



SPONSOR: Rep. Valihura & Sen. Vaughn & Rep. Wagner

HOUSE OF REPRESENTATIVES

143rd GENERAL ASSEMBLY

HOUSE BILL NO. 150

AN ACT TO AMEND TITLE 8 OF THE DELAWARE CODE RELATING TO THE GENERAL CORPORATION LAW.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each house thereof concurring therein):

1 Section 1. Amend Section 141(d), Title 8, Delaware Code, by deleting the text thereof in its entirety and substituting in
2 lieu thereof the following:

3 “(d) The directors of any corporation organized under this chapter may, by the certificate of incorporation or
4 by an initial bylaw, or by a bylaw adopted by a vote of the stockholders, be divided into 1, 2 or 3 classes; the term of office
5 of those of the first class to expire at the annual meeting next ensuing; of the second class 1 year thereafter; of the third
6 class 2 years thereafter; and at each annual election held after such classification and election, directors shall be chosen for
7 a full term, as the case may be, to succeed those whose terms expire. The certificate of incorporation may confer upon
8 holders of any class or series of stock the right to elect 1 or more directors who shall serve for such term, and have such
9 voting powers as shall be stated in the certificate of incorporation. The terms of office and voting powers of the directors
10 elected separately by the holders of any class or series of stock may be greater than or less than those of any other director
11 or class of directors. In addition, the certificate of incorporation may confer upon one or more directors, whether or not
12 elected separately by the holders of any class or series of stock, voting powers greater than or less than those of other
13 directors. If the certificate of incorporation provides that one or more directors shall have more or less than 1 vote per
14 director on any matter, every reference in this chapter to a majority or other proportion of the directors shall refer to a
15 majority or other proportion of the votes of the directors.”

16 Section 2. Amend Section 158, Title 8, Delaware Code, by deleting the third sentence thereof in its entirety and
17 substituting in lieu thereof the following:

18 “Every holder of stock represented by certificates shall be entitled to have a certificate signed by, or in the name of the
19 corporation by the chairperson or vice-chairperson of the board of directors, or the president or vice-president, and by the

20 treasurer or an assistant treasurer, or the secretary or an assistant secretary of such corporation representing the number of
21 shares registered in certificate form.”

22 Section 3. Amend Section 251(g), Title 8, Delaware Code, by deleting the text of subdivision (7)(ii) thereof in its entirety
23 and substituting in lieu thereof the following:

24 “(ii) the organizational documents of the surviving entity may be amended in the merger (A) to reduce the
25 number of classes and shares of capital stock or other equity interests or units that the surviving entity is authorized to
26 issue and (B) to eliminate any provision authorized by subsection (d) of § 141 of this title; and”.

27 Section 4. Amend Section 265(a), Title 8, Delaware Code, by deleting the text thereof in its entirety and substituting in
28 lieu thereof the following:

29 “(a) As used in this section, the term “other entity” means a limited liability company, statutory trust,
30 business trust or association, real estate investment trust, common-law trust or any other unincorporated business including
31 a partnership (whether general (including a limited liability partnership) or limited (including a limited liability limited
32 partnership)), or a foreign corporation.”

33 Section 5. Amend Section 265(b), Title 8, Delaware Code, by deleting “incorporated under the laws” therefrom and by
34 deleting “(g)” therefrom and substituting in lieu thereof “(h)”.

35 Section 6. Amend Section 265(b)(1), Title 8, Delaware Code, by inserting “to corporation” after “conversion” and by
36 deleting “(h)” therefrom and substituting in lieu thereof “(i)”.

37 Section 7. Amend Section 265(c), Title 8, Delaware Code, by inserting “to corporation” after “conversion”.

38 Section 8. Amend Section 265(c)(1), Title 8, Delaware Code, by deleting the text thereof in its entirety and substituting in
39 lieu thereof the following:

40 “(1) The date on which and jurisdiction where the other entity was first created, incorporated, formed or
41 otherwise came into being and, if it has changed, its jurisdiction immediately prior to its conversion to a domestic
42 corporation;”.

43 Section 9. Amend Section 265(c)(2), Title 8, Delaware Code, by deleting “;” therefrom and substituting in lieu thereof “to
44 corporation; and”.

45 Section 10. Amend Section 265(c)(3), Title 8, Delaware Code, by deleting “; and” therefrom and substituting in lieu
46 thereof “.”.

47 Section 11. Amend Section 265(c)(4), Title 8, Delaware Code, by deleting subsection (c)(4) in its entirety.

48 Section 12. Amend Section 265(d), Title 8, Delaware Code, by inserting “to corporation” after “certificate of conversion”,
49 by deleting “into” after “shall be converted” and substituting in lieu thereof “to” and by inserting “in the jurisdiction in which the
50 other entity was first created, formed, incorporated or otherwise came into being” at the end of subsection (d).

51 Section 13. Amend Section 265(e), Title 8, Delaware Code, by deleting “into” after “other entity” and substituting in lieu
52 thereof “to”.

53 Section 14. Amend Section 265, Title 8, Delaware Code, by adding a new subsection (f) thereto as follows:

54 “(f) When an other entity has been converted to a corporation of this State pursuant to this section, the
55 corporation of this State shall, for all purposes of the laws of the State of Delaware, be deemed to be the same entity as the
56 converting other entity. When any conversion shall have become effective under this section, for all purposes of the laws
57 of the State of Delaware, all of the rights, privileges and powers of the other entity that has converted, and all property,
58 real, personal and mixed, and all debts due to such other entity, as well as all other things and causes of action belonging to
59 such other entity, shall remain vested in the domestic corporation to which such other entity has converted and shall be the
60 property of such domestic corporation and the title to any real property vested by deed or otherwise in such other entity
61 shall not revert or be in any way impaired by reason of this chapter; but all rights of creditors and all liens upon any
62 property of such other entity shall be preserved unimpaired, and all debts, liabilities and duties of the other entity that has
63 converted shall remain attached to the corporation of this State to which such other entity has converted, and may be
64 enforced against it to the same extent as if said debts, liabilities and duties had originally been incurred or contracted by it
65 in its capacity as a corporation of this State. The rights, privileges, powers and interests in property of the other entity, as
66 well as the debts, liabilities and duties of the other entity, shall not be deemed, as a consequence of the conversion, to have
67 been transferred to the domestic corporation to which such other entity has converted for any purpose of the laws of the
68 State of Delaware.”

69 Section 15. Amend Section 265(f), Title 8, Delaware Code, by redesignating subsection (f) as subsection (g) and by
70 deleting “or otherwise provided by any laws of this State applicable to the converting limited liability company, partnership or
71 statutory trust” therefrom and substituting in lieu thereof “for all purposes of the laws of the State of Delaware or as required under
72 applicable non-Delaware law”.

73 Section 16. Amend Section 265(g), Title 8, Delaware Code, by redesignating subsection (g) as subsection (h) and by
74 inserting “to corporation” after “certificate of conversion”.

75 Section 17. Amend Section 265(h), Title 8, Delaware Code, by deleting the text thereof in its entirety and substituting in
76 lieu thereof the following:

77 “(i) The certificate of conversion to corporation shall be signed by any person who is authorized to sign the
78 certificate of conversion to corporation on behalf of the other entity.”

79 Section 18. Amend Section 265, Title 8, Delaware Code, by adding a new subsection (j) thereto as follows:

80 “(j) In connection with a conversion hereunder, rights or securities of, or interests in, the other entity which is
81 to be converted to a corporation of this State may be exchanged for or converted into cash, property, or shares of stock,
82 rights or securities of such corporation of this State or, in addition to or in lieu thereof, may be exchanged for or converted
83 into cash, property, or shares of stock, rights or securities of or interests in another domestic corporation or other entity or
84 may be cancelled.”

85 Section 19. Amend Section 266(a), Title 8, Delaware Code, by deleting the text thereof in its entirety and substituting in
86 lieu thereof the following:

87 “(a) A corporation of this State may, upon the authorization of such conversion in accordance with this section,
88 convert to a limited liability company, statutory trust, business trust or association, real estate investment trust, common-
89 law trust or any other unincorporated business including a partnership (whether general (including a limited liability
90 partnership) or limited (including a limited liability limited partnership)) or a foreign corporation.”

91 Section 20. Amend Section 266(b), Title 8, Delaware Code, by deleting in its entirety that portion of the fifth sentence
92 thereof that precedes and includes the colon and substituting in lieu thereof the following:

93 “If all outstanding shares of stock of the corporation, whether voting or nonvoting, shall be voted for the adoption
94 of the resolution, the conversion shall be authorized.”

95 Section 21. Amend Section 266(b), Title 8, Delaware Code, by deleting subsections (b)(1), (b)(2), (b)(3) and (b)(4) thereof
96 in their entirety and substituting in lieu thereof the following:

97 “(c) If a corporation shall convert in accordance with this section to another entity organized, formed or
98 created under the laws of a jurisdiction other than the State of Delaware, the corporation shall file with the Secretary of
99 State a certificate of conversion executed in accordance with § 103 of this title, which certifies:

- 100 (1) The name of the corporation, and if it has been changed, the name under which it was originally
101 incorporated;
- 102 (2) The date of filing of its original certificate of incorporation with the Secretary of State;
- 103 (3) The name and jurisdiction of the entity to which the corporation shall be converted;
- 104 (4) That the conversion has been approved in accordance with the provisions of this section;

105 (5) The agreement of the corporation that it may be served with process in the State of Delaware in any
106 action, suit or proceeding for enforcement of any obligation of the corporation arising while it was a corporation of this
107 State, and that it irrevocably appoints the Secretary of State as its agent to accept service of process in any such action, suit
108 or proceeding; and

109 (6) The address to which a copy of the process referred to in subsection (c)(5) shall be mailed to it by the
110 Secretary of State. In the event of such service upon the Secretary of State in accordance with subsection (c)(5), the
111 Secretary of State shall forthwith notify such corporation that has converted out of the State of Delaware by letter, certified
112 mail, return receipt requested, directed to such corporation that has converted out of the State of Delaware at the address so
113 specified, unless such corporation shall have designated in writing to the Secretary of State a different address for such
114 purpose, in which case it shall be mailed to the last address designated. Such letter shall enclose a copy of the process and
115 any other papers served on the Secretary of State pursuant to this subsection. It shall be the duty of the plaintiff in the
116 event of such service to serve process and any other papers in duplicate, to notify the Secretary of State that service is
117 being effected pursuant to this subsection and to pay the Secretary of State the sum of \$50 for the use of the State, which
118 sum shall be taxed as part of the costs in the proceeding, if the plaintiff shall prevail therein. The Secretary of State shall
119 maintain an alphabetical record of any such service setting forth the name of the plaintiff and the defendant, the title,
120 docket number and nature of the proceeding in which process has been served, the fact that service has been effected
121 pursuant to this subsection, the return date thereof, and the day and hour service was made. The Secretary of State shall
122 not be required to retain such information longer than 5 years from receipt of the service of process.”

123 Section 22. Amend Section 266(c), Title 8, Delaware Code, by redesignating subsection (c) as subsection (d), by deleting
124 “Upon the filing of a certificate of conversion in accordance with subsection (b) of this section, the filing of any document required
125 to be filed by the statute governing the formation of the entity into which the corporation is converting” therefrom and substituting
126 in lieu thereof “Upon the filing in the Office of the Secretary of State of a certificate of conversion to non-Delaware entity in
127 accordance with subsection (c) of this section or upon the future effective date or time of the certificate of conversion to non-
128 Delaware entity” and by inserting “out of the State of Delaware” at the end of the second sentence thereof.

129 Section 23. Amend Section 266, Title 8, Delaware Code, by deleting subsections (d) and (e) thereof in their entirety and
130 substituting in lieu thereof the following:

131 “(e) The conversion of a corporation out of the State of Delaware in accordance with this section and the
132 resulting cessation of its existence as a corporation of this state pursuant to a certificate of conversion to non-Delaware
133 entity shall not be deemed to affect any obligations or liabilities of the corporation incurred prior to such conversion or the

134 personal liability of any person incurred prior to such conversion, nor shall it be deemed to affect the choice of law
135 applicable to the corporation with respect to matters arising prior to such conversion.”

136 Section 24. Amend Section 266(f), Title 8, Delaware Code, by deleting “and shall constitute a continuation of the
137 existence of the converting corporation in the form of the applicable other entity of this State” therefrom.

138 Section 25. Amend Section 266, Title 8, Delaware Code, by adding a new subsection (g) thereto as follows:

139 “(g) In connection with a conversion of a domestic corporation to another entity pursuant to this section,
140 shares of stock, of the corporation of this State which is to be converted may be exchanged for or converted into cash,
141 property, rights or securities of, or interests in, the entity to which the corporation of this State is being converted or, in
142 addition to or in lieu thereof, may be exchanged for or converted into cash, property, shares of stock, rights or securities of,
143 or interests in, another domestic corporation or other entity or may be cancelled.”

144 Section 26. Amend Section 266, Title 8, Delaware Code, by adding a new subsection (h) thereto as follows:

145 “(h) When a corporation has been converted to another entity or business form pursuant to this section, the
146 other entity or business form shall, for all purposes of the laws of the State of Delaware, be deemed to be the same entity as
147 the corporation. When any conversion shall have become effective under this section, for all purposes of the laws of the
148 State of Delaware, all of the rights, privileges and powers of the corporation that has converted, and all property, real,
149 personal and mixed, and all debts due to such corporation, as well as all other things and causes of action belonging to such
150 corporation, shall remain vested in the other entity or business form to which such corporation has converted and shall be
151 the property of such other entity or business form, and the title to any real property vested by deed or otherwise in such
152 corporation shall not revert or be in any way impaired by reason of this chapter; but all rights of creditors and all liens
153 upon any property of such corporation shall be preserved unimpaired, and all debts, liabilities and duties of the corporation
154 that has converted shall remain attached to the other entity or business form to which such corporation has converted, and
155 may be enforced against it to the same extent as if said debts, liabilities and duties had originally been incurred or
156 contracted by it in its capacity as such other entity or business form. The rights, privileges, powers and interest in property
157 of the corporation that has converted, as well as the debts, liabilities and duties of such corporation, shall not be deemed, as
158 a consequence of the conversion, to have been transferred to the other entity or business form to which such corporation
159 has converted for any purpose of the laws of the State of Delaware.”

160 Section 27. Amend Section 266, Title 8, Delaware Code, by adding a new subsection (i) thereto as follows:

161 “(i) No vote of stockholders of a corporation shall be necessary to authorize a conversion if no shares of the stock
162 of such corporation shall have been issued prior to the adoption by the board of directors of the resolution approving the
163 conversion.”

164 Section 28. Amend Section 271, Title 8, Delaware Code, by adding a new subsection (c) thereto as follows:

165 “(c) For purposes of this section only, the property and assets of the corporation include the property and
166 assets of any subsidiary of the corporation. As used in this subsection, “subsidiary” means any entity wholly-owned and
167 controlled, directly or indirectly, by the corporation and includes, without limitation, corporations, partnerships, limited
168 partnerships, limited liability partnerships, limited liability companies, and/or statutory trusts. Notwithstanding subsection
169 (a) of this section, except to the extent the certificate of incorporation otherwise provides, no resolution by stockholders or
170 members shall be required for a sale, lease or exchange of property and assets of the corporation to a subsidiary.”

171 Section 29. Amend Section 388, Title 8, Delaware Code, by deleting “corporations” from the heading thereof and
172 substituting in lieu thereof “entities”.

173 Section 30. Amend Section 388(a), Title 8, Delaware Code, by deleting the text thereof in its entirety and substituting in
174 lieu thereof the following:

175 “(a) As used in this section, the term: (1) “foreign jurisdiction” means any foreign country or other foreign
176 jurisdiction (other than the United States, any state, the District of Columbia, or any possession or territory of the United
177 States); and (2) “non-United States entity” means a corporation, a limited liability company, a statutory trust, a business
178 trust or association, a real estate investment trust, a common-law trust, or any other unincorporated business or entity,
179 including a partnership (whether general (including a limited liability partnership) or limited (including a limited liability
180 limited partnership)), formed, incorporated, created or that otherwise came into being under the laws of any foreign
181 jurisdiction.”

182 Section 31. Amend Section 388(b), Title 8, Delaware Code, by deleting “Any non-United States corporation may become
183 domesticated in this State by filing with the Secretary of State” therefrom and substituting in lieu thereof “Any non-United States
184 entity may become domesticated as a corporation in this State by complying with subsection (h) of this section and filing with the
185 Secretary of State”.

186 Section 32. Amend Section 388(b)(1), Title 8, Delaware Code, by inserting “corporate” before “domestication”.

187 Section 33. Amend Section 388(c), Title 8, Delaware Code, by inserting “corporate” before “domestication”.

188 Section 34. Amend Section 388(c)(1), Title 8, Delaware Code, by deleting “corporation” therefrom and substituting in lieu
189 thereof “non-United States entity” and by inserting “, created” after “incorporated”.

190 Section 35. Amend Section 388(c)(2), Title 8, Delaware Code, by deleting “corporation” therefrom and substituting in lieu
191 thereof “non-United States entity” and by inserting “corporate” before “domestication”.

192 Section 36. Amend Section 388(c)(4), Title 8, Delaware Code, by inserting “,” after “social”, by deleting “corporation”
193 therefrom and substituting in lieu thereof “non-United States entity” and by deleting “certificate of domestication.” therefrom and
194 substituting in lieu thereof “certificate of corporate domestication; and”.

195 Section 37. Amend Section 388(c), Title 8, Delaware Code, by adding a new subsection (c)(5) thereto as follows:

196 “(5) That the domestication has been approved in the manner provided for by the document, instrument,
197 agreement or other writing, as the case may be, governing the internal affairs of the non-United States entity and the
198 conduct of its business or by applicable non-Delaware law, as appropriate.”

199 Section 38. Amend Section 388(d), Title 8, Delaware Code, by deleting the text thereof in its entirety and substituting in
200 lieu thereof the following:

201 “(d) Upon the certificate of corporate domestication and the certificate of incorporation becoming effective in
202 accordance with § 103 of this title, the non-United States entity shall be domesticated as a corporation in this State and the
203 corporation shall thereafter be subject to all of the provisions of this title, except that notwithstanding § 106 of this title, the
204 existence of the corporation shall be deemed to have commenced on the date the non-United States entity commenced its
205 existence in the jurisdiction in which the non-United States entity was first formed, incorporated, created or otherwise
206 came into being.”

207 Section 39. Amend Section 388(e), Title 8, Delaware Code, by deleting the text thereof in its entirety and substituting in
208 lieu thereof the following:

209 “(e) The domestication of any non-United States entity as a corporation in this State shall not be deemed to affect
210 any obligations or liabilities of the non-United States entity incurred prior to its domestication as a corporation in this
211 State, or the personal liability of any person therefor.”

212 Section 40. Amend Section 388(f), Title 8, Delaware Code, by deleting the text thereof in its entirety and substituting in
213 lieu thereof the following:

214 “(f) The filing of a certificate of corporate domestication shall not affect the choice of law applicable to the non-
215 United States entity, except that, from the effective time of the domestication, the law of the State of Delaware, including
216 this title, shall apply to the non-United States entity to the same extent as if the non-United States entity had been
217 incorporated as a corporation of this State on that date.”

218 Section 41. Amend Section 388(g), Title 8, Delaware Code, by deleting the text thereof in its entirety and substituting in
219 lieu thereof the following:

220 “(g) The certificate of corporate domestication shall be signed by any person who is authorized to sign the
221 certificate of corporate domestication on behalf of the non-United States entity.”

222 Section 42. Amend Section 388, Title 8, Delaware Code, by adding a new subsection (h) thereto as follows:

223 “(h) Prior to the filing of a certificate of corporate domestication with the Secretary of State, the domestication
224 shall be approved in the manner provided for by the document, instrument, agreement or other writing, as the case may be,
225 governing the internal affairs of the non-United States entity and the conduct of its business or by applicable non-Delaware
226 law, as appropriate, and the certificate of incorporation shall be approved by the same authorization required to approve the
227 domestication.”

228 Section 43. Amend Section 388, Title 8, Delaware Code, by adding a new subsection (i) thereto as follows:

229 “(i) When a non-United States entity has become domesticated as a corporation pursuant to this section, for all
230 purposes of the laws of the State of Delaware, the corporation shall be deemed to be the same entity as the domesticating
231 non-United States entity and the domestication shall constitute a continuation of the existence of the domesticating non-
232 United States entity in the form of a corporation of this State. When any domestication shall have become effective under
233 this section, for all purposes of the laws of the State of Delaware, all of the rights, privileges and powers of the non-United
234 States entity that has been domesticated, and all property, real, personal and mixed, and all debts due to such non-United
235 States entity, as well as all other things and causes of action belonging to such non-United States entity, shall remain
236 vested in the corporation to which such non-United States entity has been domesticated (and also in the non-United States
237 entity, if and for so long as the non-United States entity continues its existence in the foreign jurisdiction in which it was
238 existing immediately prior to the domestication) and shall be the property of such corporation (and also of the non-United
239 States entity, if and for so long as the non-United States entity continues its existence in the foreign jurisdiction in which it
240 was existing immediately prior to the domestication), and the title to any real property vested by deed or otherwise in such
241 non-United States entity shall not revert or be in any way impaired by reason of this title; but all rights of creditors and all
242 liens upon any property of such non-United States entity shall be preserved unimpaired, and all debts, liabilities and duties
243 of the non-United States entity that has been domesticated shall remain attached to the corporation to which such non-
244 United States entity has been domesticated (and also to the non-United States entity, if and for so long as the non-United
245 States entity continues its existence in the foreign jurisdiction in which it was existing immediately prior to the
246 domestication), and may be enforced against it to the same extent as if said debts, liabilities and duties had originally been

247 incurred or contracted by it in its capacity as such corporation. The rights, privileges, powers and interests in property of
248 the non-United States entity, as well as the debts, liabilities and duties of the non-United States entity, shall not be deemed,
249 as a consequence of the domestication, to have been transferred to the corporation to which such non-United States entity
250 has domesticated for any purpose of the laws of the State of Delaware.”

251 Section 44. Amend Section 388, Title 8, Delaware Code, by adding a new subsection (j) thereto as follows:

252 “(j) Unless otherwise agreed or otherwise required under applicable non-Delaware law, the domesticating non-
253 United States entity shall not be required to wind up its affairs or pay its liabilities and distribute its assets, and the
254 domestication shall not be deemed to constitute a dissolution of such non-United States entity. If, following domestication,
255 a non-United States entity that has become domesticated as a corporation of this State continues its existence in the foreign
256 jurisdiction in which it was existing immediately prior to domestication, the corporation and such non-United States entity
257 shall, for all purposes of the laws of the State of Delaware, constitute a single entity formed, incorporated, created or
258 otherwise having come into being, as applicable, and existing under the laws of the State of Delaware and the laws of such
259 foreign jurisdiction.”

260 Section 45. Amend Section 388, Title 8, Delaware Code, by adding a new subsection (k) thereto as follows:

261 “(k) In connection with a domestication under this section, shares of stock, rights or securities of, or interests in,
262 the non-United States entity that is to be domesticated as a corporation of this State may be exchanged for or converted
263 into cash, property, or shares of stock, rights or securities of such corporation or, in addition to or in lieu thereof, may be
264 exchanged for or converted into cash, property, or shares of stock, rights or securities of, or interests in, another
265 corporation or other entity or may be cancelled.”

266 Section 46. Amend Section 389(a)(1), Title 8, Delaware Code, by deleting the text thereof in its entirety and substituting
267 in lieu thereof the following:

268 “(1) The term “foreign jurisdiction” and the term “non-United States entity” shall have the same meanings as set
269 forth in § 388(a) of this title.”

270 Section 47. Amend Section 389(a)(3)f., Title 8, Delaware Code, by deleting “corporation” therefrom and substituting in
271 lieu thereof “non-United States entity”.

272 Section 48. Amend Section 389(a)(3)h., Title 8, Delaware Code, by deleting “corporation” therefrom and substituting in
273 lieu thereof “non-United States entity”.

274 Section 49. Amend Section 389(a)(3)j., Title 8, Delaware Code, by deleting the text thereof in its entirety and substituting
275 in lieu thereof the following:

276 “j. Such other event which, under the law of the jurisdiction governing the internal affairs of the non-United
277 States entity, permits the non-United States entity to transfer its domicile.”

278 Section 50. Amend Section 389(b), Title 8, Delaware Code, by deleting the text thereof in its entirety and substituting in
279 lieu thereof the following:

280 “(b) Any non-United States entity may, subject to and upon compliance with this section, transfer its domicile
281 (which term, as used in this section, shall be deemed to refer in addition to the seat, siege social or principal place of
282 business or central administration of such entity, or any other equivalent thereto under applicable law) into this State, and
283 may perform the acts described in this section, so long as the law by which the internal affairs of such entity are governed
284 does not expressly prohibit such transfer.”

285 Section 51. Amend Section 389(c), Title 8, Delaware Code, by deleting “corporation” therefrom and substituting in
286 lieu thereof “non-United States entity”.

287 Section 52. Amend Section 389(c)(2), Title 8, Delaware Code, by deleting the text thereof in its entirety and substituting
288 in lieu thereof the following:

289 “(2) A certificate issued by an authorized official of the jurisdiction the law of which governs the internal affairs
290 of the non-United States entity evidencing its existence;”

291 Section 53. Amend Section 389(c)(3), Title 8, Delaware Code, by deleting “corporation” therefrom and substituting in lieu
292 thereof “non-United States entity”.

293 Section 54. Amend Section 389(c)(4), Title 8, Delaware Code, by deleting “corporation” therefrom and substituting in lieu
294 thereof “non-United States entity”.

295 Section 55. Amend Section 389(c)(4)c., Title 8, Delaware Code, by deleting “corporate” therefrom and by deleting
296 “corporation” therefrom and substituting in lieu thereof “entity”.

297 Section 56. Amend Section 389(c)(4)e., Title 8, Delaware Code, by deleting “corporation” therefrom and substituting in
298 lieu thereof “non-United States entity”.

299 Section 57. Amend Section 389(c)(4)f., Title 8, Delaware Code, by deleting “corporation” therefrom and substituting in
300 lieu thereof “non-United States entity” and by deleting “corporation’s” therefrom and substituting in lieu thereof “entity’s”.

301 Section 58. Amend Section 389(c), Title 8, Delaware Code, by deleting the last paragraph thereof in its entirety and
302 substituting in lieu thereof the following:

303 “If any of the documents referred to in paragraphs (1)-(5) of this subsection are not in English, a translation
304 thereof, under oath of the translator, shall be attached thereto. If such documents satisfy the requirements of this section,

305 and if the name of the non-United States entity meets the requirements of § 102(a)(1) of this title, the Secretary of State
306 shall notify the non-United States entity that such documents have been accepted for filing, and the records of the
307 Secretary of State shall reflect such acceptance and such notification. In addition, the Secretary of State shall enter the
308 name of the non-United States entity on the Secretary of State’s reserved list to remain there so long as the non-United
309 States entity is in compliance with this section. No document submitted under this subsection shall be available for public
310 inspection pursuant to Chapter 100 of Title 29 until, and unless, such entity effects a transfer of its domicile as provided in
311 this section. The Secretary of State may waive the 30-day period and translation requirement provided for in this
312 subsection upon request by such entity, supported by facts (including, without limitation, the existence of an emergency
313 condition) justifying such waiver.”

314 Section 59. Amend Section 389(d), Title 8, Delaware Code, by deleting the text thereof in its entirety and substituting in
315 lieu thereof the following:

316 “(d) On or before the 1st day of March in each year, prior to the transfer of its domicile as provided for in
317 subsection (e) of this section, during any such transfer and, in the event that it desires to continue to be subject to a transfer
318 of domicile under this section, after its domicile has ceased to be in this State, the non-United States entity shall file a
319 certificate executed by an appropriate officer or director of the non-United States entity, certifying that the documents
320 submitted pursuant to this section remain in full force and effect or attaching any amendments or supplements thereto and
321 translated as required in subsection (c) of this section, together with the filing fee prescribed under § 391 of this title. In
322 the event that any non-United States entity fails to file the required certificate on or before the 1st day of March in each
323 year, all certificates and filings made pursuant to this section shall become null and void on the 2nd day of March in such
324 year, and any proposed transfer thereafter shall be subject to all of the required submissions and the examination fee set
325 forth in subsection (c) of this section.”

326 Section 60. Amend Section 389(e), Title 8, Delaware Code, by deleting the text thereof in its entirety and substituting in
327 lieu thereof the following:

328 “(e) If the Secretary of State accepts the documents submitted pursuant to subsection (c) of this section for filing,
329 such entity may transfer its domicile to this State at any time by means of a written communication to such effect
330 addressed to the Secretary of State, signed by 1 of the persons named on the list filed pursuant to subparagraph d. of
331 paragraph (4) of subsection (c) of this section, and confirming that the statements made pursuant to paragraph (4) of
332 subsection (c) of this section remain true and correct; provided, that if emergency conditions have affected ordinary means
333 of communication, such notification may be made by telegram, telex, telecopy or other form of writing so long as a duly

334 signed duplicate is received by the Secretary of State within 30 days thereafter. The records of the Secretary of State shall
335 reflect the fact of such transfer. Upon the payment to the Secretary of State of the fee prescribed under § 391 of this title,
336 the Secretary of State shall certify that the non-United States entity has filed all documents and paid all fees required by
337 this title. Such certificate of the Secretary of State shall be prima facie evidence of transfer by such non-United States
338 entity of its domicile into this State.”

339 Section 61. Amend Section 389(f), Title 8, Delaware Code, by deleting the text thereof in its entirety and substituting in
340 lieu thereof the following:

341 “(f) Except to the extent expressly prohibited by the laws of this State, from and after the time that a non-United
342 States entity transfers its domicile to this State pursuant to this section, the non-United States entity shall have all of the
343 powers which it had immediately prior to such transfer under the law of the jurisdiction governing its internal affairs and
344 the directors and officers designated pursuant to paragraph (3) of subsection (c) of this section, and their successors, may
345 manage the business and affairs of the non-United States entity in accordance with the laws of such jurisdiction. Any such
346 activity conducted pursuant to this section shall not be deemed to be doing business within this State for purposes of § 371
347 of this title. Any reference in this section to the law of the jurisdiction governing the internal affairs of a non-United States
348 entity which has transferred its domicile into this State shall be deemed to be a reference to such law as in effect
349 immediately prior to the transfer of domicile.”

350 Section 62. Amend Section 389(g), Title 8, Delaware Code, by deleting “corporation” therefrom and substituting in lieu
351 thereof “non-United States entity”.

352 Section 63. Amend Section 389(h), Title 8, Delaware Code, by deleting the text thereof in its entirety and substituting in
353 lieu thereof the following:

354 “(h) The transfer by any non-United States entity of its domicile into this State shall not be deemed to affect any
355 obligations or liabilities of such non-United States entity incurred prior to such transfer.”

356 Section 64. Amend Section 389(i), Title 8, Delaware Code, by deleting the text thereof in its entirety and substituting in
357 lieu thereof the following:

358 “(i) The directors of any non-United States entity which has transferred its domicile into this State may withhold
359 from any holder of equity interests in such entity any amounts payable to such holder on account of dividends or other
360 distributions, if the directors shall determine that such holder will not have the full benefit of such payment, so long as the
361 directors shall make provision for the retention of such withheld payment in escrow or under some similar arrangement for
362 the benefit of such holder.”

363 Section 65. Amend Section 389(j), Title 8, Delaware Code, by deleting the text thereof in its entirety and substituting in
364 lieu thereof the following:

365 “(j) All process issued out of any court of this State, all orders made by any court of this State and all rules and
366 notices of any kind required to be served on any non-United States entity which has transferred its domicile into this State
367 may be served on the non-United States entity pursuant to § 321 of this title in the same manner as if such entity were a
368 corporation of this State. The directors of a non-United States entity which has transferred its domicile into this State shall
369 agree in writing that they will be amenable to service of process by the same means as, and subject to the jurisdiction of the
370 courts of this State to the same extent as are directors of corporations of this State, and such agreements shall be submitted
371 to the Secretary of State for filing before the respective directors take office.”

372 Section 66. Amend Section 389(k), Title 8, Delaware Code, by deleting the text thereof in its entirety and substituting in
373 lieu thereof the following:

374 “(k) Any non-United States entity which has transferred its domicile into this State may voluntarily return to the
375 jurisdiction the law of which governs its internal affairs by filing with the Secretary of State an application to withdraw
376 from this State. Such application shall be accompanied by a resolution of the directors of the non-United States entity
377 authorizing such withdrawal and by a certificate of the highest diplomatic or consular official of such jurisdiction
378 accredited to the United States indicating the consent of such jurisdiction to such withdrawal. The application shall also
379 contain, or be accompanied by, the agreement of the non-United States entity that it may be served with process in this
380 State in any proceeding for enforcement of any obligation of the non-United States entity arising prior to its withdrawal
381 from this State, which agreement shall include the appointment of the Secretary of State as the agent of the non-United
382 States entity to accept service of process in any such proceeding and shall specify the address to which a copy of process
383 served upon the Secretary of State shall be mailed. Upon the payment of any fees and taxes owed to this State, the
384 Secretary of State shall file the application and the non-United States entity’s domicile shall, as of the time of filing, cease
385 to be in this State.”

386 Section 67. Amend Section 390, Title 8, Delaware Code, by inserting “, domestication” after “Transfer” in the heading
387 thereof.

388 Section 68. Amend Section 390(a), Title 8, Delaware Code, by deleting the text thereof in its entirety and substituting in
389 lieu thereof the following:

390 “(a) Upon compliance with the provisions of this section, any corporation existing under the laws of this State
391 may transfer to or domesticate or continue in any foreign jurisdiction and, in connection therewith, may elect to continue

392 its existence as a corporation of this State. As used in this section, the term: (1) “foreign jurisdiction” means any foreign
393 country, or other foreign jurisdiction (other than the United States, any state, the District of Columbia, or any possession or
394 territory of the United States); and (2) “resulting entity” means the entity formed, incorporated, created or otherwise
395 coming into being as a consequence of the transfer of the corporation to, or its domestication or continuance in, a foreign
396 jurisdiction pursuant to this section.”

397 Section 69. Amend Section 390(b), Title 8, Delaware Code, by amending the first sentence thereof by deleting “another”
398 therefrom and substituting in lieu thereof “a foreign”, by deleting “transfer or continuance” therefrom and substituting in lieu
399 thereof “transfer, domestication or continuance”, by inserting “foreign” before “jurisdiction to which the corporation shall be
400 transferred” and by inserting “, if applicable, that in connection with such transfer, domestication or continuance the corporation’s
401 existence as a corporation of this State is to continue and” before “recommending the approval of such transfer” and by amending
402 the fifth sentence thereof by inserting “transfer and domestic” before “continuance”.

403 Section 70. Amend Section 390(b)(3), Title 8, Delaware Code, by inserting “foreign” before “jurisdiction” and by
404 inserting “and the name of the resulting entity” at the end of subsection (b)(3).

405 Section 71. Amend Section 390(b)(4), Title 8, Delaware Code, by deleting “or” after “transfer” and substituting in lieu
406 thereof “,”.

407 Section 72. Amend Section 390(b)(5), Title 8, Delaware Code, by inserting “irrevocably” before “appoint”.

408 Section 73. Amend Section 390(b)(6), Title 8, Delaware Code, by inserting “transfer and domestic” after “the case of a
409 certificate of” and by inserting “transfer and domestic” before “continuance becomes effective”.

410 Section 74. Amend Section 390(c), Title 8, Delaware Code, by inserting in the second sentence thereof “, domestication or
411 continuance” after “transfer”.

412 Section 75. Amend Section 390(d), Title 8, Delaware Code, by deleting the text thereof in its entirety and substituting in
413 lieu thereof the following:

414 “(d) The transfer, domestication or continuance of a corporation out of this State in accordance with this section
415 and the resulting cessation of its existence as a corporation of this State pursuant to a certificate of transfer shall not be
416 deemed to affect any obligations or liabilities of the corporation incurred prior to such transfer, domestication or
417 continuance, the personal liability of any person incurred prior to such transfer, domestication or continuance, or the choice
418 of law applicable to the corporation with respect to matters arising prior to such transfer, domestication or continuance.

419 Unless otherwise agreed or otherwise provided in the certificate of incorporation, the transfer, domestication or
420 continuance of a corporation out of the State of Delaware in accordance with this section shall not require such corporation

421 to wind up its affairs or pay its liabilities and distribute its assets under this title and shall not be deemed to constitute a
422 dissolution of such corporation.”

423 Section 76. Amend Section 390(e), Title 8, Delaware Code, by deleting the text thereof in its entirety and substituting in
424 lieu thereof the following:

425 “(e) If a corporation files a certificate of transfer and domestic continuance, after the time the certificate of
426 transfer and domestic continuance becomes effective, the corporation shall continue to exist as a corporation of this State,
427 and the law of the State of Delaware, including this title, shall apply to the corporation to the same extent as prior to such
428 time. So long as a corporation continues to exist as a corporation of the State of Delaware following the filing of a
429 certificate of transfer and domestic continuance, the continuing corporation and the resulting entity shall, for all purposes
430 of the laws of the State of Delaware, constitute a single entity formed, incorporated, created or otherwise having come into
431 being, as applicable, and existing under the laws of the State of Delaware and the laws of the foreign jurisdiction.”

432 Section 77. Amend Section 390, Title 8, Delaware Code, by adding a new subsection (f) thereto as follows:

433 “(f) When a corporation has transferred, domesticated or continued pursuant to this section, for all purposes of
434 the laws of the State of Delaware, the resulting entity shall be deemed to be the same entity as the transferring,
435 domesticating or continuing corporation and shall constitute a continuation of the existence of such corporation in the form
436 of the resulting entity. When any transfer, domestication or continuance shall have become effective under this section, for
437 all purposes of the laws of the State of Delaware, all of the rights, privileges and powers of the corporation that has
438 transferred, domesticated or continued, and all property, real, personal and mixed, and all debts due to such corporation, as
439 well as all other things and causes of action belonging to such corporation, shall remain vested in the resulting entity (and
440 also in the corporation that has transferred, domesticated or continued, if and for so long as such corporation continues its
441 existence as a corporation of this State) and shall be the property of such resulting entity (and also of the corporation that
442 has transferred, domesticated or continued, if and for so long as such corporation continues its existence as a corporation of
443 this State), and the title to any real property vested by deed or otherwise in such corporation shall not revert or be in any
444 way impaired by reason of this title; but all rights of creditors and all liens upon any property of such corporation shall be
445 preserved unimpaired, and all debts, liabilities and duties of such corporation shall remain attached to the resulting entity
446 (and also to the corporation that has transferred, domesticated or continued, if and for so long as such corporation
447 continues its existence as a corporation of this State), and may be enforced against it to the same extent as if said debts,
448 liabilities and duties had originally been incurred or contracted by it in its capacity as such resulting entity. The rights,
449 privileges, powers and interests in property of the corporation, as well as the debts, liabilities and duties of the corporation,

450 shall not be deemed, as a consequence of the transfer, domestication or continuance, to have been transferred to the
451 resulting entity for any purpose of the laws of the State of Delaware.”

452 Section 78. Amend Section 390, Title 8, Delaware Code, by adding a new subsection (g) thereto as follows:

453 “(g) In connection with a transfer, domestication or continuance under this section, shares of stock of the
454 transferring, domesticating or continuing corporation may be exchanged for or converted into cash, property, or shares of
455 stock, rights or securities of, or interests in, the resulting entity or, in addition to or in lieu thereof, may be exchanged for or
456 converted into cash, property, or shares of stock, rights or securities of, or interests in, another corporation or other entity
457 or may be cancelled.”

458 Section 79. Amend Section 390, Title 8, Delaware Code, by adding a new subsection (h) thereto as follows:

459 “(h) No vote of the stockholders of a corporation shall be necessary to authorize a transfer, domestication or
460 continuance if no shares of the stock of such corporation shall have been issued prior to the adoption by the board of
461 directors of the resolution approving the transfer, domestication or continuance.”

462 Section 80. This Act shall become effective August 1, 2005.

SYNOPSIS

Section 1. The amendments to Section 141(d) provide that the certificate of incorporation may confer greater or lesser voting powers on one or more directors, whether or not such director or directors is or are separately elected by the holders of any class or series of stock.

Section 2. The amendment to Section 158 eliminates the requirement that a corporation with uncertificated shares issue a certificate for such shares upon the request of the holder of such shares. Notwithstanding this amendment, a corporation with uncertificated shares still is permitted to issue a certificate upon the request of a holder, but the corporation is not obligated to do so.

Section 3. The amendment to Section 251(g)(7)(ii) now permits the organizational documents of the surviving entity to be amended to eliminate a classified board provision or any other provision authorized by subsection (d) of Section 141 of Title 8.

Sections 4 through 18. The amendments to Section 265 provide for the conversion of an other entity, including a non-Delaware other entity, to a Delaware corporation. The addition of subsection (f) makes it clear that upon conversion to a corporation, the corporation is a continuation of the existence of the converting other entity. The addition of subsection (j) confirms the flexibility permitted in the Code regarding a conversion to a domestic corporation.

Sections 19 through 27. The amendments to Section 266 provide for the conversion of a Delaware corporation to an other entity, including a non-Delaware other entity. The amendments to subsections (e) and (f) and the addition of subsection (h) clarify the effects of a conversion of a Delaware corporation to an other entity. New subsection (g) confirms the flexibility permitted in this section regarding a conversion of a domestic corporation. New subsection (i) provides that if a converting Delaware corporation has no outstanding capital stock, no vote of stockholders is required to authorize the conversion.

Section 28. Section 271 has been amended to add new subsection (c). The purpose of subsection (c) is to provide that (i) no stockholder vote is required for a sale, lease or exchange of assets to or with a direct or indirect wholly-owned and controlled subsidiary, and (ii) the assets of such a subsidiary are to be treated as assets of its ultimate parent for purposes of applying, at the parent level, the requirements set forth in subsection (a). The amendment is not intended to address the application of subsection (a) to a sale, lease or exchange of assets by, or to or with, a subsidiary that is not wholly-owned and controlled, directly or

indirectly, by the ultimate parent.

Sections 29 through 45. The amendments to Section 388 provide that any non-United States entity may domesticate in Delaware. New subsections (i) and (j) clarify the effects of a domestication of a non-United States entity as a Delaware corporation. New subsection (k) confirms the flexibility permitted in the Code regarding a domestication as a Delaware corporation.

Sections 46 through 66. The amendments to Section 389 reflect the newly defined terms “non-United States entity” and “foreign jurisdiction” in Section 388, Title 8, Delaware Code.

Sections 67 through 79. The amendments to Section 390 create two types of filings under Section 390: a certificate of transfer when the Delaware corporation is not to continue its existence in Delaware and a certificate of transfer and domestic continuance when the Delaware corporation elects to continue its existence as a Delaware corporation. The amendments confirm that so long as a corporation continues to exist as a corporation of the State of Delaware the resulting entity is the same entity as existed prior to transfer. The amendments to subsections (d) and (e) and new subsection (f) clarify the effects of a transfer of a Delaware corporation. New subsection (g) confirms the flexibility permitted in the Code regarding a transfer of a Delaware corporation. New subsection (h) provides that if a transferring Delaware corporation has no outstanding capital stock, no vote of stockholders is required to authorize the transfer.

Section 80. This section provides for an effective date of August 1, 2005.