

8 Reasons To Consider Maryland As A 'DExit' Option

By **Topper Webb, Trey Hilberg and Amanda Fruman** (April 28, 2026)

In recent years, a number of companies and advisers have questioned the long-standing choice of Delaware as the primary state of incorporation for publicly traded corporations. Delaware has often been viewed as the preferred jurisdiction because of its highly regarded courts, known to produce extensive business-specific case law, and its widely known statutory framework.

Recent court decisions and legislation, however, have led entities to consider other states for incorporation. This trend is often referred to as DExit.

The DExit phenomenon gained momentum in January 2024 following the Delaware Court of Chancery's later-overturned invalidation of Elon Musk's Tesla compensation package in *Tornetta v. Musk*, drawing the attention of companies considering a departure from Delaware.

Companies leaving Delaware might be attracted to an alternative jurisdiction by a variety of factors, such as reduced litigation risk over officer and director liability, better ability to defend themselves from unwanted takeover attempts, and likely cost savings from avoiding Delaware's annual franchise taxes.

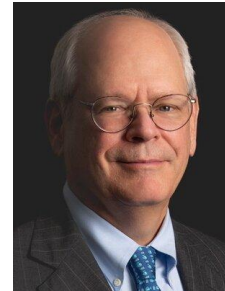
While Nevada and Texas have garnered attention as alternative states of incorporation, there are also considerable benefits to incorporating in Maryland, which has long been a common state of incorporation, outside Delaware, for public companies. Maryland is also the jurisdiction of choice for certain investment vehicles, such as publicly traded real estate investment trusts and certain mutual funds, reflecting Maryland's long-standing acceptance as a home for public companies.

Here are eight important reasons that companies should consider the Old Line State as a DExit option.

1. Directors' Standard of Conduct and the Business Judgment Rule

Directors of Maryland corporations must comply with a predictable statutory standard of conduct under Section 2-405.1(c) of the Maryland General Corporation Law. Further, according to Section 2-405.1(g), directors' actions are presumed to comply with that standard, making the business judgment rule a matter of statute.

Even in extraordinary circumstances where courts in other states — including Delaware — may apply enhanced scrutiny or entire fairness review, Maryland courts apply the more deferential business judgment rule to directors' actions.



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2. Maryland Courts Equipped to Handle Complex Business Matters

The long-standing Business and Technology Case Management Program for complex business cases in Maryland, originally formed in 2003, has over 20 years of published opinions.

Maryland's substantial body of case law sets its business court apart from other options, placing the predictability of Maryland courts above virtually all its peers outside Delaware.

In contrast, other states competing for corporations leaving Delaware either lack dedicated business courts or have only recently established them, resulting in less certainty and precedent for parties to rely on.

3. Enhanced Anti-Takeover Protections

More than ever, investors are seeking top talent and top managers to operate their investment funds and operating companies. The Maryland General Corporation Law provides qualifying listed corporations and their boards of directors with an array of tools to protect investor expectations and deter or defend against hostile, short-term profit-seeking actions.

These tools include the ability for a board to self-classify without stockholder action and, notwithstanding a contrary provision in the charter or bylaws, to increase the affirmative vote required to remove a director to two-thirds of the votes entitled to be cast by stockholders.

A Maryland board of directors may also fix the number of directors by its own vote, and elect to grant the board the power to fill vacancies on the board, whether from an increase in the size of the board or from the death, resignation or removal of a director. When vacancies must be filled by the remaining directors, an activist is required to remove the entire board to gain control.

In addition, a Maryland corporation's ability to defend itself is enhanced by a robust business combination — or moratorium — statute, a control share voting statute, and recognition, by courts and by statute, of rights plans.

4. Exculpation and Indemnification

A Maryland corporation, by its charter, may limit the liability of directors and officers for money damages, except to the extent that the person received an improper benefit or profit in money, property or services, or if the person's act or omission was the result of active and deliberate dishonesty. That means exculpation in Maryland is more expansive than under Delaware law, where exculpation is not available for, among other things, a breach of the duty of loyalty.

Similarly, Maryland permits a broad indemnification of directors and officers, and provides certain indemnitee-friendly presumptions. A Maryland corporation may indemnify a current or former director, officer or employee made a party to any proceeding by reason of their service, unless it is established that the act or omission was material and committed in bad faith, the result of deliberate dishonesty, or, in a criminal proceeding, that the person had reasonable cause to believe the act or omission was unlawful.

5. Appraisal Rights

Maryland permits the charter of a Maryland corporation to eliminate appraisal rights for one or more classes of stock, and generally eliminates appraisal rights for stock that is not entitled to be voted on the subject transaction.

Most Maryland corporations take advantage of this option, and both investors and corporations have found that doing so leads to more predictable, market-driven action and avoids judicial second-guessing.

6. Stockholder Action by Written Consent

Under Maryland law, common stockholders may act outside a meeting only by unanimous written consent unless the charter provides otherwise. Most Maryland corporations do not permit common stockholders to act outside a meeting by less than unanimous written consent.

This favors the flow of information that must occur attendant to a stockholders' meeting over the backroom dealing that can occur when action by written consent is more liberally permitted. Requiring stockholder action to occur at a meeting often permits a board of directors to more effectively communicate with stockholders prior to any material changes to the corporation or its governance.

7. Bylaw Amendments Exclusively Reserved to Board of Directors

Although pressure from Institutional Shareholder Services Inc., among others, has altered the publicly listed marketplace, many Maryland corporations continue to prohibit stockholders from taking direct action to amend the corporate bylaws, reserving this right for the board of directors.

This leads to a more predictable and stable corporate governance regime and structure.

8. No Franchise Taxes

Some states charge corporations franchise taxes to raise revenue. Many public corporations in Delaware pay as much as \$250,000 annually.

Maryland corporations, on the other hand, pay only a modest initial capitalization fee and a \$300 annual fee. For years, both yield-driven funds and operating companies have benefited from reinvestment of the significant cost savings.

Conclusion

The foregoing is not an exhaustive list of the benefits Maryland offers as a state of incorporation. Nevada and Texas will continue to attract DExit candidates for several reasons, including Texas' 2025 legislation enhancing liability protections and governance flexibility, though notably many of those provisions apply only to public companies or require an opt-in.

Maryland, however, offers a compelling alternative: a predictable statutory framework, robust anti-takeover protections, broad exculpation and indemnification provisions, and sophisticated business courts with decades of experience. And the benefits in Maryland apply to public and nonpublic corporations.

Thus, Maryland should be atop the list, alongside Nevada and Texas, as a DExit destination.

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