

## Delaware Allows Blockchain to Create and Maintain State Corporate Records

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Delaware recently revised its General Corporation Law (DGCL) to provide specific authority for Delaware corporations to use networks of electronic databases, including the nascent “blockchain” database technology, for the creation and maintenance of corporate records.

Delaware has a well-earned reputation for innovation when it comes to the laws governing corporate organization. It is one reason why so many companies choose to be incorporated there. Practices that streamline corporate governance today, such as telephonic board meetings, trace their origins back to changes in Delaware law. This means that when the Delaware legislature amends its corporate statutes, it often is an indicator of an emerging trend.

“Blockchain” technology is such an emerging trend. It is best known today as the backbone database engine driving the issuance and trading of digital currencies such as Bitcoin. Blockchain also has the power to transform recordkeeping practices elsewhere because of the technology’s inherent ability to allow multiple parties to share databases of permanent, unchangeable records without the need for a database manager or custodian.

The Delaware corporate law amendments, which are effective August 1, 2017, change Sections 219 and 224 of the DGCL to permit a corporation to rely on records “administered by or on behalf of the company” as formal corporate records. Section 224 further clarifies that the “administered” records can take the form of electronic databases, such as blockchain. Section 232 redefines “electronic transmission” to include exchange of blockchain information. Corporations can accordingly use blockchain to create, maintain, and communicate information, such as stock ledgers, books of account, and minutes.

The use of blockchain for corporate records is not unrestricted, however. Records maintained electronically must be readily convertible into clearly legible paper form within a reasonable time. Moreover, for purposes of stock ledgers, the records maintained electronically must be formatted to permit the following: (i) the preparation of a stockholder list in conformance with Sections 219 and 220 (*i.e.*, for purposes of books and records requests) and (ii) record transfers of stock governed under Article 8 of the Delaware Uniform Commercial Code. The electronically maintained stock ledgers must also record the information required by Section 156 (relating to partly paid shares), Section 159 (relating to collateral security transfers), Section 217 (relating to pledged shares), and Section 218 (relating to voting trusts).

As is typical with the advent of new technology, it will take some time for the marketplace to provide viable blockchain based services. Even then, its ultimate widespread use will first require a few hardy early adopters to switch over to using those services. As the ease of use increases and the cost-reducing benefits of blockchain technology become apparent, Delaware corporations should begin to see a significant change in the cost and effort associated with mandatory

recordkeeping.

For example, if blockchain technology is properly implemented, corporations and shareholders could clear and settle securities transactions in a transparent manner without the need for custodians, other third-party intermediaries, or even extensive computer hardware. Further, if the business world becomes comfortable and confident in blockchain corporate recordkeeping, the extension of the technology to other areas such as medical recordkeeping, insurance policy and claims management, or even secured transactions becomes more likely.

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