

Delaware Supreme Court Upholds Constitutionality of SB 21: The Amended Section 144 Safe Harbors Are Here to Stay

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In *Rutledge v. Clearway Energy Group LLC*, the Delaware Supreme Court, sitting en banc, answered two certified questions from the Court of Chancery and held that the controlling-stockholder safe harbor provisions enacted by Senate Bill 21 do not violate the Delaware Constitution. The court concluded that the amended Section 144 of the Delaware General Corporation Law, which permits a controlling-stockholder transaction (other than a going-private transaction) to be cleansed by either an independent committee approval or a majority-of-the-minority stockholder vote (rather than requiring both under applicable case law), represents a legitimate exercise of the General Assembly's legislative authority, does not divest the Court of Chancery of its equity jurisdiction, and may be applied retroactively to transactions that occurred before SB 21's enactment, except for proceedings that were pending as of February 17, 2025.

With the constitutional challenge now resolved, deal planners should treat the amended Section 144 framework as settled law. For private equity sponsors and other controlling stockholders, this means that a single cleansing mechanism, either a properly functioning independent committee or an informed, uncoerced majority-of-the-minority vote, is sufficient to insulate a non-going-private transaction from entire-fairness review and foreclose equitable relief or damages for breach of fiduciary duty claims. Sponsors and their counsel should ensure that transaction processes are designed from the outset to satisfy the statutory requirements, including the board's determination of director disinterestedness and, where applicable, the statutory presumption of independence for directors of public companies who satisfy stock exchange independence standards.

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