

Delaware Offers Relief To Corporations With Already Noticed Annual Stockholder Meetings By Authorizing A Change to Remote Means

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On Tuesday, April 6, 2020, in response to the COVID-19 pandemic, Delaware Governor John C. Carney issued a Tenth Modification of his Declaration of State of Emergency (the "Tenth Modification") that temporarily modified the requirements under the Delaware General Corporation Law ("DGCL") obligating Delaware public corporations to hold their previously noticed annual stockholder meetings. Under the Tenth Modification, a Delaware corporation that has already noticed an annual stockholder meeting at a physical location may change the meeting to solely remote means if the corporation determines that it would be impracticable to carry out the noticed meeting at the noticed location. To effectuate the change of an already noticed annual meeting to remote means, the Tenth Modification requires Delaware corporations to notify stockholders by filing a document with the Securities and Exchange Commission pursuant to § 13, § 14, or §15(d) of the Securities Exchange Act of 1934 and issue a press release to be promptly posted on the corporation's website after release.

Delaware is the preferred state of incorporation for more than one million legal entities, including approximately two-thirds of the Fortune 500 companies. Governor Carney's Tenth Modification addresses the practical difficulties faced by these corporations in attempting to comply with the requirement of the DGCL in light of the COVID-19 pandemic and the travel-bans in place in several states. It is not prospective as it applies only to annual meetings already noticed, and it does not alter the requirements of 8 *Del. C.* § 211 for holding a remote annual meeting.

Under 8 *Del. C.* § 211, Delaware corporations generally are authorized to hold an annual meeting via remote means, so long as the corporation's organizational documents grant the board of directors the discretion to decide where to hold an annual meeting of stockholders. For remote meetings, Delaware law requires the implementation of reasonable measures to ensure a reliable and verifiable meeting for participating stockholders or proxyholders. For instance, 8 *Del. C.* § 211 requires the corporation to:

- Implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting is a stockholder or a proxyholder;
- Implement reasonable measures to provide each stockholder or proxyholder a reasonable opportunity to participate in the

meeting and vote on matters submitted to the stockholders, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings; and

- Maintain a record of the votes or other action taken by each stockholder or proxyholder at the meeting.

The Tenth Modification does not abrogate these requirements. However, legislation has been introduced in Delaware to relax or suspend certain requirements for Delaware corporations under the Delaware General Corporation Law in circumstances such as the COVID-19 pandemic.