

## 2012 Amendments to the Delaware General Corporation Law

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The Delaware General Assembly has recently approved a number of **amendments** to the Delaware General Corporation Law, which have been signed into law by Gov. Jack Markell. As described below, the amendments are of a fairly technical nature but nevertheless important in the circumstances in which they apply.

These amendments will become effective on August 1, 2012, with the exception of the amendments to Section 377 adding subsections (d) and (e), which will become effective on August 1, 2013.

### Amendments Relating to Certain Certificates of Merger or Consolidation

A certificate of merger or consolidation executed in accordance with Section 103 now must state the type of entity of each of the constituent entities when filed in connection with certain mergers and consolidations involving entities other than domestic corporations.

Conforming amendments to Sections 254(d)(1), 263(c)(1), 265(c)(2) and 267(a) have been made.

### Amendments to Sections 311 and 312

Amendments to Section 311(a)(4) require that a certificate of revocation of dissolution must state the address of the corporation's registered office in Delaware, in accordance with Section 131(c), as well as the name of the corporation's registered agent at such address.

Similar amendments to Section 312(d)(2) require that a statement of a corporation's address in a certificate of extension, restoration, renewal or revival of a certificate of incorporation shall be stated in accordance with Section 131(c).<sup>1</sup>

### Amendments to Section 377

Amendments to Section 377(a)(2) provide that the registered agent of a foreign corporation registered to do business in Delaware must comply with Section 371(b)(2)(i).

Amendments to Section 377(b) clarify the types of entities that may be designated by a foreign corporation as its registered agent for service of process.

Section 377 was further amended to add a new requirement to provide for the reinstatement of a foreign corporation's qualification when it has been forfeited for failure to appoint a registered agent.<sup>2</sup>

<sup>1</sup> Section 131(c) was added by amendment in 2011 and provides: "As contained in any certificate of incorporation or other document filed with the Secretary of State under this chapter, the address of a registered office shall include the street, number, city, county and postal code."

<sup>2</sup> The new Sections 377(d) and (e) provide:

A foreign corporation whose qualification to do business in this State has been forfeited pursuant to section 132(f)(4) or section 136(b) of this title may be reinstated by filing a certificate of reinstatement with the Secretary of State, acknowledged in accordance with Section 103 of this title, setting forth:

(1) the name of the foreign corporation;

### **Amendments to Section 381**

Amendments to Section 381 remove the provision allowing the filing of a dissolution from a foreign jurisdiction in place of the certificate of withdrawal required by Section 381. The amendments also confirm the practice of solely providing a certificate evidencing the foreign corporation's surrender and withdrawal to such foreign corporation by removing the requirement that a certificate be delivered to the foreign corporations' registered agent.

### **Amendments to Section 390**

Amendments to Section 390(b)(5) clarify that the address provided for service of process by a corporation transferring or domesticating in a foreign jurisdiction may not be that of the corporation's registered agent without the written consent of such registered agent. The amendments further clarify that such consent must be filed with the Secretary of State along with a certificate of transfer.

### **Amendments to Section 391**

Amendments to Section 391 clarify that charges assessed by the state pursuant to that section are not taxes and set forth a fee of \$10 for the reinstatement of a foreign corporation.

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(2) the effective date of the forfeiture; and

(3) the name and address of the foreign corporation's registered agent required to be maintained by § 132 of this title.

(e) Upon the filing of a certificate of reinstatement in accordance with subsection (d) of this section, the qualification of the foreign corporation to do business in this State shall be reinstated with the same force and effect as if it had not been forfeited pursuant to this title.