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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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 18-806. Revocation of dissolution.

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

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

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

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.