

CHAPTER 290
FORMERLY
HOUSE BILL NO. 375
AS AMENDED BY
HOUSE AMENDMENT NO. 1

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 § 104, Title 8, Delaware Code, by inserting “267, ” immediately following “263-264, ”.

Section 2. Amend § 111(a)(6), Title 8, Delaware Code, by striking said subsection in its entirety and substituting the following in lieu thereof:

“(6) Any agreement, certificate of merger or consolidation, or certificate of ownership and merger governed by §§ 251-253, §§ 255-258, §§ 263-264, or § 267 of this title;”.

Section 3. Amend § 114(b)(2), Title 8, Delaware Code, by inserting “267, ” immediately following “252, ”.

Section 4. Amend § 132(b), Title 8, Delaware Code, by inserting “for a domestic corporation or a foreign corporation” immediately after “Every registered agent”.

Section 5. Amend § 145(d), Title 8, Delaware Code, by adding “of the corporation” to the second sentence thereof immediately after “director or officer” and before “at the time of such determination”.

Section 6. Amend § 145(e), Title 8, Delaware Code, by striking said subsection in its entirety and substituting the following in lieu thereof:

“(e) Expenses (including attorneys’ fees) incurred by an officer or director of the corporation in defending any civil, criminal, administrative or investigative action, suit or proceeding may be paid by the corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such amount if it shall ultimately be determined that such person is not entitled to be indemnified by the corporation as authorized in this section. Such expenses (including attorneys’ fees) incurred by former directors and officers or other employees and agents of the corporation or by persons serving at the request of the corporation as directors, officers, employees or agents of another corporation, partnership, joint venture, trust or other enterprise may be so paid upon such terms and conditions, if any, as the corporation deems appropriate.”.

Section 7. Amend § 242(b), Title 8, Delaware Code, by striking “, as the directors shall deem advisable” from the third sentence of clause (1) thereof.

Section 8. Amend § 251(b)(3), Title 8, Delaware Code, by inserting “ (which amendments or changes may amend and restate the certificate of incorporation of the surviving corporation in its entirety)” immediately after “effected by the merger” and before the second “, ”.

Section 9. Amend § 251(c), Title 8, Delaware Code, by striking “, as the directors shall deem advisable” from the third sentence thereof.

Section 10. Amend § 251(c)(4), Title 8, Delaware Code, by inserting “ (which amendments or changes may amend and restate the certificate of incorporation of the surviving corporation in its entirety)” immediately after “effected by the merger” and before the second “, ”.

Section 11. Amend § 252(c)(4), Title 8, Delaware Code, by inserting “ (which amendments or changes may amend and restate the certificate of incorporation of the surviving corporation in its entirety)” immediately after “effected by the merger” and before the second “, ”.

Section 12. Amend § 252(d), Title 8, Delaware Code, by deleting the first two sentences thereof and replacing them with the following five sentences:

“If the corporation surviving or resulting from the merger or consolidation is to be governed by the laws of the District of Columbia or any state or jurisdiction other than this State, it shall agree that it may be served with process in this State in any proceeding for enforcement of any obligation of any constituent corporation of this State, as well as for enforcement of any obligation of the surviving or resulting corporation arising from the merger or consolidation, including any suit or other proceeding to enforce the right of any stockholders as determined in appraisal proceedings pursuant to § 262 of this title, and shall irrevocably appoint the Secretary of State as its agent to accept service of process in any such suit or other proceedings and shall specify the address to which a copy of such process shall be mailed by the Secretary of State. Process may be served upon the Secretary of State under this subsection by means of electronic transmission but only as prescribed by the Secretary of State. The Secretary of State is authorized to issue such rules and regulations with respect to such service as the Secretary of State deems necessary or appropriate. In the event of such service upon the Secretary of State in accordance with this subsection, the Secretary of State shall forthwith notify such surviving or resulting corporation thereof by letter, directed to such surviving or resulting corporation at its address so specified, unless such surviving or resulting 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 so designated. Such letter shall be sent by a mail or courier service that includes a record of mailing or deposit with the courier and a record of delivery evidenced by the signature of the recipient.”.

Section 13. Amend § 253(a), Title 8, Delaware Code, by striking the last sentence of said subsection in its entirety and substituting the following in lieu thereof:

“If the surviving corporation exists under the laws of the District of Columbia or any state or jurisdiction other than this State, (1) subsection (d) of § 252 of this title or subsection (c) of § 258 of this title, as applicable, shall also apply to a merger under this section and (2) the terms and conditions of the merger shall obligate the surviving corporation to provide the agreement, and take the actions, required by subsection (d) of § 252 of this title or subsection (c) of § 258 of this title, as applicable.”.

Section 14. Amend § 254(d)(4), Title 8, Delaware Code, by inserting “ (which amendments or changes may amend and restate the certificate of incorporation of the surviving corporation in its entirety)” immediately after “effected by the merger” and before the second “,”.

Section 15. Amend § 256(d), Title 8, Delaware Code, by deleting the first two sentences thereof and replacing them with the following five sentences:

“If the corporation surviving or resulting from the merger or consolidation is to be governed by the laws of any state other than this State, it shall agree that it may be served with process in this State in any proceeding for enforcement of any obligation of any constituent corporation of this State, as well as for enforcement of any obligation of the surviving or resulting corporation arising from the merger or consolidation and shall irrevocably appoint the Secretary of State as its agent to accept service of process in any suit or other proceedings and shall specify the address to which a copy of such process shall be mailed by the Secretary of State. Process may be served upon the Secretary of State under this subsection by means of electronic transmission but only as prescribed by the Secretary of State. The Secretary of State is authorized to issue such rules and regulations with respect to such service as the Secretary of State deems necessary or appropriate. In the event of such service upon the Secretary of State in accordance with this subsection, the Secretary of State shall forthwith notify such surviving or resulting corporation thereof by letter, directed to such corporation at its address so specified, unless such surviving or resulting 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 so designated. Such letter shall be sent by a mail or courier service that includes a record of mailing or deposit with the courier and a record of delivery evidenced by the signature of the recipient.”.

Section 16. Amend § 262(b)(3), Title 8, Delaware Code, by striking said subsection in its entirety and substituting the following in lieu thereof:

“(3) In the event all of the stock of a subsidiary Delaware corporation party to a merger effected under § 253 or § 267 of this title is not owned by the parent immediately prior to the merger, appraisal rights shall be available for the shares of the subsidiary Delaware corporation.”.

Section 17. Amend § 262(d)(2), Title 8, Delaware Code, by striking “§ 228 or § 253” where it appears in the first sentence of said subsection and substituting in lieu thereof “§ 228, § 253, or § 267”.

Section 18. Amend § 263(c)(4), Title 8, Delaware Code, by inserting “ (which amendments or changes may amend and restate the certificate of incorporation of the surviving corporation in its entirety)” immediately after “effected by the merger” and before the second “,”.

Section 19. Amend § 263(d), Title 8, Delaware Code, by deleting the first two sentences thereof and replacing them with the following five sentences:

“If the entity surviving or resulting from the merger or consolidation is to be governed by the laws of the District of Columbia or any state other than this State, it shall agree that it may be served with process in this State in any proceeding for enforcement of any obligation of any constituent corporation or partnership of this State, as well as for enforcement of any obligation of the surviving or resulting corporation or partnership arising from the merger or consolidation, including any suit or other proceeding to enforce the right of any stockholders as determined in appraisal proceedings pursuant to § 262 of this title, and shall irrevocably appoint the Secretary of State as its agent to accept service of process in any such suit or other proceedings and shall specify the address to which a copy of such process shall be mailed by the Secretary of State. Process may be served upon the Secretary of State under this subsection by means of electronic transmission but only as prescribed by the Secretary of State. The Secretary of State is authorized to issue such rules and regulations with respect to such service as the Secretary of State deems necessary or appropriate. In the event of such service upon the Secretary of State in accordance with this subsection, the Secretary of State shall forthwith notify such surviving or resulting corporation or partnership thereof by letter, directed to such surviving or resulting corporation or partnership at its address so specified, unless such surviving or resulting corporation or partnership 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 so designated. Such letter shall be sent by a mail or courier service that includes a record of mailing or deposit with the courier and a record of delivery evidenced by the signature of the recipient.”.

Section 20. Amend § 264(c)(4), Title 8, Delaware Code, by inserting “ (which amendments or changes may amend and restate the certificate of incorporation of the surviving corporation in its entirety)” immediately after “effected by the merger” and before the second “,”.

Section 21. Amend § 264(d), Title 8, Delaware Code, by deleting the first two sentences thereof and replacing them with the following five sentences:

“If the entity surviving or resulting from the merger or consolidation is to be governed by the laws of the District of Columbia or any state other than this State, it shall agree that it may be served with process in this State in any proceeding for enforcement of any obligation of any constituent corporation or limited liability company of this State, as well as for enforcement of any obligation of the surviving or resulting corporation or limited liability company arising from the merger or consolidation, including any suit or other proceeding to enforce the right of any stockholders as determined in appraisal proceedings pursuant to the provisions of § 262 of this title, and shall irrevocably appoint the Secretary of State as its agent to accept service of process in any such suit or other proceedings and shall specify the address to which a copy of such process shall be mailed by the Secretary of State. Process may be served upon the Secretary of State under this subsection by means of electronic transmission but only as prescribed by the Secretary of State. The Secretary of State is authorized to issue such rules and regulations with respect to such service as the Secretary of State deems necessary or appropriate. In the event of such service upon the Secretary of State in accordance

with this subsection, the Secretary of State shall forthwith notify such surviving or resulting corporation or limited liability company thereof by letter, directed to such surviving or resulting corporation or limited liability company at its address so specified, unless such surviving or resulting corporation or limited liability company 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 so designated. Such letter shall be sent by a mail or courier service that includes a record of mailing or deposit with the courier and a record of delivery evidenced by the signature of the recipient.”.

Section 22. Amend § 266(c)(6), Title 8, Delaware Code, by deleting the first two sentences thereof and replacing them with the following five sentences:

“The address to which a copy of the process referred to in subsection (c)(5) of this section shall be mailed to it by the Secretary of State. Process may be served upon the Secretary of State in accordance with subsection (c)(5) of this section by means of electronic transmission but only as prescribed by the Secretary of State. The Secretary of State is authorized to issue such rules and regulations with respect to such service as the Secretary of State deems necessary or appropriate. In the event of such service upon the Secretary of State in accordance with subsection (c)(5) of this section, the Secretary of State shall forthwith notify such corporation that has converted out of the State of Delaware by letter, 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 be sent by a mail or courier service that includes a record of mailing or deposit with the courier and a record of delivery evidenced by the signature of the recipient.”.

Section 23. Amend Title 8, Delaware Code, by inserting a new section 267 to read as follows:

“§ 267. Merger of parent entity and subsidiary corporation or corporations.

(a) In any case in which (1) at least 90% of the outstanding shares of each class of the stock of a corporation or corporations (other than a corporation which has in its certificate of incorporation the provision required by § 251(g)(7)(i) of this title), of which class there are outstanding shares that, absent this subsection, would be entitled to vote on such merger, is owned by an Entity, (2) 1 or more of such corporations is a corporation of this State, and (3) any Entity or corporation that is not an Entity or corporation of this State is an Entity or corporation of any other state or the District of Columbia, the laws of which do not forbid such merger, the Entity having such stock ownership may either merge the corporation or corporations into itself and assume all of its or their obligations, or merge itself, or itself and 1 or more of such corporations, into 1 of the other corporations by (a) authorizing such merger in accordance with such Entity’s Governing Documents and the laws of the jurisdiction under which such Entity is formed or organized and (b) acknowledging and filing with the Secretary of State, in accordance with § 103 of this title, a certificate of such ownership and merger certifying that such merger was authorized in accordance with such Entity’s Governing Documents and the laws of the jurisdiction under which such Entity is formed or organized, such certificate executed in accordance with such Entity’s Governing Documents and in accordance with the laws of the jurisdiction under which such Entity is formed or organized; provided, however, that in case the Entity shall not own all the outstanding stock of all the corporations, parties to a merger as aforesaid, (A) the certificate of ownership and merger shall state the terms and conditions of the merger, including the securities, cash, property, or rights to be issued, paid, delivered or granted by the surviving Constituent Party upon surrender of each share of the corporation or corporations not owned by the Entity, or the cancellation of some or all of such shares and (B) such terms and conditions of the merger may not result in a holder of stock in a corporation becoming a general partner in a surviving Entity that is a partnership (other than a limited liability

partnership or a limited liability limited partnership). Any of the terms of the merger may be made dependent upon facts ascertainable outside of the certificate of ownership and merger, provided that the manner in which such facts shall operate upon the terms of the merger is clearly and expressly set forth in the certificate of ownership and merger. The term “facts,” as used in the preceding sentence, includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body, including the Entity. If the surviving Constituent Party exists under the laws of the District of Columbia or any state or jurisdiction other than this State, (1) subsection (d) of § 252 of this title shall also apply to a merger under this section; if the surviving Constituent Party is the Entity, the word “corporation” where applicable, as used in Section 252(d), shall be deemed to include an Entity as defined herein; and (2) the terms and conditions of the merger shall obligate the surviving Constituent Party to provide the agreement, and take the actions, required by subsection (d) of § 252 of this title.

(b) Sections 259, 261, and 328 of this title shall, insofar as they are applicable, apply to a merger under this section, and Section 260 and subsection (e) of § 251 of this title shall apply to a merger under this section in which the surviving Constituent Party is a corporation of this State. For purposes of this subsection, references to “agreement of merger” in subsection (e) of § 251 of this title shall mean the terms and conditions of the merger set forth in the certificate of ownership and merger, and references to “corporation” in §§ 259-261 of this title, and § 328 of this title shall be deemed to include the Entity, as applicable. Section 262 of this title shall not apply to any merger effected under this section, except as provided in subsection (c) of this section.

(c) In the event all of the stock of a Delaware corporation party to a merger effected under this section is not owned by the Entity immediately prior to the merger, the stockholders of such Delaware corporation party to the merger shall have appraisal rights as set forth in § 262 of this title.

(d) A merger may be effected under this section although 1 or more of the Constituent Parties is a corporation organized under the laws of a jurisdiction other than 1 of the United States; provided that the laws of such jurisdiction do not forbid such merger.

(e) As used in this section only, the term:

(1) “Constituent Party” means an Entity or corporation to be merged pursuant to this Section 267;

(2) “Entity” means a partnership (whether general (including a limited liability partnership) or limited (including a limited liability limited partnership)), limited liability company, any association of the kind commonly known as a joint-stock association or joint-stock company and any unincorporated association, trust or enterprise having members or having outstanding shares of stock or other evidences of financial or beneficial interest therein, whether formed by agreement or under statutory authority or otherwise; and

(3) “Governing Documents” means a partnership agreement, limited liability company agreement, articles of association or any other instrument containing the provisions by which an Entity is formed or organized.”.

Section 24. Amend § 274, Title 8, Delaware Code, by inserting “: ” immediately after “stating” in the first sentence thereof and by inserting “ the date of filing of the corporation’s original certificate of incorporation with the Secretary of State;” immediately after the first “;” in the first sentence thereof.

Section 25. Amend § 275(d), Title 8, Delaware Code, by deleting “and” after “; ” in subsection (3) thereof, by deleting “.” at the end of subsection (4) thereof and substituting in lieu thereof “; and” and by inserting a new subsection (5) at the end thereof as follows:

“(5) The date of filing of the corporation’s original certificate of incorporation with the Secretary of State.”.

Section 26. Amend § 278, Title 8, Delaware Code, by adding the following to the end thereof:

“Sections 279 through 282 of this title shall apply to any corporation that has expired by its own limitation, and when so applied, all references in those sections to a dissolved corporation or dissolution shall include a corporation that has expired by its own limitation and to such expiration, respectively.”.

Section 27. Amend § 321(b), Title 8, Delaware Code, by deleting the first two sentences thereof and replacing them with the following five sentences:

“In case the officer whose duty it is to serve legal process cannot by due diligence serve the process in any manner provided for by subsection (a) of this section, it shall be lawful to serve the process against the corporation upon the Secretary of State, and such service shall be as effectual for all intents and purposes as if made in any of the ways provided for in subsection (a) hereof. Process may be served upon the Secretary of State under this subsection by means of electronic transmission but only as prescribed by the Secretary of State. The Secretary of State is authorized to issue such rules and regulations with respect to such service as the Secretary of State deems necessary or appropriate. In the event that service is effected through the Secretary of State in accordance with this subsection, the Secretary of State shall forthwith notify the corporation by letter, directed to the corporation at its principal place of business as it appears on the records relating to such corporation on file with the Secretary of State or, if no such address appears, at its last registered office. Such letter shall be sent by a mail or courier service that includes a record of mailing or deposit with the courier and a record of delivery evidenced by the signature of the recipient.”.

Section 28. Amend § 371(b)(1), Title 8, Delaware Code, by inserting “, as of a date not earlier than 6 months prior to the filing date,” immediately after “certificate” in the first sentence thereof.

Section 29. Amend § 371(b)(2), Title 8, Delaware Code, by deleting “which agent shall be either an individual resident in this State when appointed or another corporation authorized to transact business in this State” in the first sentence thereof and inserting in lieu thereof “which agent may be any of the foreign corporation itself, an individual resident in this State, a domestic corporation, a domestic partnership (whether general (including a limited liability partnership) or limited (including a limited liability limited partnership)), a domestic limited liability company, a domestic statutory trust, a foreign corporation (other than the foreign corporation itself), a foreign partnership (whether general (including a limited liability partnership) or limited (including a limited liability limited partnership)), a foreign limited liability company or a foreign statutory trust”.

Section 30. Amend § 376(b), Title 8, Delaware Code, by deleting the first two sentences thereof and replacing them with the following five sentences:

“In case the officer whose duty it is to serve legal process cannot by due diligence serve the process in any manner provided for by subsection (a) of this section, it shall be lawful to serve the process against the corporation upon the Secretary of State, and such service shall be as effectual for all intents and purposes as if made in any of the ways provided for in subsection (a) hereof. Process may be served upon the Secretary of State under this subsection by means of electronic transmission but only as prescribed by the Secretary of State. The Secretary of State is authorized to issue such rules and regulations with respect to such service as the Secretary of State deems necessary or appropriate. In the event that service is effected through the Secretary of State in accordance with this subsection, the Secretary of State shall forthwith notify the corporation by letter, directed to the corporation at its principal place of business as it appears on the last annual report filed pursuant to § 374 of this title or, if no such address appears, at its last registered office. Such letter shall be sent by a mail or courier service that includes a record of mailing or deposit with the courier and a record of delivery evidenced by the signature of the recipient.”.

Section 31. Amend § 381(c), Title 8, Delaware Code, by adding the following two sentences at the end thereof:

“Process may be served upon the Secretary of State under this subsection by means of electronic transmission but only as prescribed by the Secretary of State. The Secretary of State is authorized to issue such rules and regulations with respect to such service as the Secretary of State deems necessary or appropriate.”.

Section 32. Amend § 381(d), Title 8, Delaware Code, by deleting “certified mail, return receipt requested, ” in the first sentence thereof and by inserting a new sentence immediately after the first sentence thereof as follows:

“Such letter shall be sent by a mail or courier service that includes a record of mailing or deposit with the courier and a record of delivery evidenced by the signature of the recipient.”.

Section 33. Amend § 382(a), Title 8, Delaware Code, by adding the following two sentences at the end thereof:

“Process may be served upon the Secretary of State under this subsection by means of electronic transmission but only as prescribed by the Secretary of State. The Secretary of State is authorized to issue such rules and regulations with respect to such service as the Secretary of State deems necessary or appropriate.”.

Section 34. Amend § 382(c), Title 8, Delaware Code, by deleting “certified mail, return receipt requested, ” in the first sentence thereof and by inserting a new sentence immediately after the first sentence thereof as follows:

“Such letter shall be sent by a mail or courier service that includes a record of mailing or deposit with the courier and a record of delivery evidenced by the signature of the recipient.”.

Section 35. Amend § 390(b)(5), Title 8, Delaware Code, by adding the following eight sentences at the end thereof as follows:

“Process may be served upon the Secretary of State under this subsection by means of electronic transmission but only as prescribed by the Secretary of State. The Secretary of State is authorized to issue such rules and regulations with respect to such service as the Secretary of State deems necessary or appropriate. In the event of service upon the Secretary of State in accordance with this subsection, the Secretary of State shall forthwith notify such corporation that has transferred out of the State of Delaware by letter, directed to such corporation that has transferred 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 be sent by a mail or courier service that includes a record of mailing or deposit with the courier and a record of delivery evidenced by the signature of the recipient. 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 36. Effective Date. Sections 1-15 and Sections 18-35 shall be effective on August 2, 2010. Sections 16-17 shall be effective only with respect to transactions consummated pursuant to agreements entered into after August 1, 2010 (or, in the case of mergers pursuant to Section 253, resolutions of the board of directors adopted after August 1, 2010 and in the case of mergers pursuant to Section 267, mergers authorized after August 1, 2010), and appraisal proceedings arising out of such transactions.

Approved June 10, 2010