

2010 AMENDMENTS TO DELAWARE CORPORATE LAWS

General Assembly Approves 2010 Amendments to Corporate Laws

Dover - The Delaware General Assembly approved the following legislation in 2010 affecting Delaware's business entity laws:

[HB 341](#) – Corporate Amendments for Nonstock Corporations

[HB 372](#) – Limited Liability Company Amendments

[HB 373](#) – Limited Partnership Amendments

[HB 374](#) – Amendments to the Delaware Revised Uniform Partnership Act

[HB 375](#) – Corporate Amendments

Click on each bill to view in PDF format.

Highlights of this year's legislation, which is effective August 1, 2010, except as noted, are summarized below:

NOTE: THE FOLLOWING SUMMARY OF 2007 LEGISLATION AFFECTING DELAWARE BUSINESS ENTITY LAWS IS NEITHER AUTHORITATIVE NOR ALL-INCLUSIVE. THIS SUMMARY DOES NOT REPRESENT OFFICIAL POLICY OF THE STATE OF DELAWARE AND HAS BEEN PREPARED ONLY FOR GENERAL INFORMATION PURPOSES AND NOT FOR LEGAL ADVICE.

AMENDMENTS TO THE DELAWARE GENERAL CORPORATION LAW

Signed into law by the Governor on May 3, 2010 — and effective August 1, 2010 (except for certain provisions related to appraisal and dissolution) — **HB 341** implements comprehensive amendments to the Delaware General Corporation Law's (DGCL) provisions related to nonstock corporations. The DGCL applies to both stock and nonstock corporations. Despite the sweeping nature of the 1967 revision of the DGCL, treatment of nonstock corporations in the statutes remained inconsistent, creating uncertainty as to the application of some DGCL provisions to nonstock corporations.

The amendments set forth in House Bill 341 remove the statutory uncertainty surrounding nonstock corporations. Developed over a two year period by a subcommittee of the Corporation Law Council, the amendments provide clarity to the 18,000 nonstock corporations registered in Delaware. The centerpiece of the amendments is a new Section 114, a "translator" provision that defines which provisions of the DGCL apply to nonstock corporations generally and which provisions apply to non-profit, nonstock corporations specifically. Furthermore, the amendments were

formulated to avoid creating new, surprise requirements or other traps for the unwary. Rather, the revamped provisions are intended to and will apply seamlessly to nonstock corporations.

The annual "update" amendments to the DGCL were signed into law as **HB 375** by the Governor on June 10, 2010. The amendments are effective August 2, 2010 (except for certain provisions related to appraisal). Highlights of the amendments include the following:

Secretary of State Provisions – Amendments to several sections authorize service of process on the Secretary of State by means of electronic transmission, but only as prescribed by the Secretary of State. Other amendments relate to requirements for registered agents and certain filing requirements.

Advancement and Indemnification – The amendments clarify that litigation expenses may be advanced to persons serving at the request of the corporation as directors, officers, or employees of another corporation.

Certificate Amendments and Merger Procedures – Amendments to Sections 242 (certificate amendments) and 251 (mergers) streamline ministerial requirements for securing stockholder approval of a certificate amendment or merger agreement. Both statutes require the corporation to disseminate to stockholders either a summary or a complete copy of the amendment or agreement. The amendments clarify that the decision to disseminate either a summary or a complete copy need not be made by the board of directors.

Certificate Amendments in Conjunction with Mergers – Clarifying amendments to the merger statutes confirm that, in a merger, the certificate of the surviving corporation may be amended in its entirety.

New Section 267: Expanding the Availability of Short Form Mergers – The DGCL currently authorizes short form mergers, but only where the parent is a corporation. New Section 267 provides a mechanism for the short form merger of a subsidiary corporation or corporations and a parent non-corporate entity.

Application of Dissolution Provisions to Expired SPACs – Amendments to the DGCL's dissolution statutes and those relating to the winding up of a corporation confirm that such provisions apply to a corporation that has expired by its own terms.

AMENDMENTS TO ALTERNATIVE ENTITY LAW

The Governor signed **House Bill No. 372**, **House Bill No. 373** and **House Bill No. 374** into law on June 10, 2010, effecting amendments to the Delaware Limited Liability Company Act, the Delaware Revised Uniform Limited Partnership Act and the Delaware Revised Uniform Partnership Act, respectively (collectively, the "Acts"). The

amendments to the Acts become effective on August 2, 2010. A summary of the more significant amendments follows.

Amendments Specific to the Delaware Revised Uniform Limited Partnership Act and the Delaware Limited Liability Company Act – Certain amendments to the Delaware Revised Uniform Limited Partnership Act and the Delaware Limited Liability Company Act were enacted to provide that a partnership agreement or limited liability company agreement will be governed by and construed under Delaware law if such partnership agreement or limited liability company agreement provides for the application of the laws of the State of Delaware. These amendments are not intended to negate the application of Delaware law to the interpretation and enforcement of a partnership agreement or a limited liability company agreement that does not explicitly provide for the application of Delaware law or to negate the application of the internal affairs doctrine to Delaware limited partnerships or limited liability companies.

Amendments Made to Each of the Acts – Each of the Acts was amended to provide that a partnership agreement or a limited liability company agreement, as applicable, is not subject to the statute of frauds. Such amendments were made in light of the decision of the Delaware Supreme Court in *Olson v. Halvorsen*, C.A. No. 1884 (Del. Supr. Dec. 15, 2009).

In addition, each of the Acts was amended to confirm that a Delaware limited partnership, limited liability company or general partnership (collectively, "Alternative Entities"), has the power to grant, hold or exercise a power of attorney, including an irrevocable power of attorney. In addition, such amendments confirm that a power of attorney with respect to matters relating to organization, internal affairs or termination of an Alternative Entity granted by an equity owner of, or a person seeking to become an equity owner of, an Alternative Entity, will be irrevocable if it states that it is irrevocable and it is coupled with an interest. The amendments also clarify when such a power of attorney will be deemed coupled with an interest sufficient in law to support an irrevocable power and the effects of such irrevocability.

Further, amendments to the Acts were enacted to permit Alternative Entities to implement a short-form merger consistent with the provisions of the General Corporation Law of the State of Delaware (the "DGCL"). Such amendments to the Acts provide a mechanism to effect a short-form merger in which an Alternative Entity is the parent Entity (as defined in new Section 267(e)(2) of the DGCL).

Finally, the Acts were amended to clarify that the time period for response to a demand for information arising under the books and records section of each Act is five (5) business days or such shorter or longer period of time as is provided for in the applicable partnership agreement or limited liability company agreement, but not longer than 30 business days. Such amendments also clarify the categories of information that are within the scope of such demands.

NOTE: THE ABOVE SUMMARY OF 2009 LEGISLATION AFFECTING

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