

Recent Updates to the Delaware General Corporation Law

The Delaware General Corporation Law was recently amended, effective as of August 1, 2022. In addition to an amendment authorizing the protection of corporate officers from personal liability for money damages, which we discussed in a prior client advisory, this advisory discusses some of the other amendments to Delaware's corporate statute.

Section 157: Delegation of Authority to Issue Stock Rights and Options. Prior to these recent amendments, a board of directors was permitted to delegate to officers the authority to grant certain stock rights and options, subject to meeting certain requirements. Under the amended statute concerning stock rights and options, the board is given broader authority to delegate the ability to issue stock rights and options to any "person or body," not just officers. Some requirements under this provision of the law have not changed, such as requiring board resolutions conveying such authority to contain details of the rights or options being granted, as outlined in the statute, and prohibiting such persons from issuing the rights or options to themselves.

Section 219: Access to Stockholder List. The Delaware statute no longer requires a corporation to make a stockholders list available during a stockholders meeting, but it must still make a stockholders list available at least ten days prior to a stockholders meeting.

Section 262: Appraisal Rights. The appraisal statute that entitles a stockholder to an appraisal of the fair value of the stockholder's stock following a merger or consolidation (and, as a result of the amendment, a conversion) has been extended to beneficial owners. A "beneficial owner" is an individual or entity who holds shares of stock either in a voting trust or by a nominee on behalf of such person. Prior to the amendment, a beneficial owner could demand an appraisal only if the record owner requested it on behalf of the beneficial owner. Now, a beneficial owner can make a demand for an appraisal directly.

Section 266: Stockholder Approval of Conversions. Delaware now permits the conversion of a Delaware corporation to another form of entity, including a foreign corporation, with only the approval of a majority of its stockholders. Prior to the amendment, the unanimous approval of the stockholders was required. The amendment further provides that a conversion of a corporation to a partnership must be approved by each stockholder that will become a general partner as a result of the conversion.

Section 102: Dissolution Upon Expiration of Corporate Existence. Delaware law permits a corporation to include an expiration date (the date on which the corporation's existence will terminate) in its certificate of incorporation. The amendment now requires any corporation which has such a provision in its certificate of incorporation to file a certificate of dissolution with the Secretary of State within 90 days before its stated expiration/termination date.

If you have any questions about the recent DGCL amendments and their potential impact on your Delaware corporation, please contact Gianfranco Pietrafesa at 201-498-8559 or gpietrafesa@archerlaw.com, or Shamila Ahmed at 201-498-8516 or sahmed@archerlaw.com.

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