# The 1969 Amendments to the Delaware Corporation Law

By

S. Samuel Arsht and Walter K. Stapleton

REPRINTED FROM

PRENTICE-HALL

CORPORATION REPORT

Englewood Cliffs New Jersey

# ANALYSIS OF THE 1969 AMENDMENTS TO THE DELAWARE CORPORATION LAW

*By S. Samuel Arsht and Walter K. Stapleton of the Delaware Bar*
*Partners: Morris, Nichols, Arsht & Tunnell*

## INTRODUCTION

June 23, 1969, the Governor of the State of Delaware signed into law legislation* which amends thirty-one sections of Delaware's General Corporation Law, and one section of its franchise tax law, effective on July 15, 1969. On signing, the Governor noted that this legislation was part of the continuing effort to keep Delaware's statute abreast of developments in the corporate community and maintain Delaware's acknowledged pre-eminence in this field.

The amendments to the General Corporation Law were prepared by the Corporation Law Committee of the Delaware State Bar Association and sponsored by that Association. They effect a number of important substantive changes in the corporation law. Among the subjects affected are the composition, operation and powers of a board of directors and its committees, the issuance of convertible stock, weighted voting, stockholder action without a meeting, stockholder approval of mergers, appraisal rights in so-called "third party" mergers, and dissolution. In addition, the amendments change the organization and wording of a number of sections of the General Corporation Law in the interest of simplification and clarity.

Amendments to other portions of the Corporations Title of the Delaware Code revise the schedule of fees payable to the Secretary of State in connection with various transactions and effect a 10% increase in franchise tax rates, the first general increase since 1951, and the third since enactment of the General Corporation Law in 1899.*

This article calls attention to each of the changes made by the new legislation. It is intended to supplement the analysis of the Delaware Corporation Law, as it existed following the comprehensive revision of 1967, which was prepared by the authors of this article and published by Prentice-Hall, Inc.** As in the case of that analysis, the organization of this supplement follows that of the statute in order to facilitate reference to the statute where more detail is desired.

## FORMATION

**Pre-emptive rights [§ 102(b)(3)].**—Prior to the 1967 revision of the General Corporation Law, stockholders possessed the common law pre-emptive right to purchase additional issues of capital stock of their corporation unless, and except to the extent that, such right was expressly denied or limited in the certificate of incorporation. The 1967 revision reversed this rule, in effect, by providing that a certificate of incorporation might grant stockholders or any class of them the pre-emptive right to subscribe to any or all additional issues of stock and that, in the absence

* Chapters 150, 148 and 149 of Vol. 57 Laws of Delaware.
* 48 Del. L., Ch. 355 (1951); Del. L., Ch. 7 (1931).
** Arsht & Stapleton, *Analysis of the New Delaware Corporation Law,* Prentice-Hall, Inc., 1967.

of such a provision, no stockholder would have this right. This change was to operate prospectively, however, and was not intended to destroy existing pre-emptive rights. Thus the last sentence of section 102(b)(3) provided that the new rule would not apply to any corporation whose certificate of incorporation, on the effective date of the revision, did not contain a provision limiting or denying to its stockholders pre-emptive rights. There were some situations, however, where this provision arguably did not accomplish its purpose of preserving all then existing pre-emptive rights. The 1969 amendment is intended to clarify the original intent by replacing this sentence with a directive that all pre-emptive rights in existence on July 3, 1967 (the effective date of the 1967 revision) shall remain in existence unaffected by the new rule unless or until changed or terminated by appropriate action which expressly provides for such change or termination. [§ 102(b)(3)].

There are two other minor changes effected by the 1969 amendments in the area of pre-emptive rights. The first grants express permission for a corporation to grant pre-emptive rights to holders of a series of a class with respect to additional issues of any class or series, without according the same rights to other series of the same class. [§ 102(b)(3)]. The other change is the inclusion in the statute of an express denial of a pre-emptive right to subscribe to securities convertible into capital stock unless, and except to the extent that, such right is expressly granted in the certificate of incorporation. [§ 102(b)(3)].

**Correction of instruments filed with Secretary of State [§ 103(f)].**—Occasionally, an instrument is filed in the Office of the Secretary of State which has been defectively executed, sealed or acknowledged, or which, through stenographic error, inadvertence or other mistake, inaccurately describes the corporate action which it purports to record. A new subsection (f) has been added to Section 103 to provide a means for correcting such errors. The means is a "certificate of correction" which points out the inaccuracy or defect and sets forth the erroneous portion of the instrument in corrected form. This new statutory provision provides that the instrument, as thus corrected, becomes effective as of the day the original instrument was filed, except as to persons who have been substantially and adversely affected in the meantime, and, as to those persons, the corrected instrument becomes effective as of the date of the filing of the certificate of correction.

## POWERS

**Corporate power to aid governmental authority [§ 122(12)].**—Section 122 of the General Corporation Law sets forth powers which each Delaware corporation shall have in addition to those granted by its certificate of incorporation and elsewhere in the statute. Paragraph (12) thereof, as amended, provides that every Delaware corporation shall have the power to transact any lawful business which the corporation's board of directors shall find to be in aid of governmental authority. The prior statute contained a provision of like import except that it was limited by the phrase "in time of war or other national emergency".

**Banking power denied [§ 126(a)].**—Section 126 which denies to corporations organized under the General Corporation Law the power to perform certain banking functions, has been amended to delete a prohibition against engaging in "the business of buying gold and silver bullion or foreign coins". The deletion avoids any question as to the applicability

of the prohibition to mining and other non-banking corporations. [§ 126(a)]

## REGISTERED OFFICE AND REGISTERED AGENT

No Change.

## DIRECTORS AND OFFICERS

**Charter provisions conferring management authority on persons other than directors [§ 141(a)].**—Subsection (a) of Section 141 has long provided that the business of every Delaware corporation shall be managed by its board of directors except as otherwise provided in its certificate of incorporation or in the General Corporation Law. Questions have persisted, however, as to the scope of the authority to confer management power on persons other than directors by so providing in the certificate of incorporation, and as to the relationship between subsection 141(a) and those sections of the statute expressly calling for director action. In order to clarify what was considered to be the intent of this subsection, a new sentence was added providing that when a certificate provision alters the statutory rule, the powers and duties conferred or imposed upon the board of directors by the General Corporation Law shall be exercised or performed to such extent and by such person or persons as shall be provided in the certificate of incorporation.

**Composition of board of directors and fixing of quorum [§ 141(b)].**—An amendment to subsection (b) of Section 141 provides that any corporation may have one director. Under the prior law, three directors were required unless all the shares of the corporation were owned by either one or two stockholders, in which case the number of directors could be any number not less than the number of stockholders. The amendment to this section also modifies the law with respect to a quorum of the board. Under the statute as amended, a majority of the whole board constitutes a quorum unless the certificate of incorporation or by-laws require a greater number. Unless the certificate provides otherwise, the by-laws may provide for a smaller quorum so long as it is not less than one-third of the whole board. Under the prior law, there was an additional restriction that a by-law provision could not specify a quorum of less than two directors, except where the corporation had one stockholder and a board of one. Finally, the amendment clarifies the language in this subsection which has the effect of authorizing an optional charter provision fixing the number of directors.

**Committes of board [§ 141(c)].**—The minimum size of committees of the board has been reduced from two to one director. In addition, the scope of the authority or power that may be conferred on committees of the board has been more precisely defined. Under the statute as amended, any committee of the board, to the extent provided in the by-laws or in the board resolution creating the committee, is authorized to exercise all of the power and authority of the board of directors with two categories of exception. There is an absolute prohibition on any committee exercising the power and authority of the board with reference to "amending the certificate of incorporation, adopting an agreement of merger or consolidation, recommending to stockholders the sale, lease or exchange of all or substantially all of the corporation's property and assets, recommend-

ing to the stockholders a dissolution of the corporation or a revocation of a dissolution, or amending the by-laws of the corporation. There is a qualified prohibition on a committee's exercising the power or authority of the board to declare a dividend or to authorize the issuance of stock. A committee may declare dividends or issue stock only pursuant to an express delegation of those powers in the certificate of incorporation, the by-laws or the resolution creating the committee. This specification of the scope of the authority of board committees replaces a sweeping statement in the prior statute which, if read literally, granted authority for board committees to exercise all power of the board to the extent they were delegated in the by-laws or in the resolution creating the committee. The difficulty with this sweeping provision was that a Delaware court, in conformity with decisions in other jurisdictions construing similar provisions, had intimated that there might be certain "fundamental" or "extraordinary" powers of the board which were non-delegable, despite the breadth of the statutory language. The amendment eliminates the uncertainty which had been thus created while maintaining the authority for delegation of most board functions.

**Authority of board of directors with respect to director compensation [§ 141(h)].**—A new subsection has also been added to Section 141 which specifies that the board of directors shall have the authority to fix compensation for members of the board, unless otherwise restricted by the certificate of incorporation or by-laws. This was intended to lay to rest a suggestion by way of dictum in an early case that directors are not empowered to vote compensation for members of the board unless authorized by a vote of stockholders or by a specific charter or by-law provision. [§ 141(h).]

**Telephonic meetings of board [§ 141(i)].**—Section 141 has also been amended to include express authorization for the holding of board or committee meetings "by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other". [§ 141(i)].

**Common or interested directors [§ 144].**—The 1967 revision of the General Corporation Law inserted, for the first time, a section dealing with common or interested directors or officers. Among other things, this statutory provision stipulated that a contract or transaction between the corporation and one of its officers or directors, or between the corporation and another entity in which one of its officers or directors is involved, either financially or as an officer or director, would not be void or voidable, even though the officer or director participated in authorizing the transaction, if there was disclosure to the board of the material facts as to such officer or director's interest and as to the contract or transaction and, the board or committee in good faith authorized it "by a vote sufficient for such purpose without counting the vote of the interested director or directors". The 1969 amendment to this section clarifies the intent of the quoted phrase by stipulating that the required vote is "a majority of the disinterested directors, even though the disinterested directors be less than a quorum". [§ 144(a)(1)].

The amendments also clarify one other aspect of this section. The introductory language of subsection (a) refers to two distinct situations: where an officer or director has a financial interest in another party to the transaction and where an officer or director is an officer or director of such

other party. Two changes have been made in the remainder of subsection (a) and in subsection (b) to make it clear that the entire section is applicable both to "common director" situations and "interested director" situations. [¶ 144(a), (b)]

## STOCK AND DIVIDENDS

**Authority for Issuance of Convertible Common Stock [§ 151(e)].**—Subsection (e) of Section 151 has been amended to provide that stock of any class or series may be issued which is convertible into, or exchangeable for, at the option of either the holder or the corporation or upon the happening of a specified event, shares of any other class or classes or any other series of the same class or any other class or classes of stock of the corporation. Since subsection (e) before the amendment mentioned, only preferred or special stock as stock which could be made convertible, there was no express authority for convertible common stock. It was also arguable that shares of a series could not be made convertible into another series of the same class. The amendment now makes it clear that common stock may be made convertible and that a series of any class may be made convertible into another series of the same class.

**Notation of Powers, Preferences, and Special Rights on Stock Certificates [§ 151(f)].**—The word "powers" has been inserted in subsection (f) of Section 151 to make clear that voting powers, as well as preferences and special rights, must be noted on stock certificates in multi-class or multi-series situations. As before, a description of such powers, preferences and rights may be omitted if the certificate states that the corporation will furnish such a description upon request. [§ 151(f)].

**Issuance or Disposition of Stock [§ 153].**—Under the prior statute, shares of stock, whether treasury shares or authorized but previously unissued shares, could be disposed of or issued for such consideration, "expressed in dollars" (not less than the par value in the case of previously unissued par value stock), as the board of directors might determine, unless the certificate of incorporation provided that the stockholders should make such determination. The amendment to Section 153 eliminates the phrase "expressed in dollars". While a specific dollar valuation of the consideration received for the stock must still ultimately be made where stock is issued for something other than cash in order to record the transaction on the books of the corporation in accordance with Section 154, the board of directors or the stockholders under the amended statute may, at the time of the adoption of the resolution authorizing the issue or disposition, refer to the consideration to be received for the stock without making a specific dollar valuation beyond a determination, in the case of previously unissued par stock, that the consideration to be received has a value in excess of the par value of the stock to be issued.

**Fractional Shares [§ 155].**—Section 155 of the prior statute provided that a corporation, in lieu of issuing fractional shares, might pay in cash the fair value thereof or issue scrip or fractional warrants. The amendment to this section makes it clear that, as a third alternative, a corporation may arrange for the disposition of fractional interests by those entitled thereto.

## STOCK TRANSFERS

No change.

**Fractional or multiple voting [§ 212].**—Section 212 of the prior statute provided that each stockholder should be entitled to one vote for each share of capital stock held by him on the record date unless the certificate of incorporation stated that he should have a different vote. This clearly authorized charter provisions which granted to a class or series of a class more than one vote per share or a fraction of a vote per share at least with respect to elections of directors. It was unclear, however, whether multiple or fractional voting rights could be validly conferred with respect to such matters as amendment of the certificate of incorporation, sale of assets, and dissolution. It seemed clear from the wording of the sections governing mergers that multiple voting or fractional voting could not be recognized in a vote upon a merger. The amendment to this section makes it clear that the certificate of incorporation may effectively provide for such voting on all matters. This is accomplished by the addition in subsection (a) of Section 212 of the sentence "If the certificate of incorporation provides for more or less than one vote for any share, on any matter, every reference in this chapter [the General Corporation Law] to a majority or other proportion of stock shall refer to such majority or other proportion of the votes of such stock."

**Record Date [§ 213].**—Subsection (a) of Section 213 provides that the board of directors may set a record date for, among other things, determining the stockholders entitled to vote upon, or to express consent to, corporate action. This authority remains unchanged. Subsection (b), before its recent amendment, provided that where no record date is fixed by the board of directors the record date for determining the stockholders entitled to a vote at a meeting of stockholders would be the day next preceding the date of notice or, if notice were waived, the day next preceding the meeting date. It further provided that the record date for determining stockholders "for any other purpose" would be the close of business on the day on which the directors adopted the resolution relating to the particular action. It contained no provision for a record date, in the absence of one being fixed by the directors, for determining the stockholders entitled to express written consent to corporate action when no prior action of the board was necessary under the statute. The amendment fills this rather narrow gap by specifying that the record date in such instances shall be the day on which the first written consent is expressed. [§ 213 (b)(2)].

**Cumulative Voting [§ 214].**—No stockholder of a Delaware corporation is entitled to cumulative voting rights unless they are specifically conferred in the certificate of incorporation. Section 214 grants the authority for conferring such rights in the certificate. This section has been amended to authorize the granting of cumulative voting rights to a particular class or series thereof and to make it clear that the number of votes to which a stockholder having cumulative voting rights is entitled is the number of votes he would otherwise have multiplied by the number of directors to be elected by him. When literally read, the wording of the prior statute did not fit the situation where a class or series of stock having cumulative voting rights was entitled to elect only a specific number or portion of the board.

**Voting trusts and voting agreements [§ 218].**—The 1967 revision of Section 218 provided that neither a voting trust nor any other form of voting agreement among stockholders would be effective for longer than a ten year period unless extended in the manner stipulated in the statute.

In connection with this prohibition, Section 218 stipulated that the validity of a voting agreement, otherwise lawful, should not be affected during a period of ten years from its execution date by the fact that, under its terms, it would or might last beyond such ten year period. The statute contained no similar provision, however, with respect to voting trusts. The recent amendment to Section 218 makes the ten year savings clause applicable to both voting trusts and other voting agreements among stockholders.

**Keeping of Records [§ 224].**—Section 224 authorizes Delaware corporations to maintain their records (including stock ledgers, books of accounts and minute books) on punch cards, magnetic tape, microphotographs or any other information storage device. The prior statute went on to provide that, where records were kept in such manner, the cards, tapes, etc. would be admissable in evidence. This provision has been amended to provide that "a clearly legible written form produced from such" cards, tapes, etc. will be admissible.

**Consent of stockholders in lieu of meeting, [§ 228].**—Section 228, as amended, permits, unless otherwise provided in the certificate of incorporation, any action required by law to be taken at a meeting of stockholders to be taken without a meeting, without prior notice and without a vote, if a consent in writing to such corporate action is signed by the holders of outstanding stock having not less than the minimum number of votes which would be necessary to authorize such action at a meeting at which all shares entitled to vote thereon were present and voted. Under the prior law, corporate action could be taken by unanimous written consent of stockholders in every instance, but such action could be taken by less than unanimous consent only if the certificate of incorporation of the corporation expressly so provided.

In addition, Section 228, as amended, specifies that notice of the taking of corporate action without a meeting need only be given to those stockholders who have not consented in writing, rather than to all stockholders. Finally, the amendment prescribes a new requirement that any certificate filed with the Secretary of State reflecting action taken on the basis of written stockholder consent shall specify that the written notice required by Section 228 has been given.

**Waiver of notice [§ 229].**—Section 229 specifies the mechanics for an express waiver of notice and provides that certain conduct will be deemed to constitute such a waiver. The wording of this section has been revised to make it clear that it applies to directors and to meetings of directors and committees, as well as to stockholders and stockholders' meetings.

## AMENDMENTS OF CERTIFICATE OF INCORPORATION; CHANGES IN CAPITAL AND CAPITAL STOCK

**Amendments to certificate of incorporation [§ 242].**—The 1969 amendment to Section 242, which governs charter amendments, rewords and reorganizes that section in an attempt to clarify it. [§ 242(b)—(c)(1)(2)]. The one substantive change is in the area of class voting on amendments. The amended section, like the prior one, grants a class vote to the outstanding shares of a class, whether or not they are entitled to vote on an amendment under the provisions of the corporation's charter, if the amendment would increase or decrease the aggregate number of au-

thorized shares of such class, increase or decrease the par value of the shares of such class, or alter or change the powers, preferences or special rights of the shares of such class so as to affect them adversely. The prior statute, at least when read literally, required a class vote of the entire class on amendments which would adversely affect the powers, preferences and special rights of less than all series of the class. As amended, Section 242 provides that in such circumstances only the shares of the series adversely affected by the amendment shall be considered a class for the purpose of applying the class vote provision. [§ 242(c)(2)].

One non-substantive change in Section 242 deserves special comment. Subsection (c) of Section 242, prior to the 1969 amendment (then subsection (d)), described the primary voting requirement for stockholder approval in terms of "the holders of a majority of the stock entitled to vote" and the class vote requirement in terms of "the affirmative vote of a majority in interest of each" class adversely affected. This was the only place in the statute that the phrase "majority in interest" was used and its meaning was the subject of some debate. While the phrase "stock entitled to vote" was less troublesome, its contrast with the phrase "stock having voting power", as used in Sections 271 and 275 of the statute, was somewhat puzzling and both of these phrases raised the question whether they embodied some concept of stock having "general voting power" or whether they referred to stock having power to vote on the particular matter involved. Each of these statutory phrases has now been replaced with a description in terms of "the outstanding stock entitled to vote thereon."

**Redemption, purchase or retirement of stock [§ 243].**—The phrase "preferred or special" has been deleted from the catchline of Section 243 and from subsections (c) and (e) thereof in order to conform with the amendment to Section 151 authorizing the creation of convertible common stock.

## MERGER OR CONSOLIDATION

**Merger or Consolidation [§§ 251-258].**—The 1969 amendments effect two important changes in the sections of the General Corporation Law dealing with mergers and consolidations. The first is a change in the stockholder vote required for adoption of the agreement of merger or consolidation. The prior sections, except with respect to short form mergers and mergers where no stockholder approval was required, provided that each outstanding share of stock was entitled to one vote and that the affirmative vote of "two-thirds of the total number of outstanding shares" was necessary for adoption of the agreement of merger or consolidation. As amended, the statute provides that the agreement shall be adopted if approved by a "majority of the outstanding shares of stock of the corporation entitled to vote thereon." [§ 251(c); § 252(c)]. In addition to changing the defined class of stockholders entitled to vote and reducing the percentage, this provision, when read in conjunction with the amended provisions of Section 212 dealing with multiple or fractional voting rights, also permits charter provisions which grant particular classes or series of stock a weighted vote on a merger or consolidation.

The second important change deals with the type of consideration into which, or for which, shares of a constituent corporation may be converted or exchanged in a merger. The prior statute specifically provided that shares of a constituent corporation might be converted into, or exchanged

## Analysis of 1969 Amendments to G.C.L.

for, shares or other securities of the corporation resulting from or surviving the consolidation of merger, cash, or securities of any other corporation, or any combination of these types of consideration. It left open, except with respect to short-form mergers, the question of whether it was permissible to distribute other forms of property or rights in a merger or consolidation. The 1969 amendments to the merger sections of the statute answer this question by specifically authorizing the conversion or exchange of shares of a constituent corporation into or for "cash, property, rights or securities of any other corporation", as well as shares of the surviving or resulting corporation. [§ 251(b); § 252(b)]. Among other things, this provides express authority for the conversion of shares of a constituent corporation, in whole or in part, into a right to receive shares of the resulting or surviving corporation, or a parent thereof, in the future upon the happening of specified events, whether or not that right is evidenced by a "security".

A number of less important changes have been made in these sections of the statute. The requirement of subsection 251(b) that a merger agreement governing the merger of domestic corporations should set forth the provisions or facts required or permitted by the General Corporation Law to be stated in the certificate of incorporation has been deleted. The amendment substitutes a provision that such an agreement shall state "such amendments or changes in the certificate of incorporation of the surviving corporation as are desired to be effected by the merger or consolidation, or, if no such amendments or changes are desired, a statement that the certificate of incorporation of one of the constituent corporations shall be the certificate of incorporation of the surviving or resulting corporation". This provides specific statutory authority for a pre-existing practice.

In addition, the provisions of the statute dealing with the certificate of the secretary of the corporation under subsection 251(f) have been altered. That subsection deals with mergers where no stockholder vote of the surviving corporation is required because the shares of the surviving corporation being issued in the merger do not exceed 15% of its shares of the same class outstanding immediately prior to the effective date of the merger.

Finally, the language of several sections granting the authority for the merger of foreign and domestic corporations has been clarified. [§§ 242(a); 253(a); 256(a); 258(a)]. The prior statute granted authority for a merger of a Delaware corporation with one or more corporations of other jurisdictions if such other jurisdictions were ones "which permit such a merger". Questions arose, particularly in the context of Section 253 dealing with short form mergers, as to whether this clause required that the law of the other jurisdiction authorized the particular form of merger authorized by the Delaware statute or merely that such law authorized the merger of domestic and foreign corporations. The quoted phrase has now been altered, in each instance, to read, "which permit a corporation of such jurisdiction to merge with a corporation of another jurisdiction". Thus the amended statute makes clear that a Delaware corporation may follow the short form procedure specified in Section 253, even though the law of the jurisdiction of the corporation with which it is merging does not authorize short form mergers. In such instances, the foreign corporation must, of course, follow the procedure specified by the law of its own jurisdiction.

**Appraisal rights [§ 262(b), (c), (k)].**—Section 262 of the statute, which deals with appraisal rights, has been amended in three respects. The first change was dictated by the amendment to the merger sections changing the class of stockholders entitled to vote on a merger from all stockholders to those stockholders entitled to vote thereon. The amended version of Section 262 preserves appraisal rights, where they would otherwise exist, for each stockholder whose shares "were not entitled to vote" and who filed a written objection to the merger with the corporation before the taking of the vote thereon* [§ 262(b)].

The appraisal statute has been further amended to preserve appraisal rights, where they would otherwise exist, in the case of a merger pursuant to a written consent of stockholders, for stockholders "who either did not, or had no right to, consent in writing to such merger or consolidation".

Finally, a significant substantive change has been effected in the description of the situations in which appraisal rights are and are not conferred. In the 1967 revision of the General Corporation Law a provision was inserted which denied appraisal rights, in the absence of a charter provision to the contrary, to any class or series of a class of stock which was either registered on a national securities exchange or held of record by not less than 2,000 stockholders. This denial of appraisal rights did not apply, however, to the holders of shares who were required to accept anything other than stock, or stock and cash in lieu of fractional shares, of the surviving or resulting corporation. The net effect of these provisions was to deny appraisal rights to the stockholders of a publicly held company who received stock of the resulting or surviving corporation, but to preserve appraisal rights for stockholders of such a corporation who received shares of a parent of the resulting or surviving corporation. The statute, as amended in 1969, changes this result in most so-called "third party" mergers. It provides that the denial of appraisal rights to stockholders of publicly held corporations shall also apply where they receive "stock or stock and cash in lieu of fractional shares of any other corporation, which at the record date fixed to determine the stockholders entitled to receive notice of and to vote at the meeting of stockholders at which the agreement of merger and consolidation is to be acted upon, were either (1) registered on a national securities exchange or (2) held of record by not less than 2,000 stockholders". [§ 262(k)].

## SALE OF ASSETS, DISSOLUTION AND WINDING UP

**Sale, lease or exchange of assets [§ 271(a)].**—In conformity with the above-explained change in Section 242, the phrase "a majority of the outstanding stock of the corporation entitled to vote thereon" has been substituted for the phrase "a majority of the stock issued and outstanding having voting power." [§ 271(a)].

**Dissolution [§ 275 (a), (b), (c)].**—Two substantive changes in the statute governing dissolution are effected by the current amendments. First, the required vote of stockholders has been changed from two-thirds of the stock of the corporation having voting power to "a majority of the outstanding stock of the corporation entitled to vote thereon". [§ 275(a), (b)]. Second, a new subsection has been added which permits the dissolution of a corporation upon the giving of written consent by all of the stockholders entitled to vote thereon without the necessity of action by the board recommending the dissolution. [§ 275(c)].

* Under the amended merger sections, all stockholders, whether or not they are entitled to vote, must receive notice of the stockholders' meeting called to vote upon the merger.

Analysis of 1969 Amendments to G.C.L.

## INSOLVENCY; RECEIVERS AND TRUSTEES

No change.

## RENEWAL, REVIVAL, EXTENSION AND RESTORATION OF CERTIFICATE OF INCORPORATION

Revocation of dissolution [§ 311(a)].—In conformity with the change in the law on dissolution, the section of the statute governing revocation of dissolution has been amended to change the stockholder vote required from two-thirds of all the stock having voting power at the time of the dissolution to a majority of the stock of the corporation which was outstanding and entitled to vote upon the dissolution at the time of the dissolution. [§ 311(a)].

## SUITS AGAINST CORPORATIONS, DIRECTORS, OFFICERS OR STOCKHOLDERS

No change.

## CLOSE CORPORATION; SPECIAL PROVISIONS

Election of existing corporation to become a statutory close corporation [§ 344].—Section 344, which grants authority for a corporation not organized as a statutory close corporation to thereafter elect to become one, has been amended to provide that such election may be made before capital has been paid in as well as thereafter. This cures an inadvertent omission in the prior statute.

## FOREIGN CORPORATIONS

Qualification by corporations to do business in Delaware [§ 371(c)].—The statutory provision governing the qualification by foreign corporations to do business in Delaware has been amended to provide that the Secretary of State shall not issue a certificate evidencing the right to do business unless the name of the foreign corporation is such as to distinguish it on the records of his office from the names of other Delaware corporations, names reserved, and names registered for other foreign corporations. [§ 371(c)].

Denial of banking powers to foreign corporations [§ 379(a)].—Section 379, which denies banking power to foreign corporations doing business in Delaware, has been amended to make it conform with the amended version of the smilar statute, Section 126(a), dealing with domestic corporations. See *infra*, p. 424.

## MISCELLANEOUS PROVISIONS

Filing taxes and fees payable to the Secretary of State [§ 391].—Section 391 specifies the filing taxes and the fees which are to be paid to the Secretary of State when corporate action is affected by filing a corporate document or when other services are rendered by that office. The 1969 amendments make no change in any of the filing taxes. They do, however, revise the schedule of fees in a number of respects and reference should be made to Section 391 for the applicable current charges.

Franchise Taxes [§ 503].—As previously noted, the 1969 amendments make the first general increase in Delaware franchise tax rates in over 18 years. Under the revised schedule, franchise taxes have been increased 10%, and the minimum franchise tax is now $20 per year.

*Ed. Note:* See tab card "State Taxes."