

LAWS OF DELAWARE
VOLUME 84
CHAPTER 309
152nd GENERAL ASSEMBLY
FORMERLY
SENATE BILL NO. 313

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 § 122, Title 8 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 122. Specific powers.

Every corporation created under this chapter shall have ~~power~~ power, whether or not so provided in the certificate of incorporation, to:

(1) Have perpetual succession by its corporate name, unless a limited period of duration is stated in its certificate of incorporation;

(2) Sue and be sued in all courts and participate, as a party or otherwise, in any judicial, administrative, arbitral or other proceeding, in its corporate name;

(3) Have a corporate seal, which may be altered at pleasure, and use the same by causing it or a facsimile thereof, to be impressed or affixed or in any other manner reproduced;

(4) Purchase, receive, take by grant, gift, devise, bequest or otherwise, lease, or otherwise acquire, own, hold, improve, employ, use and otherwise deal in and with real or personal property, or any interest therein, wherever situated, and to sell, convey, lease, exchange, transfer or otherwise dispose of, or mortgage or pledge, all or any of its property and assets, or any interest therein, wherever situated;

(5) Appoint such officers and agents as the business of the corporation requires and to pay or otherwise provide for them suitable compensation; provided that any contract or other appointment or delegation of authority that empowers an officer or agent to act on behalf of the corporation shall be subject to § 141(a) of this title, to the extent it is applicable;

(6) Adopt, amend and repeal bylaws in accordance with § 109 of this title;

(7) Wind up and dissolve itself in the manner provided in this chapter;

(8) Conduct its business, carry on its operations and have offices and exercise its powers within or without this State;

(9) Make donations for the public welfare or for charitable, scientific or educational purposes, and in time of war or other national emergency in aid thereof;

(10) Be an incorporator, promoter or manager of other corporations of any type or kind;

(11) Participate with others in any corporation, partnership, limited partnership, joint venture or other association of any kind, or in any transaction, undertaking or arrangement which the participating corporation

would have power to conduct by itself, whether or not such participation involves sharing or delegation of control with or to others;

(12) Transact any lawful business which the corporation's board of directors shall find to be in aid of governmental authority;

(13) Make contracts, including contracts of guaranty and suretyship, incur liabilities, borrow money at such rates of interest as the corporation may determine, issue its notes, bonds and other obligations, and secure any of its obligations by mortgage, pledge or other encumbrance of all or any of its property, franchises and income, and make contracts of guaranty and suretyship which are necessary or convenient to the conduct, promotion or attainment of the business of (a) a corporation all of the outstanding stock of which is owned, directly or indirectly, by the contracting corporation, or (b) a corporation which owns, directly or indirectly, all of the outstanding stock of the contracting corporation, or (c) a corporation all of the outstanding stock of which is owned, directly or indirectly, by a corporation which owns, directly or indirectly, all of the outstanding stock of the contracting corporation, which contracts of guaranty and suretyship shall be deemed to be necessary or convenient to the conduct, promotion or attainment of the business of the contracting corporation, and make other contracts of guaranty and suretyship which are necessary or convenient to the conduct, promotion or attainment of the business of the contracting corporation;

(14) Lend money for its corporate purposes, invest and reinvest its funds, and take, hold and deal with real and personal property as security for the payment of funds so loaned or invested;

(15) Pay pensions and establish and carry out pension, profit sharing, stock option, stock purchase, stock bonus, retirement, benefit, incentive and compensation plans, trusts and provisions for any or all of its directors, officers and employees, and for any or all of the directors, officers and employees of its subsidiaries;

(16) Provide insurance for its benefit on the life of any of its directors, officers or employees, or on the life of any stockholder for the purpose of acquiring at such stockholder's death shares of its stock owned by such ~~stockholder~~. stockholder;

(17) Renounce, in its certificate of incorporation or by action of its board of directors, any interest or expectancy of the corporation in, or in being offered an opportunity to participate in, specified business opportunities or specified classes or categories of business opportunities that are presented to the corporation or 1 or more of its officers, directors or ~~stockholders~~. stockholders; and

(18) Notwithstanding § 141(a) of this title, make contracts with one or more current or prospective stockholders (or one or more beneficial owners of stock), in its or their capacity as such, in exchange for such minimum consideration as determined by the board of directors (which may include inducing stockholders or beneficial owners of stock to take, or refrain from taking, one or more actions); provided that no provision of such contract shall be enforceable against the corporation to the extent such contract provision is contrary to the certificate of incorporation or would be contrary to the laws of this State (other than § 115 of this title) if included in the certificate of incorporation. Without limiting the provisions that may be included in any such contracts, the corporation may agree to: (a) restrict or prohibit itself from taking actions specified in the

contract, (b) require the approval or consent of one or more persons or bodies before the corporation may take actions specified in the contract (which persons or bodies may include the board of directors or one or more current or future directors, stockholders or beneficial owners of stock of the corporation), and (c) covenant that the corporation or one or more persons or bodies will take, or refrain from taking, actions specified in the contract (which persons or bodies may include the board of directors or one or more current or future directors, stockholders or beneficial owners of stock of the corporation). Solely for purposes of applying the proviso in the first sentence of this subsection, a restriction, prohibition or covenant in any such contract that relates to any specified action shall not be deemed contrary to the laws of this State or the certificate of incorporation by reason of a provision of this title or the certificate of incorporation that authorizes or empowers the board of directors (or any one or more directors) to take such action. With respect to all contracts made under this paragraph (18), the corporation shall be subject to the remedies available under the law governing the contract, including for any failure to perform or comply with its agreements under such contract.

Section 2. Amend Subchapter IV, Chapter 1, Title 8 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 147. Authorization of agreements and other instruments.

Whenever this chapter expressly requires the board of directors to approve or take other action with respect to any agreement, instrument or document, such agreement, instrument or document may be approved by the board of directors in final form or in substantially final form. If the board of directors shall have acted to approve or take other action with respect to an agreement, instrument or document that is required by this chapter to be filed with the Secretary of State or referenced in any certificate so filed, the board of directors may, at any time after providing such approval or taking such other action and prior to the effectiveness of such filing with the Secretary of State, adopt a resolution ratifying the agreement, instrument or document. A ratification under this section shall be deemed to be effective as of the time of the original approval or other action by the board of directors and to satisfy any requirement under this chapter that the board of directors approve or take other action with respect to such agreement, instrument or document in a specific manner or sequence. Ratification under this section shall not be deemed to be the exclusive means of ratifying an agreement, instrument or document approved by the board of directors pursuant to this section, but shall be in addition to any ratification or validation that may be available under §§ 204 and 205 of this title or under the common law.

Section 3. Amend § 232, Title 8 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 232. Delivery of notice; notice by electronic transmission.

(g) If a notice is given pursuant to paragraph (a)(1) or (a)(2) of this section, each document enclosed with the notice or annexed or appended to the notice shall be deemed part of the notice solely for purposes of determining whether notice was duly given under this title, the certificate of incorporation or bylaws.

(g)(h) No provision of this section, except for paragraphs (a)(1), (d)(2) and (d)(3) of this section, shall apply to § 164, § 296, § 311, § 312, or § 324 of this title.

Section 4. Amend § 261, Title 8 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 261. Remedies; appointment of stockholder representatives; effect ~~Effect~~ of merger upon pending actions.

(a) Any agreement of merger or consolidation governed by § 251, other than a merger effected pursuant to § 251(g) of this title, § 252, § 254, § 255, § 256, § 257, § 258, § 263 or § 264 of this title may provide:

(1) That (i) a party to the agreement that fails to perform its obligations under such agreement in accordance with the terms and conditions of such agreement, or that otherwise fails to comply with the terms and conditions of such agreement, in each case, required to be performed or complied with prior to the time such merger or consolidation becomes effective, or that otherwise fails to consummate, or fails to cause the consummation of, the merger or consolidation (whether prior to a specified date, upon satisfaction or, to the extent permitted by law, waiver of all conditions to such consummation set forth in such agreement, or otherwise) shall be subject, in addition to any other remedies available at law or in equity, to such penalties or consequences as are set forth in the agreement of merger or consolidation (which penalties or consequences may include an obligation to pay to the other party or parties to such agreement an amount representing, or based on the loss of, any premium or other economic entitlement the stockholders of such other party would be entitled to receive pursuant to the terms of such agreement if the merger or consolidation were consummated in accordance with the terms of such agreement) and (ii) if, pursuant to the terms of such agreement, a corporation is entitled to receive payment from another party to an agreement of merger or consolidation of any amount representing such a penalty or consequence (as specified in clause (i) of this paragraph (a)(1)), such corporation shall be entitled to enforce the other party's payment obligation and, upon receipt of any such payment, shall be entitled to retain the amount of such payment so received.

(2)(i) For the appointment, at or after the time at which the agreement of merger or consolidation is adopted by the stockholders of a constituent corporation to such merger or consolidation in accordance with the requirements of this subchapter, of one or more persons (which may include the surviving or resulting entity or any officer, manager, representative or agent thereof) as representative of the stockholders of a constituent corporation of this State, including those whose shares of capital stock shall be cancelled, converted or exchanged in the merger or consolidation and for the delegation to such person or persons of the sole and exclusive authority to take action on behalf of such stockholders pursuant to such agreement, including taking such actions as the representative determines to enforce (including by entering into settlements with respect to) the rights of such stockholders under the agreement of merger or consolidation, on the terms and subject to the conditions set forth in the agreement, (ii) that any appointment pursuant to clause (i) of this paragraph (a)(2) shall be irrevocable and binding on all such stockholders from and after the adoption of the agreement of merger or consolidation by the requisite vote of such stockholders pursuant to this subchapter, and (iii) that any provision adopted pursuant to this paragraph (a)(2) may not be amended after the merger or consolidation has become effective or may be amended only with the consent or approval of persons specified in the agreement of merger or consolidation.

Any provision of the agreement of merger or consolidation adopted pursuant to this subsection (a) may be made dependent upon facts (including, but not limited to, the occurrence of any event, including a determination or action by any person or body, including the corporation) ascertainable outside of such agreement, provided that the manner in which such facts shall operate upon the terms of the agreement is clearly and expressly set forth in the agreement of merger or consolidation.

(b) Any action or proceeding, whether civil, criminal or administrative, pending by or against any corporation which is a party to a merger or consolidation shall be prosecuted as if such merger or consolidation had not taken place, or the corporation surviving or resulting from such merger or consolidation may be substituted in such action or proceeding.

Section 5. Amend Subchapter IX, Chapter 1, Title 8 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 268. Amendments to certificate of incorporation of the surviving corporation; disclosure schedules.

(a) If an agreement of merger entered into pursuant to any provision of this subchapter, other than § 251(g) of this title, provides, with respect to any constituent corporation, that all of the shares of capital stock of such constituent corporation issued and outstanding immediately before the time at which the merger becomes effective shall be converted into or exchanged for cash, property, rights or securities (excluding stock of the surviving corporation), then, notwithstanding any other provision of this subchapter, with respect to such constituent corporation, (i) the agreement of merger as approved by the board of directors need not include any provision regarding the certificate of incorporation of the surviving corporation in order for the agreement of merger to be considered in final form or substantially final form, (ii) any amendment or amendment and restatement of the certificate of incorporation of the surviving corporation may be adopted by the board of directors of such constituent corporation or any person acting at the direction thereof (or, if under the terms of the agreement of merger the shares or equity interests of a constituent entity are to be converted into all of the shares of capital stock of the surviving corporation, the board of directors or governing body of such constituent entity or other person acting at the direction thereof), and (iii) no alteration or change of such certificate of incorporation shall be deemed to constitute an amendment to the agreement of merger.

(b) Unless otherwise expressly provided by an agreement of merger or consolidation, any disclosure letter, disclosure schedules or similar documents or instruments delivered in connection with the agreement that modify, supplement, qualify, or make exceptions to representations, warranties, covenants or conditions contained in the agreement shall not be deemed part of the agreement for purposes of any provision of this title but shall have the effects provided in the agreement.

Section 6. Sections 1 through 5 of this Act shall become effective on August 1, 2024, and shall apply to all contracts made by a corporation, all agreements, instruments or documents approved by the board of directors and all agreements of merger and consolidation entered into by a corporation, in each case whether or not the contracts, agreements, instruments, documents or agreements of merger or consolidation are made, approved or entered into on

or before such date, except that these Sections 1 through 6 of this Act shall not apply to or affect any civil action or proceeding completed or pending on or before such date.

Approved July 17, 2024