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DELAWARE STATE SENATE
151st GENERAL ASSEMBLY

SENATE BILL NO. 275

AN ACT TO AMEND CHAPTER 18, TITLE 6 OF THE DELAWARE CODE RELATING TO THE CREATION,
REGULATION, OPERATION AND DISSOLUTION OF DOMESTIC LIMITED LIABILITY COMPANIES AND THE
REGISTRATION AND REGULATION OF FOREIGN LIMITED LIABILITY COMPANIES

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 18-101, Title 6 of the Delaware Code by making deletions as shown by strike through and
insertions as shown by underline as follows:

§ 18-101. Definitions.

As used in this chapter unless the context otherwise requires:

(9) "Limited liability company agreement" means any agreement (whether referred to as a limited liability
company agreement, operating agreement or otherwise), written, oral or implied, of the member or members as to the
affairs of a limited liability company and the conduct of its business. A member or manager of a limited liability
company or an assignee of a limited liability company interest is bound by the limited liability company agreement
whether or not the member or manager or assignee executes the limited liability company agreement. A limited
liability company (including any protected series or registered series thereof) is not required to execute its limited
liability company agreement. A limited liability company (including any protected series or registered series thereof) is
bound by its limited liability company agreement whether or not the limited liability company (or any protected series
or registered series thereof) executes the limited liability company agreement. A limited liability company agreement
of a limited liability company having only 1 member shall not be unenforceable by reason of there being only 1 person
who is a party to the limited liability company agreement. A limited liability company agreement is not subject to any
statute of frauds (including § 2714 of this title). A limited liability company agreement may provide rights to any
person, including a person who is not a party to the limited liability company agreement, to the extent set forth therein.
A written limited liability company agreement or another written agreement or writing:

a. May provide that a person shall be admitted as a member of a limited liability company, or shall
become an assignee of a limited liability company interest or other rights or powers of a member to the extent
assigned:

22 1. If such person (or a representative authorized by such person orally, in writing or by other action
23 such as payment for a limited liability company interest) executes the limited liability company agreement or
24 any other writing evidencing the intent of such person to become a member or assignee; or

25 2. Without such execution, if such person (or a representative authorized by such person orally, in
26 writing or by other action such as payment for a limited liability company interest) complies with the
27 conditions for becoming a member or assignee as set forth in the limited liability company agreement or any
28 other writing; ~~and~~

29 b. Shall not be unenforceable by reason of its not having been signed by a person being admitted as a
30 member or becoming an assignee as provided in paragraph (9)a. of this section, or by reason of its having been
31 signed by a representative as provided in this ~~chapter~~ chapter; ~~and~~

32 c. May consist of 1 or more agreements, instruments or other writings and may include or incorporate one
33 or more schedules, supplements or other writings containing provisions as to the conduct of the business and
34 affairs of the limited liability company or any series thereof.

35 Section 2. Amend § 18-109, Title 6 of the Delaware Code by making deletions as shown by strike through and
36 insertions as shown by underline as follows:

37 § 18-109. Service of process on managers and liquidating trustees.

38 (b) Service of process shall be effected by serving the registered agent (or, if there is none, the Secretary of State)
39 with 1 copy of such process in the manner provided by law for service of writs of summons. In the event service is made
40 under this subsection upon the Secretary of State, the plaintiff shall pay to the Secretary of State the sum of \$50 for the use
41 of the State of Delaware, which sum shall be taxed as part of the costs of the proceeding if the plaintiff shall prevail therein.
42 In addition, the Prothonotary or the Register in Chancery of the court in which the civil action or proceeding is pending
43 shall, within 7 days of such service, deposit in the United States mails, by registered mail, postage prepaid, true and attested
44 copies of the process, together with a statement that service is being made pursuant to this section, addressed to such
45 manager or liquidating trustee at the ~~registered office~~ principal place of business of the limited liability company (if such
46 address is known) and at the manager's or liquidating trustee's address last known to the party desiring to make such
47 service.

48 Section 3. Amend § 18-113, Title 6 of the Delaware Code by making deletions as shown by strike through and
49 insertions as shown by underline as follows:

50 § 18-113. Document form, signature and delivery.

51 (b) Subsection (a) of this section shall not apply to:

(1) A document filed with or submitted to the Secretary of State, the Register in Chancery, or a court or other judicial or governmental body of this State;

(2) A certificate of limited liability company interest, except that a signature on a certificate of limited liability company interest may be a manual, facsimile, or electronic signature; and

(3) An act or transaction effected pursuant to § 18-104, § 18-105, or § 18-109 or subchapter IX or X of this title.

The foregoing shall not create any presumption about the lawful means to document a matter addressed by this subsection, or the lawful means to sign or deliver a document addressed by this subsection. A provision of the limited liability company agreement shall not limit the application of subsection (a) of this section unless the provision expressly restricts one or more of the means of documenting an act or transaction, or of signing or delivering a document, permitted by subsection (a) of this section.

Section 4. Amend § 18-204, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 18-204. Execution.

(d) The execution of a certificate by a person who is authorized by this chapter to execute such certificate constitutes an oath or affirmation, under the penalties of perjury in the third degree, that, to the best of such person's knowledge and belief, the facts stated therein ~~are~~ shall be true at the time such certificate becomes effective as provided in this chapter.

Section 5. Amend § 18-212, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 18-212. Domestication of non-United States entities.

(g) Prior to the ~~filing of time~~ a certificate of limited liability company domestication ~~with the Office of the Secretary of State~~ becomes effective as provided in this chapter, the domestication shall be approved in the manner provided for by the document, instrument, agreement or other writing, as the case may be, governing the internal affairs of the non-United States entity and the conduct of its business or by applicable non-Delaware law, as appropriate, and a limited liability company agreement shall be approved by the same authorization required to approve the domestication.

Section 6. Amend § 18-214, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 18-214. Conversion of certain entities to a limited liability company.

(h) Prior to ~~filing the time~~ a certificate of conversion to limited liability company ~~with the office of the Secretary of State~~ becomes effective as provided in this chapter, the conversion shall be approved in the manner provided for by the document, instrument, agreement or other writing, as the case may be, governing the internal affairs of the other entity and the conduct of its business or by applicable law, as appropriate and a limited liability company agreement shall be approved by the same authorization required to approve the conversion.

Section 7. Amend § 18-1108, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 18-1108. Cancellation of certificate of formation or certificate of registered series for failure to pay taxes.

(b) The certificate of registered series of a registered series shall be canceled if the annual tax due under § 18-1107 of this title for the registered series is not paid for a period of 3 years from the date it is due, such cancellation to be effective on the third anniversary of such due date.

Section 8. Amend § 18-1109, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 18-1109. Revival of domestic limited liability company.

(a) A domestic limited liability company whose certificate of formation has been canceled pursuant to § 18-104(d) ~~or, § 18-104(i)(4) or § 18-1108(a)~~ of this title may be revived by filing in the office of the Secretary of State a certificate of revival of limited liability company accompanied by the payment of the fee required by § 18-1105(a)(3) of this title and payment of the annual tax due under § 18-1107 of this title and all penalties and interest thereon due at the time of the cancellation of its certificate of formation. The certificate of revival of limited liability company shall set forth:

(1) The name of the limited liability company at the time its certificate of formation was canceled and, if such name is not available at the time of revival, the name under which the limited liability company is to be revived;

(2) The date of filing of the original certificate of formation of the limited liability company;

(3) The address of the limited liability company's registered office in the State of Delaware and the name and address of the limited liability company's registered agent in the State of Delaware;

(4) A statement that the certificate of revival of limited liability company is filed by 1 or more persons authorized to execute and file ~~the such~~ certificate of revival to revive the limited liability company; and

(5) Any other matters the persons executing the certificate of revival of limited liability company determine to include therein.

(b) The certificate of revival of limited liability company shall be deemed to be an amendment to the certificate of formation of the limited liability company, and the limited liability company shall not be required to take any further action

111 to amend its certificate of formation under § 18-202 of this title with respect to the matters set forth in ~~the~~ such certificate
112 of revival.

113 (c) Upon the filing of a certificate of revival of limited liability company, a limited liability company ~~and all, each~~
114 registered series thereof ~~that have been formed and~~ whose certificate of registered series has ~~not been canceled prior to~~ as a
115 result of the cancellation of the certificate of formation of the limited liability company pursuant to § 18-104(d), § 18-
116 104(i)(4) or § 18-1108(a) of this title, and each protected series thereof that has not been terminated and wound up, shall be
117 revived with the same force and effect as if ~~its~~ the certificate of formation of the limited liability company had not been
118 canceled pursuant to § 18-104(d), § 18-104(i)(4) or § 18-1108(a) of this title. Such revival shall validate all contracts, acts,
119 matters and things made, done and performed by the limited liability company, ~~its, any protected series or registered series~~
120 thereof, or by the members, managers, employees and agents of the limited liability company or such series during the time
121 when ~~its~~ the certificate of formation of the limited liability company was canceled pursuant to § 18-104(d), § 18-104(i)(4)
122 or § 18-1108(a) of this title, with the same force and effect and to all intents and purposes as if the certificate of formation
123 of the limited liability company had remained in full force and effect. All real and personal property, and all rights and
124 interests, which belonged to the limited liability company or any protected series or registered series thereof at the time ~~its~~
125 the certificate of formation of the limited liability company was canceled pursuant to § 18-104(d), § 18-104(i)(4) or § 18-
126 1108(a) of this title or which were acquired by the limited liability company or any protected series or registered series
127 thereof following the cancellation of ~~its~~ the certificate of formation of the limited liability company pursuant to § 18-104(d),
128 § 18-104(i)(4) or § 18-1108(a) of this title, and which were not disposed of prior to the time of ~~its~~ the limited liability
129 company's revival, shall be vested in the limited liability company or the applicable protected series or registered series
130 after ~~its~~ the revival of the limited liability company as fully as they were held by the limited liability company or such series
131 at, and after, as the case may be, the time ~~its~~ the certificate of formation of the limited liability company was canceled
132 pursuant to § 18-104(d), § 18-104(i)(4) or § 18-1108(a) of this title. After ~~its revival, the revival of~~ the limited liability
133 company, the limited liability company and any protected series or registered series thereof shall be as exclusively liable for
134 all contracts, acts, matters and things made, done or performed in ~~its name and on its behalf~~ the name of and on behalf of
135 the limited liability company or such series by ~~its~~ the members, managers, employees and agents of the limited liability
136 company or such series prior to ~~its~~ the limited liability company's revival as if ~~its~~ the certificate of formation of the limited
137 liability company had at all times remained in full force and effect.

138 Section 9. This Act shall become effective August 1, 2022.

SYNOPSIS

This bill continues the practice of amending periodically the Delaware Limited Liability Company Act (the “Act”) to keep it current and to maintain its national preeminence. The following is a section-by-section review of the proposed amendments of the Act.

Section 1. This section amends Section 18-101(9) of the Act to confirm that any registered series or protected series of a limited liability company is bound by the limited liability company agreement of such limited liability company regardless of whether the series executed the limited liability company agreement. This amendment is not intended to imply that other references to “limited liability company” in the Act do not include protected series or registered series thereof (to the extent required by the context). This section also amends Section 18-101(9) of the Act to insert a new clause c. to confirm that a limited liability company agreement may include or incorporate multiple documents that may govern the business or affairs of the limited liability company or any of its series.

Section 2. This section amends Section 18-109(b) of the Act to provide that when service of process is being effected on a manager or liquidating trustee of a limited liability company, the Prothonotary or the Register in Chancery of the court in which the civil action or proceeding is pending shall address the required copies and statements to the manager or liquidating trustee of the limited liability company at the principal place of business of the limited liability company (if such address is known) and to the manager’s or liquidating trustee’s address last known to the party desiring to make such service.

Section 3. This section amends Section 18-113(b) to confirm that a signature on a certificate of limited liability company interest may be a manual, facsimile, or electronic signature.

Section 4. This section amends Section 18-204(d) of the Act to clarify that the execution of a certificate by a person who is authorized by the Act to execute such certificate constitutes an oath or affirmation that, to the best of such person’s knowledge and belief, the facts stated therein shall be true at the time such certificate becomes effective, not at the time such certificate is executed.

Section 5. This section amends Section 18-212(g) of the Act to provide that the approval of a limited liability company domestication in the manner provided for by the document, instrument, agreement or other writing, as the case may be, governing the internal affairs of the non-United States entity and the conduct of its business or by applicable non-Delaware law, as appropriate, and the approval of the limited liability company agreement by the same authorization required to approve the domestication, are required to occur prior to the time a certificate of limited liability company domestication becomes effective.

Section 6. This section amends Section 18-214(h) of the Act to provide that the approval of a conversion to a limited liability company in the manner provided for by the document, instrument, agreement or other writing, as the case may be, governing the internal affairs of the other entity and the conduct of its business or by applicable law, as appropriate, and the approval of the limited liability company agreement by the same authorization required to approve the conversion, are required to occur prior to the time a certificate of conversion to limited liability company becomes effective.

Section 7. This section amends Section 18-1108(b) of the Act to make conforming changes.

Section 8. This section amends Section 18-1109 of the Act to (i) clarify the effect of the filing of a certificate of revival of limited liability company on any protected series of such limited liability company that are not, at the time of such filing, otherwise terminated and wound up and any registered series of such limited liability company whose certificates of registered series are not, at the time of such filing, otherwise cancelled, and (ii) make other conforming changes.

Section 9. This section provides that the proposed amendments to the Act shall become effective August 1, 2022.

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