

The Delaware General Assembly Approves Amendments to the DGCL - Effective August 1, 2024



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On June 20, 2024, the Delaware General Assembly passed legislation to amend certain provisions of the Delaware General Corporation Law (“DGCL”) in order to address recent decisions of Delaware’s Court of Chancery and bring existing law surrounding stockholder and merger agreements in line with current market practice. Governor John Carney signed the legislation into law on July 17, 2024, and the amendments became effective on August 1, 2024.

The amendments were adopted in substantially the same form as proposed, as discussed in further detail in an earlier Cadwalader Quorum article [here](#). However, the Delaware General Assembly revised the final amendments in part to clarify (1) that the new Subsection 122(18), which explicitly authorizes a corporation to enter into contractual arrangements with its stockholders, does not permit the adoption of contracts that conflict with the corporation’s certificate of incorporation or Delaware law and (2) that the framework available under new Section 147, permitting the board to ratify agreements required to be filed with the Delaware Secretary of State, is not the exclusive means to ratify such an agreement.

Additionally, the published synopsis of the amendments clarifies that the new Section 268 ? which provides that a merger agreement need not include provisions relating to the surviving corporation’s certificate of incorporation in order to be considered in “substantially final form” and that the disclosure schedules are not deemed part of the merger agreement ? does not alter the fiduciary duties of directors or officers with respect to the delegation or exercise of authority to approve such documents or to inform the directors of the material provisions of such documents.