

Delaware Legislature Supports Ban on Fee-Shifting, Endorses Exclusive Forum

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Last week, the Delaware House of Representatives unanimously passed a bill that amends the Delaware General Corporation law to prohibit stock corporations from inserting “fee-shifting” provisions in their governance documents. We previously [discussed the bill here](#). The Delaware Senate passed the same bill in May and it is expected to be signed by the governor. The effective date is August 1, 2015.

The bill prohibits public companies from having provisions in either their charters or bylaws that would “impose liability for the attorneys’ fees or expenses of the corporation or any other party in connection with an internal corporate claim,” which would generally include M&A litigation.

In addition, Delaware companies can expressly adopt forum-selection bylaws, though Delaware must be either the exclusive forum or one of the available forums.

No action was taken on a proposed amendment to the appraisal statute, which had provided a narrow restriction on when appraisal rights are available.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

Ning Chiu

+1 212 450 4908

ning.chiu@davispolk.com

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