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Court Holds Revlon 'Duties' Don't Apply to PBC in Change-of-Control Transaction

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Recently, the Delaware Court of Chancery issued a decision of first impression addressing the fiduciary duties and standards of review applicable to a Delaware public benefit corporation (PBC) navigating a change-of-control transaction.

In *Drakes Landing Associates, L.P. v. Tilden Park Capital Management, L.P.*, C.A. No. 2025-0898-NAC (Del. Ch. July 29, 2026), Vice Chancellor Nathan Cook held that, because Section 365(a) of the Delaware General Corporation Law (DGCL) requires PBC directors to balance stockholders' pecuniary interests, the interests of other constituencies materially affected by the corporation's conduct and the public benefit stated in its charter, the court could not review the directors' decisions under the price-maximization-focused *Revlon* standard that would otherwise require the company to follow a process reasonably designed to secure the best price reasonably available for stockholders in a sale-of-control transaction.

The court left open whether a modified form of enhanced scrutiny, which it termed "PBC enhanced scrutiny," might still apply as a standard of review applicable to the sale of a PBC. However, it did not resolve that question, because it applied the statutory safe harbor in DGCL Section 365(b) that provides that a PBC director's decision is deemed to satisfy their fiduciary duties if the decision "is both informed and disinterested and not such that no person of ordinary, sound judgment would approve."

The decision is the court's most instructive guidance to date for PBC directors, and it carries immediate implications for how PBC boards and their advisors structure, document and defend change-of-control and control-shifting transactions – including sale transactions and dilutive rescue financings that are common among late-stage private companies and smaller public companies. Moving forward,PBC directors should be aware that a well-documented record of informed, disinterested directors' balancing stockholder, other constituency and public benefit interests remains critical in the change-of-control context.

Overview of Delaware PBCs

Subchapter XV of the DGCL (Sections 361–368) allows a Delaware corporation to elect PBC status: a for-profit corporation intended to operate in a responsible and sustainable manner and to produce one or more specific public benefits identified in its charter. Delaware enacted its PBC statutes in 2013 and made it easier to become a PBC in 2020 by eliminating the supermajority stockholder vote and appraisal rights previously required to convert into or out of PBC status.

Directors of a conventional Delaware corporation may weigh other constituencies only insofar as doing so advances stockholders' pecuniary interests.[1] Section 365(a) instead **requires** PBC directors to balance three interests: stockholders' pecuniary interests, the interests of those other constituencies materially affected by the corporation's conduct and the specific public benefit(s) identified in the charter.

The statute pairs that obligation with PBC-specific protections. Section 365(b) provides a safe harbor under which a director is "deemed to satisfy" their fiduciary duties if a decision implicating the balancing requirement is informed, disinterested and not one that no person of ordinary, sound judgment would approve. Section 365(c) provides that, absent a conflict of interest, a failure to satisfy the balancing requirement does not constitute an act not in good faith or a breach of the duty of loyalty for purposes of DGCL Sections 102(b)(7) and 145.

Many private and public companies have adopted PBC status, yet Subchapter XV had generated no judicial guidance on what PBC directors owe stockholders in a change of control until now. *Drakes Landing* is the first written decision to address that gap – both the standard of review that governs a PBC board in a change-of-control transaction and what a plaintiff must plead to overcome the Section 365(b) safe harbor.

Background

MPower Financing is a Delaware PBC whose stated mission is to give international students access to financing for post-secondary education. After an equity raise launched in late 2024 failed to materialize, MPower faced an urgent liquidity need (its debt covenants required a minimum cash balance of $17 million by January 31, 2025). Two existing lenders, which together held roughly $109 million of MPower debt and 25.5% of its common stock (one of which also had two board designees), proposed immediate financing coupled with an option to convert their existing debt into equity. After negotiation of the term sheet, the final proposed terms included a $20 million financing and a conversion price of $2.25 per share – a steep discount to the $15.50 per share valuation in MPower's last financing round in July 2021. The conversion option, if exercised, would have increased the funds' ownership from ~25% to ~85% and substantially diluted existing stockholders.

MPower's board approved the term sheet, with the lender board designees recusing themselves, and then appointed a three-member special committee of disinterested, independent directors. The committee retained legal and financial advisors, directed a process to evaluate any comparable capital solutions with less dilution, opened a data room to third parties and ultimately approved the financing transaction. The company and the funds executed the transaction with an exchange agreement under which the funds would lend MPower $28.125 million through a secured convertible note and a governance agreement entitling the funds to designate seven directors (comprising a majority of the board) and granting them consent rights over stock issuances, additional debt, mergers and recapitalizations, charter changes, board size, management hiring and firing and any bankruptcy filing. Although not a merger, the parties did not dispute that the terms of the financing constituted a change-of-control transaction that would be subject to *Revlon* enhanced scrutiny for a non-PBC.

Stockholder plaintiffs sued the special committee for breach of fiduciary duty and the funds for aiding and abetting, arguing principally that the committee's market check was too thin to surface a better, less dilutive alternative. Defendants moved to dismiss the complaint under Court of Chancery Rule 12(b)(6).

The court's analysis

- ***Revlon* does not apply to PBC directors.** The court held that *Revlon*'s singular focus on obtaining the best value reasonably available cannot be squared with Section 365(a)'s directive to balance stockholder, stakeholder and public-benefit interests, and as a result, *Revlon* does not govern PBC directors' conduct.
- **A modified "PBC enhanced scrutiny" standard of review may survive, but the court did not decide.** Enhanced scrutiny could still test whether a PBC board's balancing fell outside the range of reasonableness – the "enormous implications" of a control transaction do not disappear because the company is a PBC. The court left the question for another day because Section 365(b) independently required dismissal.
- **Section 365(b)'s safe harbor protected the special committee.** A PBC director is deemed to satisfy their fiduciary duties on a balancing decision that is informed and disinterested and not one that no person of ordinary, sound judgment would approve. The plaintiff bears the burden of pleading facts showing the safe harbor was not satisfied. Plaintiffs conceded the committee members were disinterested and independent, leaving only the "informed" prong and the prong that no person of ordinary, sound judgment would approve such matter, which is a question of waste.
- **Plaintiffs failed to plead that the committee was uninformed.** Because PBC directors must consider a broader set of interests, a plaintiff must plead that the board failed to inform itself as to all three Section 365(a) interests. Plaintiffs attacked only the market check – a purely pecuniary critique – and never alleged the committee failed to inform itself about stakeholder or public-benefit considerations.

Practical takeaways for PBC boards, founders and in-house counsel

A PBC board facing a change-of-control transaction is not bound by a singular obligation to maximize stockholder value. Under Section 365(a), it must balance stockholders' pecuniary interests against the interests of other materially affected constituencies and the corporation's stated public benefit – even where that balancing yields less value to stockholders than an unconstrained market process might. That flexibility is meaningfully useful for a PBC weighing bids or financing proposals that differ on more than price. But it is not self-executing: The protection the court applied depends on directors being informed about, and demonstrably weighing, all three statutory interests.

Boards, special committees and management teams of Delaware PBCs negotiating financings, sales or other control transactions should consider the following.

- **Build the balancing record contemporaneously.** Minutes, committee resolutions, board materials and advisor mandates should show that the directors informed themselves about and weighed all three Section 365(a) interests – not price alone. A record that documents only the financial market check leaves the balancing requirement – and the Section 365(b) safe harbor – exposed. MPower prevailed because the plaintiffs never pleaded a failure to balance, not because the record affirmatively demonstrated one.

- **Define the public benefit with precision – and follow it.** Directors can only balance interests they have identified. A charter purpose that is vague or aspirational makes it harder to show which stakeholders were considered and why. Companies converting to PBC status before a liquidity event should revisit the charter language – and the stakeholder groups it implicates – well before a deal is on the table. Those specific public benefits identified in the charter will then define the standard to which directors are accountable.
- **Preserve the hallmarks of a robust process.** Early identification of potential conflicts of interest, recusal by conflicted directors (or formation of a committee, where appropriate), a thoughtful market check and a strong record of a deliberative and informed board all remain central to invoking Delaware's statutory safe harbors – including for a conventional corporation relying on Section 144.
- **Anticipate books-and-records demands.** The court twice pointed to plaintiffs' failure to use DGCL Section 220 before filing. Expect sophisticated minority holders to demand records first and assume that board and committee minutes will be the central exhibit in any later challenge.
- **Counterparties should insist on process.** Potential acquirors and investors (including convertible debt lenders) negotiating with a PBC directly benefit from the target company following these best practices – which outside counsel can often help facilitate.
- **Loop in counsel early on major decisions requiring use of the balancing requirement, even if not a traditional acquisition.** The transaction here was not a merger but the combination of two elements that effectively shifted control: a deeply discounted debt-for-equity conversion and a governance agreement conferring board designation and broad consent rights. Late-stage private companies and smaller public companies negotiating bridge, convertible or structured financings that are not uncommon in those ecosystems should apply the same process discipline that they would apply to a sale process.

Drakes Landing confirms that Delaware's PBC statute offers meaningful protection to directors of mission-driven companies in the change-of-control context, reaffirming the long-standing principle that Delaware courts will not second-guess the decisions of well-informed, disinterested directors acting in the best interests of their applicable constituencies.

1. Many states have adopted some form of a "constituency statute" allowing directors to consider the interests of non?stockholder stakeholders – e.g., employees, the community, customers – alongside the interests of stockholders. These statutes tend to be permissive, rather than a mandate, to directors discharging their fiduciary duties. ??

Contributors

Jennifer Barnette
Bio

Kevin Cooper
Bio

Nick Davis
Bio

Polina Demina
Bio

Patrick Gibbs
Bio

Jamie Leigh
Bio

Beth Sasfai
Bio