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Significant Delaware Corporation Law Amendments Enacted

Delaware Governor Matthew Meyer has signed into law significant changes to Sections 144 and 220 of the Delaware General Corporation Law ("DGCL"). After vigorous debate, the amendments were approved by significant majorities in both houses of the Delaware General Assembly in substantially the form proposed by the sponsors of the bill, after the Delaware General Assembly received input from the Corporation Law Section of the Delaware State Bar Association. As we previously discussed, these amendments aim to provide greater clarity and predictability in structuring controller and other interested transactions, and to reduce undue burdens on corporations by modifying the standards applicable to stockholder access to corporate books and records. We maintain our view that these statutory amendments are highly beneficial to Delaware corporations and their stockholders. Key amendments include:

- Implementing a statutory safe harbor to provide liability protection for controller/interested transactions that comply with more straightforward, specified procedures. For controlling stockholder going-private transactions to qualify for the safe harbor, the procedures are a modified *MFW* framework, requiring approval by both (i) a committee of directors determined to be independent by the board, and (ii) a majority of the votes cast by disinterested stockholders. Non-squeeze-out transactions with controlling stockholders and other interested transactions would have to satisfy only one prong of this framework to qualify for the safe harbor.

- Defining "controlling stockholder" as a stockholder that (i) owns a majority in voting power; (ii) owns at least one-third in voting power and exercises managerial authority; or (iii) otherwise has sufficient voting power or rights to control the board.

- Adding more rigorous standards governing stockholder demands to inspect corporate books and records, including modifying the requirements for what constitutes a proper demand, narrowing the books and records accessible to stockholders upon a proper demand and imposing heightened evidentiary standards for obtaining non-formal books and records such as emails and text messages.

The amendments became effective on March 25, 2025 and apply retroactively, except for actions or proceedings completed or pending, or demands to inspect books and records made, on or before February 17, 2025. In the appendix to this memorandum we provide additional detail on the amendments as compared to prior law. Please note that the appendix is summary in nature and the legal effect of the amendments could differ based on specific facts and circumstances; the enacted law should be reviewed in full.

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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Appendix

KEY AMENDMENTS TO SECTION 144 OF THE DGCL (MARCH 2025)		
Topic	**Pre-Amendment Law**	**Amended Section 144**
Overview Standards of Review for Interested and Controlling Stockholder Transactions	*Standards Defined by Caselaw:* Any acts or transactions where a conflicted controlling stockholder stands on both sides of the transaction or otherwise receives a non-ratable benefit not shared by all stockholders would be subject to entire fairness review[1] unless both of two protective measures are satisfied.[2] Interested director or officer transactions where one of the presumptions of the business judgment rule[3] is rebutted would be subject to entire fairness review unless the transaction was approved by a fully informed, uncoerced vote of disinterested stockholders.[4]	*Safe Harbors Defined by Statute:* Under the new Section 144, certain enumerated interested or conflicted acts or transactions may not be the subject of equitable relief, or give rise to an award of damages, by reason of a claim based on a breach of fiduciary duty by a director, officer, controlling stockholder or a member of a control group, if one or both (depending on the nature of the transaction) of two protective measures are satisfied, or if the transaction "is fair to the corporation and its stockholders." We refer to this in general terms as the new "statutory safe harbor."
Interested Director/Officer Transactions	Pre-amendment Section 144 applied only to interested director and officer transactions and, practically speaking, had limited application. Compliance with any of the three standards listed in the statute (discussed below) only ensured that the transaction was not void or voidable, but such transaction could still be the subject of equitable review. Under pre-amendment Section 144, no contract or transaction with a conflicted director or officer was void or voidable if it was:	An interested director or officer transaction will be protected by the statutory safe harbor if it is either: • Approved by a majority of the disinterested directors on the board or a committee in good faith and without gross negligence. The material facts concerning the nature of the conflict of interest and the transaction must be disclosed or known to all members of the board or committee and, if a majority of the board is not disinterested, the approval must be by a committee of at

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1 Entire fairness is the most exacting standard of judicial review under Delaware law for corporate transactions. It places the burden on defendants to prove that the challenged transaction was entirely fair, taking into account in a unitary analysis both process (fair dealing) and financial (fair price) considerations.

2 *In re Match Grp., Inc. Derivative Litig.*, 315 A.3d 446 (Del. 2024).

3 The business judgment rule is a presumption that directors "acted on an informed basis, in good faith and in the honest belief that the action was taken in the best interests of the company." *In re Walt Disney Co. Derivative Litig.*, 906 A.2d 27, 52 (Del. 2006). When the business judgment rule applies, Delaware courts will not overturn a board's decision unless the decision cannot be attributed to any rational business purpose.

4 *In re KKR Fin. Hldgs. LLC S'holder Litig.*, 101 A.3d 980, 1003 (Del. Ch. 2014), *aff'd sub nom*., *Corwin* v. *KKR Fin. Hldgs LLC*, 125 A.3d 304 (Del. 2015); *see also Larkin* v. *Shah*, 2016 WL 4485447, at *10-13 (Del. Ch. Aug. 25, 2016).

	• Authorized in good faith by a majority of the disinterested directors on the board or a committee and the material facts concerning the nature of the conflict of interest and the transaction were disclosed or known to the board or committee; • Approved by a majority of the outstanding shares held by stockholders and the material facts concerning the nature of the conflict of interest and the transaction were disclosed or known to the stockholders; or • Fair as to the corporation.	least two directors, each of whom the board determines to be disinterested; or • Approved or ratified by an informed and uncoerced vote of a majority of the votes cast by the disinterested stockholders. The statutory safe harbor also will apply if the transaction is fair to the corporation and its stockholders. The term "fair to the corporation and its stockholders" is not defined in the amended statute, but the statutory synopsis states that this reference is "intended to be consistent with the entire fairness doctrine developed in the common law."
Going-Private Transactions	Under longstanding case law, a squeeze-out merger by a controlling stockholder presumptively would be subject to entire fairness review. Based on the 2014 decision in *MFW*[5] and its progeny, a squeeze out merger could be subject to business judgment review, but only if the transaction was irrevocably conditioned *ab initio* (*i.e.*, before the start of substantive economic negotiations) on the approval of both: • A fully empowered committee consisting solely of independent and disinterested directors who satisfy their duty of care; and • A fully informed, uncoerced vote of a majority of the outstanding shares held by disinterested stockholders. We refer to this standard as the "*MFW* framework."	A going-private transaction[6] by a controlling stockholder will be protected by the statutory safe harbor if both of the following occur: • The transaction is approved in good faith and without gross negligence by a majority of the disinterested directors on a committee consisting of at least two directors, each of whom the board determines to be disinterested with respect to the controlling stockholder. The material facts as to the controlling stockholder transaction must be disclosed to or known by all members of the committee and the committee must be fully empowered to negotiate and reject the transaction, and • The transaction is conditioned on the approval of the disinterested stockholders before being submitted for a vote, and the transaction is approved by an informed, uncoerced vote of a majority of the votes cast by the disinterested stockholders.

5 *Kahn* v. *M&F Worldwide Corp.*, 88 A.3d 635 (Del. 2014).

6 In general terms, DGCL 144(e)(6) defines a "going private transaction" as (i) for companies with Securities Exchange Act-registered securities, a SEC Rule 13e-3 transaction, and (ii) for any other corporation, any controlling stockholder transaction pursuant to which all or substantially all of the shares of the corporation's capital stock held by the disinterested stockholders are cancelled, converted, purchased or otherwise acquired or cease to be outstanding.

		The statutory safe harbor also will apply if the transaction is fair to the corporation and its stockholders.
Other Conflicted Controlling Stockholder or Control Group Transactions	Recently, the Delaware Supreme Court clarified that transactions other than squeeze-out mergers where a controlling stockholder or a control group receives a material non-ratable benefit not shared by all stockholders presumptively are subject to entire fairness review and may be governed by business judgment review but only if the transaction complies with the entire *MFW* framework.[7]	All other transactions involving a conflicted controlling stockholder or control group will be protected by the statutory safe harbor if the transaction complies with either of the two protective measures applicable to a going-private transaction (discussed above). The statutory safe harbor also will apply if the transaction is fair to the corporation and its stockholders.
Independence Requirement for Committees	To satisfy the *MFW* framework, all directors on a committee must be disinterested and independent.[8]	The board must determine when creating a committee that all directors on such committee are disinterested. Even if a court later disagrees with the board's determination of disinterestedness as to one or more members of a committee, the statutory safe harbor will still apply as long as the court finds that a majority of the remaining directors of such committee approving the transaction are disinterested.
Disinterested/ Independent Director Definition	At common law, a director is considered independent and disinterested when he or she does not have any material financial or other interest in an act or transaction and is not beholden to any other director or person who has a material financial or other interest in the act or transaction. Applying this standard is a highly fact-specific analysis that takes into account not	"Disinterested director" is defined as a director who is not a party to an act or transaction, and does not have a material interest in the act or transaction or a material relationship with a person that has a material interest in the act or transaction.[9] Directors of public companies are presumed to be disinterested if the director is not a party to the act or transaction and

7 *Id.*

8 *In re Match Group, Inc. Deriv. Litig.*, 315 A.3d 446 (Del. 2024); *Maffei* v. *Palkon*, 2025 WL 384054 (Del. Feb. 4, 2025).

9 "Material Interest" means "an actual or potential benefit, including the avoidance of a detriment, other than one which would devolve on the corporation or the stockholders generally, that (i) in the case of a director, would reasonably be expected to impair the objectivity of the director's judgment when participating in the negotiation, authorization, or approval of the act or transaction at issue and (ii) in the case of a stockholder or any other person (other than a director), would be material to such stockholder or such other person."

"Material Relationship" means "means a familial, financial, professional, employment, or other relationship that (i) in the case of a director, would reasonably be expected to impair the objectivity of the director's judgment when participating in the negotiation, authorization, or approval of the act or transaction at issue and (ii) in the case of a stockholder, would be material to such stockholder."

	only financial considerations, but also a range of other relationships, including social, personal and professional relationships.	the board determines that such director satisfies the criteria for director independence under the applicable exchange rules, as applied to the corporation and, if applicable, with respect to the particular transaction, a controlling stockholder or control group. The fact that a director was nominated or appointed to the board by a person that has a material interest in an act or transaction will not, by itself, be evidence that a director is not disinterested.
Controlling Stockholder Definition	Over the past decade, Delaware courts increasingly have determined whether a stockholder is a controller by engaging in a facts-and-circumstances analysis that takes into account, among other factors, voting power, contractual rights, commercial relationships and relationships with particular directors and key managers.[10] Courts applying this form of analysis have found stockholders that own well below one-third of the voting power of a corporation to be controllers due to the authority they exerted over the corporation.[11]	A controlling stockholder is defined as a stockholder who either: • Owns a majority of the voting power entitled to vote in the election of directors (or in the election of directors who have a majority in voting power of the votes of all directors on the board); • Has the right, by contract or otherwise, to appoint or cause the election of a majority of the directors (or directors that have a majority in voting power of the votes of all directors on the board); or • Owns or controls one-third of the voting power entitled to vote in the election of directors (or in the election of directors who have a majority in voting power of the votes of all directors on the board) and has the power to exercise managerial authority over the corporation.
Control Group Definition	Delaware courts determine whether a group of stockholders constitute a control group by examining whether such stockholders "are connected in some legally significant way – such as by contract, common	A control group is defined as two or more stockholders that, by virtue of an agreement, arrangement or understanding,

[10] *Basho Technologies Holdco B, LLC* v. *Georgetown Basho Investors, LLC*, 2018 WL 3326693, at *25-28 (Del. Ch. July 6, 2018).

[11] *See, e.g.*, *Tornetta* v. *Musk*, 310 A.3d 430 (Del. Ch. 2024) (controller status at 21.9%); *FrontFour Cap. Grp. LLC* v. *Taube*, 2019 WL 1313408 (Del. Ch. Mar. 11, 2019) (controller status at 15%); *In re Zhongpin Inc. S'holder Litig.*, 2014 WL 6735457 (Del. Nov. 26, 2024) (controller status at 17%).

	ownership, agreement or other arrangement – to work together toward a shared goal." To satisfy this standard, "there must be some indication of an actual agreement, although it need not be formal or written."[12]	between or among such stockholders, constitute a controlling stockholder.
Controlling Stockholder Fiduciary Duties	Under well-established law, controlling stockholders and control groups owe fiduciary duties to the corporation and its minority stockholders when they use their influence over the board and management to cause the corporation to act, but generally do not owe fiduciary duties when exercising their rights as stockholders to vote or sell stock. In a recent decision on an issue of first impression, which remains subject to appellate review, the Delaware Court of Chancery held that controllers and control groups owe fiduciary duties not to harm the corporation or its minority stockholders intentionally or through gross negligence when exercising rights as stockholders to alter a corporation's status quo.[13]	Controlling stockholders and members of a control group shall not be liable in their capacity as such to the corporation or its stockholders for monetary damages for breach of fiduciary duty other than for: • A breach of the duty of loyalty; • Acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of the law; or • Any transaction from which the person derived an improper personal benefit.

[12] *Sheldon* v. *Pinto Technology Ventures, L.P.*, 220 A.3d 245, 251–52 (Del. 2019) (internal quotations omitted).

[13] *In re Sears Hometown & Outlet Stores, Inc. S'holder Litig*., 309 A.3d 474 (Del. Ch. 2024).

KEY AMENDMENTS TO SECTION 220 OF THE DGCL (MARCH 2025)		
Topic	**Pre-Amendment Law**	**Amended Section 220**
Scope of books and records inspections	The term "books and records" was undefined in the statute. Historically, if a proper purpose was established, courts typically would require the production of formal corporate records, such as board minutes and board materials. More recently, the scope of documents subject to production expanded in some cases to include emails and text messages related to corporate action. In 2019, the Delaware Supreme Court clarified that corporations generally should not have to produce electronic documents (such as emails and text messages) if traditional board-level materials, such as minutes, would accomplish the stockholder's proper purpose.[14]	"Books and records" is defined to include: • Certificate of incorporation and bylaws; • Board/committee meeting minutes and materials; • Communications sent to stockholders, stockholder meeting minutes or consents evidencing stockholder action (limited to last three years); • Annual financial statements (limited to last three years); • Agreements between the corporation and any stockholder entered into under DGCL Section 122(18); and • Director and officer independence questionnaires. The Court of Chancery may not order the production of any records other than those specified above, with two exceptions: Exception #1: If the corporation does not have minutes of board, committee or stockholder meetings, annual financial statements, or (for public corporations) director and officer independence questionnaires, the Court of Chancery may order the production of records that are the "functional equivalent" of these categories of records, but only if and to the extent (i) the stockholder has demonstrated a proper purpose and satisfied the other statutory requirements to conduct an inspection, and (ii) such records are "necessary and essential" to fulfill the stockholder's purpose. Exception #2: The Court of Chancery may order the production of additional specific records of the corporation but only if and to the extent the stockholder (i) has demonstrated a proper purpose and satisfied the other statutory requirements to conduct an inspection, (ii) has

[14] *KT4 Partners, LLC* v. *Palantir Technologies Inc.*, 203 A.3d 738 (Del. 2019).

		demonstrated a compelling need for such records and (iii) has demonstrated by clear and convincing evidence that such records are "necessary and essential" to fulfill the stockholder's purpose.
Procedural Requirements	Stockholders were entitled to inspect books and records if they demonstrated a "proper purpose" – *i.e.*, "a purpose reasonably related to such person's interest as a stockholder."[15]	Stockholders are entitled to inspect books and records (as defined above) if: • The demand is made in good faith and for a proper purpose; • The demand describes with reasonable particularity the stockholder's purpose and the books and records to be inspected; and • The books and records sought are specifically related to the stockholder's purpose.
Confidentiality and Use of Corporate Books and Records	A court could, in its discretion, prescribe limitations or conditions with respect to an inspection of books and records. Courts routinely implemented reasonable restrictions on the confidentiality and use of corporate records, although there was no presumption of confidentiality.[16]	Corporations may impose reasonable restrictions on the confidentiality, use or distribution of any books and records that stockholders are permitted to inspect. The court may impose similar restrictions for any records it orders to be produced. Corporations may redact portions of any books and records produced to the extent such portions are not specifically related to the stockholder's purpose.

[15] 8 Del. C. § 220(b) (2024).

[16] *Tiger* v. *Boast Apparel, Inc.*, 214 A.3d 933 (Del. 2019) ("[A]lthough the Court of Chancery may—and typically does—condition Section 220 inspections on the entry of a reasonable confidentiality order, such inspections are not subject to a presumption of confidentiality.").