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Recent Amendments to Delaware's General Corporation Law Permit Charter or Bylaws to Limit Venue for an Expanded Category of Stockholder Suits, Among Other Changes

By Craig E. Rushmore, Amber J. Zelko, and Emily K. Cowan

Following recent amendments to the General Corporation Law of the State of Delaware (the "**DGCL**"), a corporation's charter or bylaws may provide that certain claims by stockholders must be asserted in a specific venue in addition to Delaware. Except as otherwise explained below, this and the other amendments discussed in this article took effect on August 1, 2025.

Stockholder Suits

In 2015, the DGCL was amended by adding a new section, § 115, which permits a corporation's charter or bylaws to require that "internal corporate claims" be brought exclusively "in any or all of the courts in [Delaware,]" subject to "applicable jurisdictional requirements." "Internal corporate claims" are defined as "claims, including claims in the right of the corporation, (i) that are based upon a violation of a duty by a current or former director or officer or stockholder in such capacity, or (ii) as to which this title [i.e., Title 8] confers jurisdiction upon the Court of Chancery." Section 115 states further that the charter or bylaws may not prohibit the bringing of internal corporate claims in Delaware.

Under the 2025 amendments, a corporation's charter or bylaws may now require certain stockholder claims that are **not** internal corporate claims to be brought "only in 1 or more prescribed forums or venues," as long as stockholders are not barred from asserting those claims "in at least 1 court in [Delaware] that has jurisdiction[.]"[1] The types of claims that may be channeled to a specific venue or venues are those brought by a stockholder when acting in its capacity as a stockholder or acting in the right of the corporation, and they must "relate to the business of the corporation, the conduct of its affairs, or the rights or powers of the corporation or its stockholders, directors or officers[.]"[2] Any such requirement in a charter or bylaws must be "consistent with applicable jurisdictional requirements" and thus may not, for example, require stockholders to bring in the Delaware Court of Chancery claims over which that court does not have subject-matter jurisdiction.[3]

The amendments have similarly expanded the DGCL's prohibition on charter or bylaw provisions that would shift attorneys' fees and litigation expenses to stockholder plaintiffs. In 2015, the DGCL was amended to bar such fee-shifting provisions only in the case of internal corporate claims, as defined above.[4] The 2025 amendments cause the prohibition to apply also to "any other claim that a stockholder, acting in its capacity as a stockholder or in the right of the corporation, has brought in an action, suit or proceeding."[5] Neither the fee-shifting amendment nor the exclusive-jurisdiction amendment discussed above is "intended to prevent the application of a provision on fee-shifting, or the selection of a forum other than a court in this State, if the provision is included in a stockholder agreement or other writing signed by the

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stockholder against whom the provision is to be enforced[.]"[6]

Revival of Charter, Revocation of Dissolution, and Reinstatement of Qualification to Do Business

Several changes have been made to the DGCL regarding the procedures to revive a void corporate charter, revoke a vote to dissolve, and reinstate a foreign corporation's qualification to do business in Delaware.

An amendment to the charter-revival provisions (DGCL § 312) harmonizes them with the provisions added in 2013 enabling corporations to cure past defective corporate acts (DGCL § 204).[7] When a corporation's charter has become void (typically, as a result of failure to timely pay the annual corporate franchise tax), it can be revived under § 312 by the filing of a certificate of revival, provided that the corporation pays an amount calculated to reflect past-due taxes.[8] New language added to § 312 now provides that if a corporation files a certificate of validation under § 204 to cure a defective corporate act, and the certificate relates to a time when the corporation's charter was void, the corporation must at the same time also file any annual franchise tax reports, and pay any franchise taxes, that it would have had to file and pay while the charter was void.[9]

The DGCL also permits a corporation to revoke dissolution by a stockholder vote and the filing of a certificate of revocation of dissolution.[10] The amendments have added to the information that must be included in that certificate. It must now include, in addition to the information previously required, the date when the corporation's original charter was filed and the date when the certificate of dissolution was filed.[11]

The amendments also make clear that when a foreign corporation seeks reinstatement of its qualification to do business in Delaware, it must file all reports and pay all fees that would have been due while its qualification was forfeited, in addition to filing a certificate of reinstatement.[12]

Franchise Taxes

Delaware corporations are annually required to file a franchise tax report with the Secretary of State and pay a franchise tax determined in accordance with §§ 501 and 503 of Title 8. The 2025 amendments have made two changes to the provisions governing franchise tax reports. The first change provides that the information to be included in a franchise tax report must now include "[t]he nature of the business of the corporation[.]"[13] The second change pertains to the requirement that the report give the street address of the corporation's principal place of business ("**PPB**"). The statute has provided since 2022 that a corporation cannot use the address of its registered agent as the address of its PPB unless the corporation has its PPB in Delaware and serves as its own registered agent.[14] Language has now been added to make clear that a corporation that is not its own registered agent in Delaware may not use the address of **any** registered agent as the corporation's PPB.[15]

The amendments have eliminated the method of franchise tax calculation that formerly applied expressly and solely to "regulated investment companies as defined by § 851 of the federal Internal Revenue Code [26 U.S.C. § 851]."[16] Regulated investment companies now calculate their Delaware franchise taxes under the generally applicable provisions, found in DGCL § 503(a).

The amendments have also added language making clear that a corporation will not be entitled to a refund of any Delaware franchise taxes as a consequence of the corporation's filing of a certificate of validation or a certificate of correction.[17]

Other Amendments

The DGCL provisions regarding registered agents have been amended to make clear that a Delaware registered agent "may not perform its duties or functions solely through the use of a virtual office, the retention by the agent of a mail forwarding service, or both."[18] The amendment defines "virtual office" as conducting "duties or functions solely through the internet or solely through other means of remote communication."[19] In addition, language that was potentially ambiguous about what can constitute a corporation's "registered office" in Delaware has been replaced by a straightforward statement that "'registered office' means the address of the registered agent located in this State being appointed to accept service of process and otherwise perform the duties of a registered agent."[20]

Since 2002, the DGCL has prohibited the issuance of stock certificates in bearer form.[21] The 2025 amendments have extended this prohibition to the certificates representing "scrip or warrants" that corporations can issue in place of fractional shares.[22]

The contents of the certificate of merger that is filed in connection with a merger of Delaware and non-Delaware corporations have been simplified. There is no longer a requirement that the certificate state the number of authorized shares of stock of the non-Delaware corporation, when the surviving corporation is a Delaware corporation.[23]

Finally, the amendments confirm that a certificate of correction can be used not only to correct, but also to nullify, an instrument that has been filed with the Secretary of State. A certificate of correction used for nullification, like one used for correction, must state "the inaccuracy or defect" that prompted the filing. But instead of setting forth corrected text, it must "provide for the nullification of the instrument."[24] According to the accompanying legislative synopsis, "[a] statement that the previously filed instrument is nullified or void, or a statement with words of similar meaning, will constitute sufficient provision for the nullification."[25]

Effective Time of the Amendments

All of the 2025 amendments described above took effect on August 1, 2025, except that the repeal of the franchise tax calculations applicable to regulated investment companies will apply only to tax years beginning January 1, 2026.[26]

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1 8 *Del. C.* § 115(c). The legislative synopsis that accompanies the 2025 amendments explains that for purposes of amended § 115, the U.S. District Court for the District of Delaware is a court in Delaware. Del. S.B. 95 syn., 153d Gen. Assem. (2025).

2 The amendment thus pertains to the category of claims that involve a corporation such that they can be regulated by its charter or bylaws, but are nevertheless not internal corporate claims. The existence of this category of claims was recognized by the Delaware Supreme Court in *Salzberg v. Sciabacucchi*, 227 A.3d 102 (Del. 2020). Del. S.B. 95 syn., 153d Gen. Assem. (2025).

3 8 *Del. C.* § 115(c); *see also* Del. S.B. 95 syn., 153d Gen. Assem. (2025) (noting that in this regard, amended § 115 "reaches a result different from" *Lee v. Fisher*, 70 F.4th 1129 (9th Cir. 2023), and *Sobel v. Thompson*, No. 1:21-CV-272-RP, 2023 WL 4356066 (W.D. Tex. July 5, 2023)).

4 80 Del. Laws ch. 40, §§ 2, 3 (2015).

5 8 *Del. C.* § 102(f) (charters), § 109(b) (bylaws). These provisions apply only to corporations that are authorized to issue stock. 8 *Del. C.* § 114(b)(2).

6 Del. S.B. 95 syn., 153d Gen. Assem. (2025).

7 79 Del. Laws ch. 72, § 4 (2013, effective Apr. 1, 2014).

8 8 *Del. C.* § 312.

9 8 *Del. C.* § 312(g).

10 8 *Del. C.* § 311. Dissolution can be revoked only within the three years following the dissolution "or such longer period as the Court of Chancery may have directed pursuant to § 278" of the DGCL. *Id.* § 311(a).

11 8 *Del. C.* § 311(a).

12 8 *Del. C.* § 377(e).

13 8 *Del. C.* § 502(a)(3).

14 83 Del. Laws ch. 377, § 16 (2022).

15 8 *Del. C.* § 502(a)(4).

16 Repealed subsection (h) of 8 *Del. C.* § 503.

17 8 *Del. C.* §§ 503(e), 505(a).

18 8 *Del. C.* § 132(b)(2).

19 *Id.*

20 8 *Del. C.* § 131(b).

21 73 Del. Laws ch. 298, § 3 (2002).

22 8 *Del. C.* § 155. The purpose of this amendment was "to bring § 155 in line with the Corporate Transparency Act, 31 U.S.C. § 5336(f)[.]" Del. S.B. 95 syn., 153d Gen. Assem. (2025).

23 8 *Del. C.* § 252(c)(8).

24 8 *Del. C.* § 103(f).

25 Del. S.B. 95 syn., 153d Gen. Assem. (2025).

26 Del. S.B. 95, 153d Gen. Assem. §§ 15-16 (2025).

Delaware LLC and LP Acts Have Recently Been Amended to Authorize Implied Ratification of Void or Voidable Acts, Among Other Changes

By Lauren M. McCrery and Daniel M. Cole

Effective August 1, 2025, the Delaware Limited Liability Company Act (the "**DLLCA**") and the Delaware Revised Uniform Limited Partnership Act (the "**DRULPA**") have been amended to provide, among other things, that a void or voidable act relating to an LLC or LP can be ratified impliedly, including by inaction.

Ratification of Void or Voidable Acts

In 2021, the DLLCA and DRULPA were amended to provide that a void or voidable act or transaction regarding an LLC or LP could subsequently be ratified by the members or managers (in the case of an LLC), partners (in the case of an LP), or other persons whose approval would be needed for validly engaging in the act or transaction.[1] The 2025 amendments have increased the availability of this ratification in several respects.

First, language has been added to make clear that statutory ratification need not be done by a formal action. Rather, ratification may be implied, "including by the statements, action, inaction, or acquiescence of or by" the members, managers, partners, or other persons whose approval would otherwise be required for the act or transaction to be valid.[2]

Second, the amendments expand the acts or transactions capable of statutory ratification to include any act or transaction regarding an LLC or LP by any member, manager, partner, or other person, in each case whether acting in an "individual capacity or on behalf of the [entity]."[3]

Third, a new clause provides that in situations where the DLLCA or DRULPA would require giving notice of ratification to members, managers, partners, or other persons, "the giving of the notice is not a condition to the effectiveness" of the ratification.[4]

Consolidation of LLCs or LPs

The DLLCA and DRULPA permit LLCs and LPs not only to merge—where one of the existing entities survives the merger—but also to "consolidate"—where a new entity results from the consolidation.[5] The 2025 amendments have revised the filing requirement when an LLC or LP has engaged in a consolidation and the resulting entity is a Delaware LLC or LP. The statutes now require that the certificate filed with the Secretary of State to effect the consolidation include, as an attachment, the certificate of formation of the resulting LLC or the certificate of limited partnership of the resulting LP.[6]

Nullifying Previous Filings

Like this year's amendments to the General Corporation Law of the State of Delaware (the "**DGCL**"), the DLLCA and DRULPA amendments confirm that certificates of correction can be used not just to correct but, alternatively, to nullify instruments that have been filed with the Secretary of State. When a certificate of correction is used for nullification, it must state "the inaccuracy or defect" that prompted the filing and "provide for the nullification of the [prior] certificate."[7] As explained in the legislative synopses that accompanied the amendments, the language providing for the nullification will be "sufficient if it states that the previously filed certificate is nullified or void or uses words of similar meaning."[8]

In addition, a conforming change has been made to the DLLCA and DRULPA provisions regarding certificates of cancellation, stating that a certificate of correction can be used to nullify an inaccurate certificate of cancellation.[9]

Winding Up LPs

Under the DRULPA, the affairs of a dissolved LP may be wound up by the general partners or by liquidating trustees (who may be a majority-in-interest of the limited partners).[10] If the LP is being wound up by persons other than the general partners, the LP's certificate of limited partnership must be amended to indicate who is conducting the wind-up. The 2025 amendments have simplified and reorganized the earlier, somewhat dense DRULPA provisions regarding such an amendment to the certificate of limited partnership, found in subsection (f) of DRULPA § 17-202 ("Amendment to certificate").

Section 17-202(f) now provides that if an LP is being wound up by persons other than a general partner or the limited partners, the certificate of limited partnership must be amended to provide the names and addresses of such persons. However, if the LP is being wound up by the limited partners, the certificate shall instead be amended to state that the limited partners are conducting the wind-up. The amended statute, unlike the prior version, uses the term "liquidating trustee" consistently to refer to anyone other than a general partner that is winding up an LP.

In addition, the amendments have removed from DRULPA § 17-202(f) language regarding the execution of an amendment to the certificate of limited partnership whenever persons other than a general partner are winding up the LP. The rule on who must execute such an amendment is now encompassed by new subsection (e) in DRULPA § 17-204 ("Execution"), and it applies to **any** filing with the Secretary of State, during an LP's wind-up, that would ordinarily require a general partner's signature. Under this provision, if neither the general partners nor the limited partners are winding up the LP, a filing with the Secretary of State must be signed by all the liquidating trustees. If, however, the limited partners are winding up the LP (i.e., acting as liquidating trustees), a filing must be signed by a majority-in-interest of the limited partners.[11]

The amendments have also added subsections dealing specifically with the winding up of registered series of LPs. New subsection (g) of DRULPA § 17-202, on amendment of a certificate of registered series, and subsection (e)(2) of DRULPA § 17-204, on execution of registered-series filings, track those described above regarding amendment of the certificate of limited partnership and execution of LP filings.

Further changes to DRULPA § 17-204 have simplified the rules for who must execute the certificate of cancellation that is filed once the LP's wind-up has been completed. Formerly, a certificate of cancellation for an LP had to be signed by the general partners only if they were conducting the wind-up; otherwise, the certificate had to be signed by the liquidating trustees (including a majority-in-interest of the limited partners if they were liquidating trustees). As amended, DRULPA § 17-204 now requires that the general partners sign the certificate of cancellation, regardless of who conducted the wind-up.[12] A similar amendment has been made regarding a certificate of cancellation for a registered series. The certificate must now be signed by the general partners associated with the registered series, regardless of who wound it up.[13]

Foreign LPs Registered to Do Business in Delaware

The 2025 amendments have given foreign LPs much more flexibility in the execution of certain filings with the Delaware Secretary of State. Previously, a foreign LP's application to register to do business in Delaware, certificate amending its application to register to do business, and certificate canceling its registration to do business all had to be signed by "a general partner." As amended, the DRULPA now provides that a foreign LP's application to register, certificate of amendment, and certificate of cancellation can be signed by "any person authorized to execute [the filing] on behalf of the foreign [LP]."[14] The law of the jurisdiction where the foreign LP resides should govern who is so authorized.

Other Changes

Like the 2025 amendments to the DGCL, the amendments to the DLLCA and the DRULPA make explicit that a Delaware registered agent "may not perform its duties or functions solely through the use of a virtual office, the retention by the agent of a mail forwarding service, or both." The term "virtual office" means acting "solely through the internet or solely through other means of remote communication."[15]

When any certificate filed with the Delaware Secretary of State will cause an LLC or LP (or a registered series of an LLC or LP) to cease to exist, then the LLC, LP, or registered series must now pay "the full amount of the annual tax for the calendar year in which the certificate becomes effective" before the certificate is accepted for filing.[16] Likewise, a foreign LLC or LP registered to do business in Delaware must now pay the full amount of its annual tax for the current year before the filing of any certificate that would cause its registration in Delaware to cease.[17]

The DLLCA and DRULPA provisions regarding amendments to an operating agreement via member or partner approval have been revised to recognize that, by default, an operating agreement can also be amended not only in a merger but also in a division or (insofar as the operating agreement relates to registered series) in a merger of registered series.[18]

Finally, with respect to LPs, the amendments have broadened general partners' and liquidating trustees' consent to service in Delaware. As previously drafted, subsection (a) of DRULPA § 17-109 ("Service of process on partners and liquidating trustees") provided that a person was deemed to have consented to service in Delaware if the person was named as a general partner or liquidating trustee in a certificate of LP, or if, after August 1, 1999, the person accepted election or appointment to such a position or served in such a position. As amended, the DRULPA's consent-to-service provision states simply that serving as a general partner or a liquidating trustee constitutes consent to service in Delaware, without any date limitation, and without any default consent when the person is named in the certificate of LP.[19]

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1 83 Del. Laws ch. 61, § 1 (2021) (LLCs); *id*. ch. 63 § 1 (LPs).

2 6 *Del. C.* §§ 18-106(e) (LLCs), 17-106(e) (LPs).

3 6 *Del. C.* §§ 18-106(e), 17-106(e).

4 6 *Del. C.* §§ 18-106(e), 17-106(e).

5 6 *Del. C.* §§ 18-209(b), 17-211(b).

6 6 *Del. C.* §§ 18-209(c)(5), 17-211(c)(5).

7 6 *Del. C.* §§ 18-211(a), 17-213(a).

8 Del. S.B. 98 syn., 153d Gen. Assem. (2025) (LLCs); Del. S.B. 97 syn., 153d Gen. Assem. (2025) (LPs).

9 6 *Del. C.* §§ 18-203(b), 17-203(b).

10 6 *Del. C.* §§ 17-101(12), 17-803.

11 6 *Del. C.* § 17-204(e)(1).

12 6 *Del. C.* § 17-204(a)(3).

13 6 *Del. C.* § 17-204(a)(12).

14 6 *Del. C.* §§ 17-902(1) (registration), 17-905 (amendment), 17-906 (cancellation).

15 6 *Del. C.* §§ 18-104(e)(2), 17-104(e)(2).

16 6 *Del. C.* §§ 18-1107(c), 17-1109(b).

17 6 *Del. C.* §§ 18-1107(c), 17-1109(b).

18 6 *Del. C.* §§ 18-302(e)-(f), 17-302(f).

19 6 *Del. C.* § 17-109(a).

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Members of the Business and Tax Section

Justin P. Duda, Partner
jduda@ycst.com
302-571-6724

Craig D. Grear, Partner
cgrear@ycst.com
302-571-6612

James P. Hughes, Jr., Partner
jhughes@ycst.com
302-571-6670

Norman M. Powell, Partner
npowell@ycst.com
302-571-6629

Timothy J. Snyder, Partner
tsnyder@ycst.com
302-571-6645

Vincent C. Thomas, Partner
vthomas@ycst.com
302-576-3278

Regina S. Schoenberg, Counsel
gschoenberg@ycst.com
302-571-5020

Richard W. Nenno, Senior Counsel
rnenno@ycst.com
302-576-3579

John J. Paschetto, Senior Counsel
jpaschetto@ycst.com
302-571-6608

Leah E. Burcat, Associate
lburcat@ycst.com
302-571-6617

Daniel M. Cole, Associate
dmcole@ycst.com
302-571-6749

Harrison W. Conaty, Associate
hconaty@ycst.com
302-571-6568

Emily K. Cowan, Associate
ecowan@ycst.com
302-571-6654

Travis G. Maurer, Associate
tmaurer@ycst.com
302-576-3596

Lauren M. McCrery, Associate
lmccrery@ycst.com
302-571-5009

Kenneth L. Norton, Associate
knorton@ycst.com
302-571-6618

Jennifer E. Reefe, Associate
jreefe@ycst.com
302-571-6652

Craig E. Rushmore, Associate
crushmore@ycst.com
302-571-6688

Amber J. Zelko, Associate
azelko@ycst.com
302-571-5021