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HOUSE OF REPRESENTATIVES  
152nd GENERAL ASSEMBLY

HOUSE BILL NO. 336

AN ACT TO AMEND TITLE 6 OF THE DELAWARE CODE RELATING TO THE DELAWARE LIMITED LIABILITY COMPANY ACT.

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

1 Section 1. Amend § 18-209, Title 6 of the Delaware Code by making deletions as shown by strike through and  
2 insertions as shown by underline as follows:

3 § 18-209. Merger and consolidation.

4 (c) Except in the case of a merger under subsection (i) of this section, if a domestic limited liability company is  
5 merging or consolidating under this section, the domestic limited liability company or other business entity surviving or  
6 resulting in or from the merger or consolidation shall file a certificate of merger or consolidation executed by 1 or more  
7 authorized persons on behalf of the domestic limited liability company when it is the surviving or resulting entity in the  
8 office of the Secretary of State. The certificate of merger or consolidation shall state:

9 (4) In the case of a merger in which a domestic limited liability company is the surviving entity, such  
10 amendments, if any, to the certificate of formation of the surviving domestic limited liability company ~~to change its~~  
11 ~~name, registered office or registered agent~~ as are desired to be effected by the ~~merger~~; merger (which amendments may  
12 amend and restate the certificate of formation of the surviving domestic limited liability company in its entirety);

13 (e) A certificate of merger or consolidation or a certificate of ownership and merger shall act as a certificate of  
14 cancellation for a domestic limited liability company which is not the surviving or resulting entity in the merger or  
15 consolidation. A certificate of merger or a certificate of ownership and merger that sets forth any amendment in accordance  
16 with paragraph (c)(4) or subsection (i) of this section shall be deemed to be an amendment to the certificate of formation of  
17 the limited liability company, and the limited liability company shall not be required to take any further action to amend its  
18 certificate of formation under § 18-202 or § 18-208 of this title with respect to such amendments set forth in the certificate  
19 of merger or certificate of ownership and merger. Whenever this section requires the filing of a certificate of merger or  
20 consolidation, such requirement shall be deemed satisfied by the filing of an agreement of merger or consolidation  
21 containing the information required by this section to be set forth in the certificate of merger or consolidation.

22 (i) In any case in which (i) at least 90% of the outstanding shares of each class of the stock of a corporation or  
23 corporations (other than a corporation which has in its certificate of incorporation the provision required by § 251(g)(7)(A)  
24 and (B) of Title 8), of which class there are outstanding shares that, absent § 267(a) of Title 8, would be entitled to vote on  
25 such merger, is owned by a domestic limited liability company, (ii) 1 or more of such corporations is a corporation of the  
26 State of Delaware, and (iii) any corporation that is not a corporation of the State of Delaware is a corporation of any other  
27 state or the District of Columbia or another jurisdiction, the laws of which do not forbid such merger, the domestic limited  
28 liability company having such stock ownership may either merge the corporation or corporations into itself and assume all  
29 of its or their obligations, or merge itself, or itself and 1 or more of such corporations, into 1 of the other corporations,  
30 pursuant to a plan of merger. If a domestic limited liability company is causing a merger under this subsection, the domestic  
31 limited liability company shall file a certificate of ownership and merger executed by 1 or more authorized persons on  
32 behalf of the domestic limited liability company in the office of the Secretary of State. The certificate of ownership and  
33 merger shall certify that such merger was authorized in accordance with the domestic limited liability company's limited  
34 liability company agreement and this chapter, and if the domestic limited liability company shall not own all the  
35 outstanding stock of all the corporations that are parties to the merger, shall state the terms and conditions of the merger,  
36 including the securities, cash, property, or rights to be issued, paid, delivered or granted by the surviving domestic limited  
37 liability company or corporation upon surrender of each share of the corporation or corporations not owned by the domestic  
38 limited liability company, or the cancellation of some or all of such shares. In the case of a merger under this subsection in  
39 which a domestic limited liability company is the surviving entity, the certificate of ownership and merger may also state  
40 such amendments, if any, to the certificate of formation of the surviving domestic limited liability company as are desired  
41 to be effected by the merger (which amendments may amend and restate the certificate of formation of the surviving  
42 domestic limited liability company in its entirety). If a corporation surviving a merger under this subsection is not a  
43 corporation organized under the laws of the State of Delaware, then the terms and conditions of the merger shall obligate  
44 such corporation to agree that it may be served with process in the State of Delaware in any proceeding for enforcement of  
45 any obligation of the domestic limited liability company or any obligation of any constituent corporation of the State of  
46 Delaware, as well as for enforcement of any obligation of the surviving corporation, including any suit or other proceeding  
47 to enforce the right of any stockholders as determined in appraisal proceedings pursuant to § 262 of Title 8, and to  
48 irrevocably appoint the Secretary of State as its agent to accept service of process in any such suit or other proceedings, and  
49 to specify the address to which a copy of such process shall be mailed by the Secretary of State. Process may be served  
50 upon the Secretary of State under this subsection by means of electronic transmission but only as prescribed by the  
51 Secretary of State. The Secretary of State is authorized to issue such rules and regulations with respect to such service as

52 the Secretary of State deems necessary or appropriate. In the event of such service upon the Secretary of State in  
53 accordance with this subsection, the Secretary of State shall forthwith notify such surviving corporation thereof by letter,  
54 directed to such surviving corporation at its address so specified, unless such surviving corporation shall have designated in  
55 writing to the Secretary of State a different address for such purpose, in which case it shall be mailed to the last address so  
56 designated. Such letter shall be sent by a mail or courier service that includes a record of mailing or deposit with the courier  
57 and a record of delivery evidenced by the signature of the recipient. Such letter shall enclose a copy of the process and any  
58 other papers served on the Secretary of State pursuant to this subsection. It shall be the duty of the plaintiff in the event of  
59 such service to serve process and any other papers in duplicate, to notify the Secretary of State that service is being effected  
60 pursuant to this subsection and to pay the Secretary of State the sum of \$50 for the use of the State of Delaware, which sum  
61 shall be taxed as part of the costs in the proceeding, if the plaintiff shall prevail therein. The Secretary of State shall  
62 maintain an alphabetical record of any such service setting forth the name of the plaintiff and the defendant, the title, docket  
63 number and nature of the proceeding in which process has been served, the fact that service has been effected pursuant to  
64 this subsection, the return date thereof, and the day and hour service was made. The Secretary of State shall not be required  
65 to retain such information longer than 5 years from receipt of the service of process.

66 Section 2. Amend § 18-215, Title 6 of the Delaware Code by making deletions as shown by strike through and  
67 insertions as shown by underline as follows:

68 § 18-215. Series of members, managers, limited liability company interests or assets.

69 (d) If a limited liability company agreement provides the manner in which a termination of a protected series may  
70 be revoked, it may be revoked in that manner and, unless the limited liability company has dissolved and such dissolution  
71 has not been revoked or the limited liability company agreement prohibits revocation of termination of a protected series,  
72 then notwithstanding the occurrence of an event set forth in paragraph (b)(9)a., b., or c. of this section, the protected series  
73 shall not be terminated and its affairs shall not be wound up if, prior to the completion of the winding up of the protected  
74 series, the protected series is continued, effective as of the occurrence of such event:

75 (1) In the case of termination effected by the vote or consent of the members associated with the protected  
76 ~~series or (or other persons, persons whose approval is required for such termination pursuant to the limited liability~~  
77 company agreement), pursuant to such vote or consent (and the approval of any members associated with the protected  
78 series or other persons whose approval is required under the limited liability company agreement to revoke a  
79 termination contemplated by this paragraph); and

80 (2) In the case of termination under paragraph (b)(9)a. or b. of this section (other than a termination effected  
81 by the vote or consent of the members associated with the protected series ~~or (or other persons), persons whose~~

82 approval is required for such termination pursuant to the limited liability company agreement)), pursuant to such vote  
83 or consent that, pursuant to the terms of the limited liability company agreement, is required to amend the provision of  
84 the limited liability company agreement effecting such termination (and the approval of any members associated with  
85 the protected series or other persons whose approval is required under the limited liability company agreement to  
86 revoke a termination contemplated by this paragraph).

87 Section 3. Amend § 18-218, Title 6 of the Delaware Code by making deletions as shown by strike through and  
88 insertions as shown by underline as follows:

89 § 18-218. Registered series of members, managers, limited liability company interests or assets.

90 (f) If a limited liability company agreement provides the manner in which a dissolution of a registered series may  
91 be revoked, it may be revoked in that manner and, unless the limited liability company has dissolved and such dissolution  
92 has not been revoked or the limited liability company agreement prohibits revocation of dissolution of a registered series,  
93 then notwithstanding the occurrence of an event set forth in paragraph (c)(9)a., b., or c. of this section, the registered series  
94 shall not be dissolved and its affairs shall not be wound up if, prior to the filing of a certificate of cancellation of the  
95 certificate of registered series in the office of the Secretary of State, the registered series is continued, effective as of the  
96 occurrence of such event:

97 (1) In the case of dissolution effected by the vote or consent of the members associated with the registered  
98 series ~~or (or other persons, persons whose approval is required for such dissolution pursuant to the limited liability~~  
99 company agreement), pursuant to such vote or consent (and the approval of any members associated with the registered  
100 series or other persons whose approval is required under the limited liability company agreement to revoke a  
101 dissolution contemplated by this paragraph); and

102 (2) In the case of dissolution under paragraph (c)(9)a. or b. of this section (other than a dissolution effected by  
103 the vote or consent of the members associated with the registered series ~~or (or other persons, persons whose approval~~  
104 is required for such dissolution pursuant to the limited liability company agreement)), pursuant to such vote or consent  
105 that, pursuant to the terms of the limited liability company agreement, is required to amend the provision of the limited  
106 liability company agreement effecting such dissolution (and the approval of any members associated with the  
107 registered series or other persons whose approval is required under the limited liability company agreement to revoke a  
108 dissolution contemplated by this paragraph).

109 Section 4. Amend § 18-221, Title 6 of the Delaware Code by making deletions as shown by strike through and  
110 insertions as shown by underline as follows:

111 § 18-221. Merger and consolidation of registered series.

112 (b) If a registered series is merging or consolidating under this section, the registered series surviving or resulting  
113 in or from the merger or consolidation shall file a certificate of merger or consolidation of registered series executed by 1 or  
114 more authorized persons on behalf of the registered series when it is the surviving or resulting registered series in the office  
115 of the Secretary of State. The certificate of merger or consolidation of registered series shall state:

116 (4) Such ~~amendment~~, amendments, if any, to the certificate of registered series of the surviving registered  
117 series ~~that is the surviving registered series to change the name of the surviving registered series, as is- as are~~ desired to  
118 be effected by the ~~merger~~, merger (which amendments may amend and restate the certificate of registered series of the  
119 surviving registered series in its entirety);

120 Section 5. Amend § 18-806, Title 6 of the Delaware Code by making deletions as shown by strike through and  
121 insertions as shown by underline as follows:

122 § 18-806. Revocation of dissolution.

123 If a limited liability company agreement provides the manner in which a dissolution may be revoked, it may be  
124 revoked in that manner and, unless a limited liability company agreement prohibits revocation of dissolution, then  
125 notwithstanding the occurrence of an event set forth in § 18-801(a)(1), (2), (3) or (4) of this title, the limited liability  
126 company shall not be dissolved and its affairs shall not be wound up if, prior to the filing of a certificate of cancellation in  
127 the office of the Secretary of State, the limited liability company is continued, effective as of the occurrence of such event:

128 (1) In the case of dissolution effected by the vote or consent of the members ~~or (or other persons, persons~~  
129 whose approval is required for such dissolution pursuant to the limited liability company agreement), pursuant to such  
130 vote or consent (and the approval of any members or other persons whose approval is required under the limited  
131 liability company agreement to revoke a dissolution contemplated by this paragraph);

132 (2) In the case of dissolution under § 18-801(a)(1) or (2) of this title (other than a dissolution effected by the  
133 vote or consent of the members ~~or (or other persons whose approval is required for such dissolution pursuant to the~~  
134 limited liability company agreement) or the occurrence of an event that causes the last remaining member to cease to  
135 be a member), pursuant to such vote or consent that, pursuant to the terms of the limited liability company agreement,  
136 is required to amend the provision of the limited liability company agreement effecting such dissolution (and the  
137 approval of any members or other persons whose approval is required under the limited liability company agreement to  
138 revoke a dissolution contemplated by this paragraph); and

139 Section 6. This Act takes effect on August 1, 2024.

## SYNOPSIS

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

Section 1 amends § 18-209 of the LLC Act to permit a certificate of merger or a certificate of ownership and merger to state any amendments to the certificate of formation of a surviving domestic limited liability company in a merger as are desired to be effected by the merger.

Section 2 amends § 18-215(d) of the LLC Act to confirm and clarify certain of the mechanisms for revoking termination of a protected series. Specifically, Section 2 amends § 18-215(d) to confirm and clarify that the references to “other persons” in § 18-215(d)(1) and (2) are references to other persons whose approval is required for such termination of the protected series pursuant to the limited liability company agreement.

Section 3 amends § 18-218(f) of the LLC Act to confirm and clarify certain of the mechanisms for revoking dissolution of a registered series. Specifically, Section 3 amends § 18-218(f) to confirm and clarify that the references to “other persons” in § 18-218(f)(1) and (2) are references to other persons whose approval is required for such dissolution of the registered series pursuant to the limited liability company agreement.

Section 4 amends § 18-221 of the LLC Act to permit a certificate of merger of registered series to state any amendments to the certificate of registered series of a surviving registered series in a merger as are desired to be effected by the merger.

Section 5 amends § 18-806 of the LLC Act to confirm and clarify certain of the mechanisms for revoking dissolution of a limited liability company. Specifically, Section 5 amends § 18-806 to confirm and clarify that the references to “other persons” in § 18-806(1) and (2) are references to other persons whose approval is required for such dissolution of the limited liability company pursuant to the limited liability company agreement.

Section 6 provides that the amendments to the LLC Act take effect on August 1, 2024.