

Delaware Law Amendments Would Facilitate Blockchain Maintenance of Corporate Records, Among Other Changes

Skadden

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On March 27, 2017, the Corporation Law Section of the Delaware State Bar Association (DSBA) approved proposed amendments to the Delaware General Corporation Law (DGCL) that had been proposed by the DSBA Corporation Law Council. This year's amendments are intended to address blockchain maintenance of corporate records, the date of effectiveness of Section 203(b) opt-outs, mergers with non-U.S. entities and the effectiveness of written consents, among other changes.

Blockchain Maintenance of Corporate Records

The proposed amendments, if adopted, are intended to provide specific statutory authority for Delaware corporations to use networks of electronic databases, known as blockchains or distributed ledgers, to create and maintain corporate records, including stock ledgers. The proposed amendments are the result of a Corporation Law Council study of the use of blockchain technology by Delaware corporations, following an initiative to embrace the technology announced in 2015 by then-Gov. Jack Markell. Under this technology, a corporation's records, including its stock ledger, would be maintained electronically by thousands of trusted users on a shared system to record stock issuances and transfers, to maintain a list of record holders and other matters. Section 224 would be amended to permit corporations to rely on the contents of an electronic network as the corporate records, provided the records so kept can be converted into clearly legible paper form within a reasonable time. The amendments would require any stock ledger (including one maintained on an electronic network) to serve three functions: (i) enable the corporation to prepare the list of stockholders entitled to vote; (ii) record the information required by the DGCL to be maintained in a stock ledger; and, (iii) record transfers of stock.

Effectiveness of Section 203(b) Opt-Out

The proposed amendments also would modify Section 203(b) to clarify the date of effectiveness of a corporation's opt-out of the restrictions on transactions with interested stockholders imposed by Section 203. In the case of a corporation that has never had a class of voting stock listed on a national securities exchange or held of record by more than 2,000 stockholders, and that has not opted into Section 203 — through its original certificate of incorporation or any amendment thereto — an amendment opting out of Section 203 would be effective at the time and date that the certificate of amendment to the certificate of incorporation becomes effective (rather than on the date such amendment is adopted by stockholders). In the case of any other corporation, an amendment opting out of Section 203 would be effective 12 months after the effective date of the certificate of amendment to the certificate of incorporation (rather than 12 months after the date such amendment is adopted by stockholders).

Effectiveness of Written Consents

The proposed amendments also would modify Section 228 to provide that a written consent need not bear the date of signature of the stockholder or member signing an action by written consent. Thus, it is the date of delivery of a written consent to the corporation, rather than the date on a signature page, that becomes the operative date. As such, the amendments to Section 228(c) also would provide that the 60-day period for the delivery of a sufficient number of written consents would start on the first date a consent is delivered to the corporation, rather than the date the consent is first executed by a stockholder or member.

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Mergers With Non-US Entities

The proposed amendments also would clarify that Delaware corporations may merge with non-U.S. entities (including joint-stock or other associations, limited liability companies, and partnerships formed or organized under the laws of a non-U.S. jurisdiction) so long as the laws of the applicable non-Delaware jurisdiction do not prohibit the transaction. The surviving entity of such a merger may either be the Delaware corporation or the non-U.S. entity.

A copy of the proposed legislation is available [here](#). If approved by the Executive Committee of the DSBA, the proposed amendments will be introduced in the General Assembly for consideration and, if adopted, would become effective August 1, 2017. However, the proposed amendments to Section 228 relating to the effectiveness of written consents would be effective only for stockholder and member consents having a record date, for purposes of determining the stockholders or members entitled to consent, on or after August 1, 2017.