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Delaware's New Blockchain Technology Regulations Could Revolutionize Business

Delaware has laid the foundation for companies doing business in the state to use blockchain technology for company record keeping. Gov. John Carney signed into law amendments to the Delaware General Corporation Law July 21, marking a key milestone in the Delaware Blockchain Initiative, launched last May, to encourage the use of blockchain technology and smart contracts in business.

Blockchain Technology Approved for Corporate Record Keeping

Blockchain technology, also called distributed ledger technology, is most commonly known as the technology underlying virtual currencies such as Bitcoin. But it can be used in the transfer of any asset that can be digitized, from securities and real property to legal claims. A blockchain serves as the public ledger of these transactions, continually stringing recorded transactions in chronological order. Blockchain-based smart contracts can digitize records to automatically update, share, expire or take other specified actions, allowing individuals and businesses to transfer assets without the traditional fees and delays usually associated with those transfers.

The amendments, which took effect on August 1, 2017, provide specific statutory authority for Delaware corporations to use "distributed electronic networks or databases" – distributed ledger or blockchain technology – to create and maintain corporate records, specifically including their stock ledgers.

The amendments revise two interrelated sections of the DGCL: Section 219(c) and Section 224. Section 219(c), as amended, defines "stock ledger" as "one or more records administered by or on behalf of the corporation in which the names of all of the corporation's stockholders of record, the address and number of shares registered in the name of each such stockholder, and all issuances and transfers of stock of the corporation are recorded in accordance with [Section] 224 of this title." As the section previously provided, a stock ledger "shall be the only evidence as to who are the stockholders entitled by this section to examine the list required by this section or to vote in person or by proxy at any meeting of stockholders."

Section 224 governs the permissible form of corporate records. The amendment to this section echoes those to Section 219(c) — replacing records "maintained by" the corporation with records "administered by or on behalf of the corporation." This section also specifically provides that corporate records "may be kept on, or by means of, or be in the form of, any information storage device, method, or one or more electronic networks or databases (including one or more distributed electronic networks or databases), provided that the records so kept can be converted into clearly legible paper form within a reasonable time."

With respect to stock ledgers, the amendments add that records kept in accordance with the section —

including those employing blockchain technology — can be used to prepare the list of stockholders for voting purposes; to record specific information, including partly paid shares, collateral transfers and parties' voting rights; and to record stock transfers. And the paper form generated from records kept using blockchain technology "shall be valid and admissible in evidence, and accepted for all other purposes, to the same extent as an original paper record of the same information would have been, provided the paper form accurately portrays the record."

Additional amendments to the DGCL also allow the use of blockchain technology for electronic transmission of required stockholder notices.

Why is this significant?

With these amendments, Delaware becomes the first — but likely not the last — state to expressly allow stock trades on the blockchain, releasing these transactions from the cumbersome systems currently in place while providing greater security and accuracy.

Historically a corporation-friendly state, Delaware serves as the legal home base for two-thirds of Fortune 500 companies, as well as many startups. The vast majority of all initial public offerings in the United States — nearly 85 percent — originate in Delaware. For many U.S. corporations, these changes in the DGCL specifically authorizing the use of blockchain technology for record keeping, especially stock records, expand the ways in which they can maintain their records beyond those requiring time-consuming, costly and potentially error-prone human labor.

Proponents tout blockchain technology as beneficial to businesses, reducing the costs and delays associated with traditional transactions. Users can share a single database to trade stock, removing the need for the numerous intermediaries that currently exist between buyers and sellers and resulting in faster, safer and more efficient transactions.

New Technology, New Challenges

Many questions remain, however. Of particular concern is how to ensure the privacy and security of individual and corporate information, as well as how to manage the risks involved in implementing blockchain technology. Companies will also need to identify their needs in terms of cost, speed and scale, as well as the skills required to implement a blockchain technology platform.

Now that the legal framework has been put in place, Delaware faces a new set of challenges. The state must help businesses get up to speed on blockchain technology and how to implement it in their own organizations. Although a host of questions need to be addressed, the benefits of blockchain technology for Delaware-based corporations are expected to be substantial.

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