

Delaware's Corporate Law Reform: A New Framework

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Delaware has long been the preferred state of incorporation for many U.S. corporations, due to its well-developed and stable body of corporate law, its specialized and expert judiciary and its flexible and enabling statutory framework. However, following several recent Chancery Court decisions, on March 25, 2025, Delaware enacted significant amendments to its General Corporation Law (DGCL), which alter key features of Delaware corporate law and governance. The amendments address three main areas: (i) director independence and disinterestedness; (ii) transactions involving interested directors, officers or controlling stockholders; and (iii) stockholder rights to inspect books and records. These changes expand the coverage of the DGCL regarding these areas, but it is unclear to what extent the amendments overrule existing case law as well as how Delaware judges will apply the new standards.

Director Independence and Disinterestedness

DGCL Section 144 was amended to provide statutory definitions and presumptions for director independence and disinterestedness. Previously, Section 144 did not define what constituted an independent or disinterested director or what types of interests or relationships would impair a director's independence or disinterestedness, which previously had been solely determined by Delaware case law. In recent years, the Delaware courts applied various tests and factors to assess director independence or disinterestedness, depending on the context and circumstances of each case, and often found that directors were not independent or disinterested based on personal, professional or financial ties to other parties.

Under amended Section 144, an independent or disinterested director is defined as a director who is not a party to a transaction, does not have a material interest in the transaction and does not have a material relationship with a person who has a material interest in the transaction. A material interest is defined as an actual or potential benefit, other than one that would devolve on the corporation or the stockholders generally, that would reasonably be expected to impair the objectivity of the director's judgment when considering the transaction. A material relationship is defined as a familial, financial, professional, employment or other relationship that would reasonably be expected to impair the objectivity of the director's judgment when considering the transaction. The amendment also provides that a director of a corporation listed on a national securities exchange is presumed to be independent or disinterested with respect to a transaction to which the director is not a party, if the board of directors has determined that the director satisfies the applicable criteria for independence under the rules of the exchange. This presumption may only be rebutted by substantial and particularized facts that the director has a material interest in the transaction or a material relationship with a person who has a material interest in the transaction. The amendment also provides that the designation, nomination or vote in the election of a director by a person who has a material interest in a transaction does not, by itself, constitute evidence that the director such interested person designated, nominated or voted for is not independent or disinterested with respect to the transaction.

The amended Section 144 provides clarity for director independence and disinterestedness. However, the amendment raises some potential issues and challenges for Delaware corporate law

and governance. For example, it remains to be seen how future judicial decisions will interpret the amendments to Section 144, including the definition and application of the material interest and material relationship standards as well as the effect of the presumption of independence for listed directors.

Transactions Involving Interested Directors, Officers or Controlling Stockholders

Another change in the amended Section 144 of the DGCL is the introduction of safe harbor procedures for transactions involving interested directors, officers or controlling stockholders. Previously, such transactions were not void or voidable solely because of the interest or involvement of the directors, officers or controlling stockholders if the transactions were approved by a majority of the disinterested directors or stockholders or were fair to the corporation and its stockholders. However, the previous law did not provide any protection from liability or equitable relief for the interested parties, and the transactions were subject to judicial review under various and often heightened standards of scrutiny depending on the nature and extent of the interest or involvement.

Under the amended Section 144, transactions involving interested directors or officers are exempt from actions for equitable relief or damages by reason of a claim based on a breach of fiduciary duties if the transactions are: (i) approved by a majority of the disinterested directors either serving on the board or an independent committee consisting of at least two disinterested directors; (ii) approved by a majority of the votes cast by disinterested stockholders; or (iii) fair to the corporation and its stockholders. Similarly, transactions involving controlling stockholders, except for going-private transactions, are exempt from such actions if: (i) the transactions are approved by an independent board committee empowered to negotiate and approve the transactions or a majority of the votes cast by the disinterested stockholders; or (ii) the transactions are fair to the corporation and its stockholders. Going-private transactions involving controlling stockholders generally must follow the previous standard from *Kahn v. M & F Worldwide Corp.*, wherein both disinterested director approval (or recommendation to the stockholders for approval) and approval by a majority of the votes cast by disinterested stockholders are required. The amended Section 144 provides greater flexibility for certain types of transactions without such transactions becoming subject to heightened judicial review and limits the liability of directors, officers and controlling stockholders, but it is unclear how judges will determine whether a transaction qualifies for the Section 144 safe harbors.

The amended Section 144 enhances predictability for transactions involving interested directors, officers or controlling stockholders. However, the amendment also raises some potential issues and challenges for Delaware corporate law and governance. For example, the amendment requires that the “material facts as to the director’s or officer’s relationship or interest and as to the act or transaction ... are disclosed or are known” in the case of approval by directors or that approval by stockholders be “informed,” which are matters subject to judicial interpretation in the event of a challenge of the transactions the amended Section 144 covers. The amendment also requires director approvals to be made in “good faith and without gross negligence.” Therefore, the ultimate applicability of these safe harbors is still subject to judicial determination.

Stockholder Rights to Inspect Books and Records

Another significant change is the amendment of Section 220 of the DGCL, which governs stockholder rights to inspect books and records of the corporation. Under the previous law, any stockholder, upon written demand under oath stating the purpose thereof, had the right to inspect the corporation’s stock ledger, a list of its stockholders and its other books and records for any

proper purpose. The previous law did not define what constituted a proper purpose or what other types of books and records were subject to inspection, leaving these matters to the interpretation and determination of the Delaware courts. In recent years, the Delaware courts have permitted stockholders access to a wide range of corporate records, including electronic communications, for various purposes, including investigating corporate wrongdoing, valuing their shares or communicating with other stockholders.

Under the amended Section 220, stockholder inspection rights are subject to more stringent and specific requirements and limitations. The amendment requires that stockholder inspection demands be made in good faith and for a proper purpose, which is defined as a purpose reasonably related to the stockholder's interest as a stockholder. The specific books and records that stockholders may request include the certificate of incorporation, bylaws, minutes of meetings, communications with stockholders, materials provided to the board or committees, annual financial statements, and director and officer independence questionnaires. The stockholder inspection demand must describe with reasonable particularity the stockholder's purpose and the books and records sought to be inspected, and that the books and records sought be specifically related to the stockholder's purpose. The amendment further provides that the corporation may impose reasonable restrictions on the confidentiality, use and distribution of the books and records, and it may redact portions of the books and records that are not specifically related to the stockholder's purpose. The amended Section 220 allows the Delaware courts to order the production of additional records only if the stockholder demonstrates a compelling need and clear and convincing evidence that such records are necessary and essential to further the stockholder's proper purpose.

The amended Section 220 narrows stockholder inspection rights and provides corporations with the ability to protect the confidentiality of corporate information that it is required to provide under Section 220. On the other hand, the amendment raises some potential issues and challenges for Delaware corporate law and governance. For example, the amendment may require judicial interpretation of the good faith, proper purpose and compelling need standards, as well as the scope and extent of confidentiality, use and distribution restrictions.

Conclusion

The amended Section 144 and Section 220 represent a significant reform of Delaware corporate law and governance and may have profound implications for the rights and responsibilities of directors, officers and stockholders of Delaware corporations. The amendments provide several benefits and advantages for Delaware corporations and their boards of directors, such as reducing litigation risks and costs, enhancing clarity and facilitating transactions, and decision-making. Conversely, it is not certain how Delaware judges will apply these changes. Therefore, the amendments will require careful and ongoing monitoring and evaluation by Delaware corporations and their advisers, as well as by the Delaware courts and legislature, to assess their impact, effectiveness and how they modify Delaware's corporate law regime.

For further information, please contact a member of the Haynes Boone [Capital Markets and Securities Practice Group](#) or [Texas Corporate Governance Practice Group](#).