeable Corporate Bar. The Delaware bar includes sophisticated and knowledgeable practice groups at numerous local firms who have expertise in Delaware corporate law and are routinely relied on by corporations and national law firms.

- Legislative Responsiveness. As Delaware's recent corporate legislation demonstrates, the Delaware legislature routinely amends the DGCL to address emerging corporate law issues and the needs of the State's corporate citizens.

We look forward to continuing to provide expert advice to our clients and co-counsel on matters of Delaware corporate law. We believe that, following the adoption of its recent legislation, Delaware will continue to play a preeminent role in stewarding corporate law for the United States, and globally. If you have any questions regarding these matters, please do not hesitate to contact us.