
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):

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

“(d) The directors of any corporation organized under this chapter may, by the certificate of incorporation or 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 of those of the first class to expire at the annual meeting next ensuing; of the second class 1 year thereafter; of the third class 2 years thereafter; and at each annual election held after such classification and election, directors shall be chosen for a full term, as the case may be, to succeed those whose terms expire. The certificate of incorporation may confer upon 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 voting powers as shall be stated in the certificate of incorporation. The terms of office and voting powers of the directors elected separately by the holders of any class or series of stock may be greater than or less than those of any other director or class of directors. In addition, the certificate of incorporation may confer upon one or more directors, whether or not elected separately by the holders of any class or series of stock, voting powers greater than or less than those of other directors. If the certificate of incorporation provides that one or more directors shall have more or less than 1 vote per director on any matter, every reference in this chapter to a majority or other proportion of the directors shall refer to a majority or other proportion of the votes of the directors.”

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

“(c) Every holder of stock represented by certificates shall be entitled to have a certificate signed by, or in the name of the corporation by the chairperson or vice-chairperson of the board of directors, or the president or vice-president, and by the
treasurer or an assistant treasurer, or the secretary or an assistant secretary of such corporation representing the number of
shares registered in certificate form.”

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

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

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

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

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

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

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

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

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

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

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

Section 11. Amend Section 265(c)(4), Title 8, Delaware Code, by deleting subsection (c)(4) in its entirety.
Section 12. Amend Section 265(d), Title 8, Delaware Code, by inserting “to corporation” after “certificate of conversion”, by deleting “into” after “shall be converted” and substituting in lieu thereof “to” and by inserting “in the jurisdiction in which the other entity was first created, formed, incorporated or otherwise came into being” at the end of subsection (d).

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

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

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

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

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

Section 17. Amend Section 265(h), Title 8, Delaware Code, by deleting the text thereof in its entirety and substituting in lieu thereof the following:
“(i) The certificate of conversion to corporation shall be signed by any person who is authorized to sign the certificate of conversion to corporation on behalf of the other entity.”

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

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

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

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

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

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

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

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

(1) The name of the corporation, and if it has been changed, the name under which it was originally incorporated;

(2) The date of filing of its original certificate of incorporation with the Secretary of State;

(3) The name and jurisdiction of the entity to which the corporation shall be converted;

(4) That the conversion has been approved in accordance with the provisions of this section;
(5) The agreement of the corporation that it may be served with process in the State of Delaware in any action, suit or proceeding for enforcement of any obligation of the corporation arising while it was a corporation of this State, and that it irrevocably appoints the Secretary of State as its agent to accept service of process in any such action, suit or proceeding; and

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

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

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

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

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

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

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

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

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

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

Section 27. Amend Section 266, Title 8, Delaware Code, by adding a new subsection (i) thereto as follows:
“(i) No vote of stockholders of a corporation shall be necessary to authorize a conversion if no shares of the stock of such corporation shall have been issued prior to the adoption by the board of directors of the resolution approving the conversion.”

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

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

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

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

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

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

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

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

Section 34. Amend Section 388(c)(1), Title 8, Delaware Code, by deleting “corporation” therefrom and substituting in lieu thereof “non-United States entity” and by inserting “, created” after “incorporated”.
Section 35. Amend Section 388(c)(2), Title 8, Delaware Code, by deleting “corporation” therefrom and substituting in lieu thereof “non-United States entity” and by inserting “corporate” before “domestication”.

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

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

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

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

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

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

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

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

“(f) The filing of a certificate of corporate domestication shall not affect the choice of law applicable to the non-United States entity, except that, from the effective time of the domestication, the law of the State of Delaware, including this title, shall apply to the non-United States entity to the same extent as if the non-United States entity had been incorporated as a corporation of this State on that date.”
Section 41. Amend Section 388(g), Title 8, Delaware Code, by deleting the text thereof in its entirety and substituting in lieu thereof the following:

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

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

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

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

“(i) When a non-United States entity has become domesticated as a corporation pursuant to this section, for all purposes of the laws of the State of Delaware, the corporation shall be deemed to be the same entity as the domesticating non-United States entity and the domestication shall constitute a continuation of the existence of the domesticating non-United States entity in the form of a corporation of this State. When any domestication shall have become effective under this section, for all purposes of the laws of the State of Delaware, all of the rights, privileges and powers of the non-United States entity that has been domesticated, and all property, real, personal and mixed, and all debts due to such non-United States entity, as well as all other things and causes of action belonging to such non-United States entity, shall remain vested in the corporation to which such non-United States entity has been domesticated (and also in the non-United States entity, if and for so long as the non-United States entity continues its existence in the foreign jurisdiction in which it was existing immediately prior to the domestication) and shall be the property of such corporation (and also of the non-United States entity, if and for so long as the non-United States entity continues its existence in the foreign jurisdiction in which it was existing immediately prior to the domestication), and the title to any real property vested by deed or otherwise in such 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 liens upon any property of such non-United States entity shall be preserved unimpaired, and all debts, liabilities and duties of the non-United States entity that has been domesticated shall remain attached to the corporation to which such non-United States entity has been domesticated (and also to the non-United States entity, if and for so long as the non-United States entity continues its existence in the foreign jurisdiction in which it was existing immediately prior to the domestication), and may be enforced against it to the same extent as if said debts, liabilities and duties had originally been
incurred or contracted by it in its capacity as such corporation. The rights, privileges, powers and interests in property of the non-United States entity, as well as the debts, liabilities and duties of the non-United States entity, shall not be deemed, as a consequence of the domestication, to have been transferred to the corporation to which such non-United States entity has domesticated for any purpose of the laws of the State of Delaware.”

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

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

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

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

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

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

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

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

Section 49. Amend Section 389(a)(3)j., Title 8, Delaware Code, by deleting the text thereof in its entirety and substituting in lieu thereof the following:
“j. Such other event which, under the law of the jurisdiction governing the internal affairs of the non-United States entity, permits the non-United States entity to transfer its domicile.”

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

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

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

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

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

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

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

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

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

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

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

“If any of the documents referred to in paragraphs (1)-(5) of this subsection are not in English, a translation thereof, under oath of the translator, shall be attached thereto. If such documents satisfy the requirements of this section,
and if the name of the non-United States entity meets the requirements of § 102(a)(1) of this title, the Secretary of State shall notify the non-United States entity that such documents have been accepted for filing, and the records of the Secretary of State shall reflect such acceptance and such notification. In addition, the Secretary of State shall enter the name of the non-United States entity on the Secretary of State’s reserved list to remain there so long as the non-United States entity is in compliance with this section. No document submitted under this subsection shall be available for public inspection pursuant to Chapter 100 of Title 29 until, and unless, such entity effects a transfer of its domicile as provided in this section. The Secretary of State may waive the 30-day period and translation requirement provided for in this subsection upon request by such entity, supported by facts (including, without limitation, the existence of an emergency condition) justifying such waiver.”

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

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

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

“(e) If the Secretary of State accepts the documents submitted pursuant to subsection (c) of this section for filing, such entity may transfer its domicile to this State at any time by means of a written communication to such effect addressed to the Secretary of State, signed by 1 of the persons named on the list filed pursuant to subparagraph d. of paragraph (4) of subsection (c) of this section, and confirming that the statements made pursuant to paragraph (4) of subsection (c) of this section remain true and correct; provided, that if emergency conditions have affected ordinary means of communication, such notification may be made by telegram, telex, telecopy or other form of writing so long as a duly
signed duplicate is received by the Secretary of State within 30 days thereafter. The records of the Secretary of State shall reflect the fact of such transfer. Upon the payment to the Secretary of State of the fee prescribed under § 391 of this title, the Secretary of State shall certify that the non-United States entity has filed all documents and paid all fees required by this title. Such certificate of the Secretary of State shall be prima facie evidence of transfer by such non-United States entity of its domicile into this State.”

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

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

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

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

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

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

“(i) The directors of any non-United States entity which has transferred its domicile into this State may withhold from any holder of equity interests in such entity any amounts payable to such holder on account of dividends or other distributions, if the directors shall determine that such holder will not have the full benefit of such payment, so long as the directors shall make provision for the retention of such withheld payment in escrow or under some similar arrangement for the benefit of such holder.”
Section 65. Amend Section 389(j), Title 8, Delaware Code, by deleting the text thereof in its entirety and substituting in lieu thereof the following:

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

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

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

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

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

“(a) Upon compliance with the provisions of this section, any corporation existing under the laws of this State may transfer to or domesticate or continue in any foreign jurisdiction and, in connection therewith, may elect to continue
its existence as a corporation of this State. As used in this section, the term: (1) “foreign jurisdiction” means any foreign
country, or other foreign jurisdiction (other than the United States, any state, the District of Columbia, or any possession or
territory of the United States); and (2) “resulting entity” means the entity formed, incorporated, created or otherwise
coming into being as a consequence of the transfer of the corporation to, or its domestication or continuance in, a foreign
jurisdiction pursuant to this section.”

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

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

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

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

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

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

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

“(d) The transfer, domestication or continuance of a corporation out of this State in accordance with this section
and the resulting cessation of its existence as a corporation of this State pursuant to a certificate of transfer shall not be
deemed to affect any obligations or liabilities of the corporation incurred prior to such transfer, domestication or
continuance, the personal liability of any person incurred prior to such transfer, domestication or continuance, or the choice
of law applicable to the corporation with respect to matters arising prior to such transfer, domestication or continuance.
Unless otherwise agreed or otherwise provided in the certificate of incorporation, the transfer, domestication or
continuance of a corporation out of the State of Delaware in accordance with this section shall not require such corporation
to wind up its affairs or pay its liabilities and distribute its assets under this title and shall not be deemed to constitute a
dissolution of such corporation.”

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

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

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

“(f) When a corporation has transferred, domesticated or continued pursuant to this section, for all purposes of the laws of the State of Delaware, the resulting entity shall be deemed to be the same entity as the transferring, domesticating or continuing corporation and shall constitute a continuation of the existence of such corporation in the form of the resulting entity. When any transfer, domestication or continuance shall have become effective under this section, for all purposes of the laws of the State of Delaware, all of the rights, privileges and powers of the corporation that has transferred, domesticated or continued, and all property, real, personal and mixed, and all debts due to such corporation, as well as all other things and causes of action belonging to such corporation, shall remain vested in the resulting entity (and also in the corporation that has transferred, domesticated or continued, if and for so long as such corporation continues its existence as a corporation of this State) and shall be the property of such resulting entity (and also of the corporation that has transferred, domesticated or continued, if and for so long as such corporation continues its existence as a corporation of this State), and the title to any real property vested by deed or otherwise in such corporation shall not revert or be in any way impaired by reason of this title; but all rights of creditors and all liens upon any property of such corporation shall be preserved unimpaired, and all debts, liabilities and duties of such corporation shall remain attached to the resulting entity (and also to the corporation that has transferred, domesticated or continued, if and for so long as such corporation continues its existence as a corporation of this State), and may be enforced against it to the same extent as if said debts, liabilities and duties had originally been incurred or contracted by it in its capacity as such resulting entity. The rights, privileges, powers and interests in property of the corporation, as well as the debts, liabilities and duties of the corporation,
Section 78. Amend Section 390, Title 8, Delaware Code, by adding a new subsection (g) thereto as follows:

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

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

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

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.