Fox Rothschild

Firm

Publications

←

MARCH 31, 2025 — ALERTS

Stopping ‘Dexit': Delaware Makes Significant Changes to Its General Corporation Law

By Andrew D. Santana and Kacey Fonner

Share on

In an effort to maintain its status as the leading state for incorporation, Delaware has made historic and significant changes to its General Corporation Law (DGCL) that make it more difficult for shareholders to challenge executive compensation.

After it made a lightning-fast run through the Delaware legislature, Gov. Matt Meyer signed Senate Bill 21 into law on March 25, 2025. Those revisions are summarized below.

Founders, controlling stockholders, directors and advisers to Delaware corporations should review these changes to the DGCL carefully to better understand the exercise of their fiduciary duties, corporate operations and governance.

The Changes

DGCL § 144(b) – A new “safe harbor” was created for directors, officers and controlling stockholders who have a financial interest in a transaction. If a conflicted transaction is approved by disinterested directors or a special committee, stockholders are barred from seeking equitable relief or damages. The material facts as to a director’s or officer’s relationship or interest with respect to the conflicted transaction must be disclosed or known to the disinterested directors or the special committee, and the disinterested directors or special committee must act in good faith by a majority of affirmative votes to approve the conflicted transaction.

DGCL § 144(e) – A bright-line definition of “controlling stockholder” was introduced, which includes “any person that, together with such person’s affiliates and associates … (a) owns or controls a majority in voting power of the outstanding stock of the corporation entitled to vote generally in the election of directors; or (b) has the power functionally equivalent to that of a stockholder that owns or controls a majority in voting power of the outstanding stock of the corporation …” Previously, Delaware courts would determine

who was a controlling stockholder on a case-by-case basis.

DGCL § 220 – A limitation on the scope of stockholder requests under Section 220 was imposed. Stockholders may now only request documents (a) if the demand is made in good faith and for a proper purpose; and (b) the demand describes with reasonable particularity the stockholder's purpose and the books and records the stockholder seeks to inspect, and (c) the books and records sought directly related to the purpose of their inquiry.

The Rationale

A recent court decision in favor of a shareholders seeking to block a top corporate executive's multibillion-dollar compensation package led to that company rechartering in Texas and several other high-profile companies threatening to recharter their

companies outside the state of Delaware.

Founders, controlling stockholders and others (and to some extent their advisers), have historically expected that they control the companies that they form and that, in turn, they can establish their own compensation and make other critical decisions without scrutiny. More importantly, it was well established that Delaware served as a management-friendly jurisdiction with a highly sophisticated and effective judiciary where controlling stockholders and directors felt safe to act as they deemed best for their companies.

The court decision upended that conviction. S.B. 21 is a course correction. It is intended to ensure that Delaware remains the most desirable state of incorporation in the United States, where controlling stockholders and directors have a clear and predictable roadmap for their critical decision-making. Among other things, S.B. 21 provides a roadmap for undertaking such executive compensation transactions and protecting those decisions from challenges from stockholders.

For further guidance, please contact our corporate team.