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DELAWARE STATE SENATE
149th GENERAL ASSEMBLY

SENATE BILL NO. 72

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:

1 Section 1. Amend § 18-101(4), Chapter 18, Title 6 of the Delaware Code by making deletions as shown by strike
2 through and insertions as shown by underline as follows:

3 (4) "Foreign limited liability company" means a limited liability company formed under the laws of any state or
4 under the laws of any foreign country or other foreign jurisdiction ~~and denominated as such under the laws of such state or~~
5 ~~foreign country or other foreign jurisdiction.~~ When used in this title in reference to a foreign limited liability company, the
6 terms "limited liability company agreement," "limited liability company interest," "manager" or "member" shall mean a
7 limited liability company agreement, limited liability company interest, manager or member, respectively, under the laws of
8 the state or foreign country or other foreign jurisdiction under which the foreign limited liability company is formed.

9 Section 2. Amend § 18-101(11), Chapter 18, Title 6 of the Delaware Code by making deletions as shown by strike
10 through and insertions as shown by underline as follows:

11 (11) "Member" means a person who is admitted to a limited liability company as a member as provided in § 18-
12 301 of this title ~~or, in the case of a foreign limited liability company, in accordance with the laws of the state or foreign~~
13 ~~country or other foreign jurisdiction under which the foreign limited liability company is formed.~~

14 Section 3. Amend § 18-102(5), Chapter 18, Title 6 of the Delaware Code by making deletions as shown by strike
15 through and insertions as shown by underline as follows:

16 (5) Shall not contain the word "bank," or any variation thereof, except for the name of a bank reporting to and
17 under the supervision of the State Bank Commissioner of this State or a subsidiary of a bank or savings association (as
18 those terms are defined in the Federal Deposit Insurance Act, as amended, at *12 U.S.C. § 1813*), or a limited liability
19 company regulated under the Bank Holding Company Act of 1956, as amended, *12 U.S.C. § 1841* et seq., or the Home
20 Owners' Loan Act, as amended, *12 U.S.C. § 1461* et seq.; provided, however, that this section shall not be construed to

21 prevent the use of the word "bank," or any variation thereof, in a context clearly not purporting to refer to a banking
22 business or otherwise likely to mislead the public about the nature of the business of the limited liability company or to lead
23 to a pattern and practice of abuse that might cause harm to the interests of the public or ~~the~~this State as determined by the
24 Division of Corporations in the Department of State.

25 Section 4. Amend § 18-104(g), Chapter 18, Title 6 of the Delaware Code by making deletions as shown by strike
26 through and insertions as shown by underline as follows:

27 (g) Every domestic limited liability company ~~formed under the laws of the State of Delaware or~~ and every foreign
28 limited liability company qualified to do business in the State of Delaware shall provide to its registered agent and update
29 from time to time as necessary the name, business address and business telephone number of a natural person who is a
30 member, manager, officer, employee or designated agent of the domestic or foreign limited liability company, who is then
31 authorized to receive communications from the registered agent. Such person shall be deemed the communications contact
32 for the domestic or foreign limited liability company. A domestic limited liability company, upon receipt of a request by the
33 communications contact delivered in writing or by electronic transmission, shall provide the communications contact with
34 the name, business address and business telephone number of a natural person who has access to the record required to be
35 maintained pursuant to § 18-305(h) of this title. Every registered agent shall retain (in paper or electronic form) the above
36 information concerning the current communications contact for each domestic limited liability company and each foreign
37 limited liability company for which that registered agent serves as registered agent. If the domestic or foreign limited
38 liability company fails to provide the registered agent with a current communications contact, the registered agent may
39 resign as the registered agent for such domestic or foreign limited liability company pursuant to this section. For purposes
40 of this subsection, the term "electronic transmission" means any form of communication not directly involving the physical
41 transmission of paper that creates a record that may be retained, retrieved and reviewed by a recipient thereof and that may
42 be directly reproduced in paper form by such a recipient through an automated process.

43 Section 5. Amend § 18-104(i)(4), Chapter 18, Title 6 of the Delaware Code by making deletions as shown by
44 strike through and insertions as shown by underline as follows:

45 (4) Upon the entry of an order by the Court enjoining any person or entity from acting as a registered agent, the
46 Secretary of State shall mail or deliver notice of such order to each affected domestic or foreign limited liability company:

47 a. That has specified the address of a place of business in a record of the Secretary of State, to the address
48 specified, or

49 b. An address of which the Secretary of State has obtained from the domestic or foreign limited liability
50 company's former registered agent, to the address obtained.

51 If such a ~~limited liability company~~ is a domestic limited liability company and fails to obtain and designate a new registered
52 agent within 30 days after such notice is given, the certificate of formation of such limited liability company shall be
53 canceled. If such a ~~limited liability company~~ is a foreign limited liability company and fails to obtain and designate a new
54 registered agent within 30 days after such notice is given, such foreign limited liability company shall not be permitted to
55 do business in the State of Delaware and its registration shall be canceled. If any other affected ~~limited liability company~~ is
56 a domestic limited liability company and fails to obtain and designate a new registered agent within 60 days after entry of
57 an order by the Court enjoining such limited liability company's registered agent from acting as a registered agent, the
58 certificate of formation of such limited liability company shall be canceled. If any other affected ~~limited liability company~~
59 is a foreign limited liability company and fails to obtain and designate a new registered agent within 60 days after entry of
60 an order by the eCourt enjoining such foreign limited liability company's registered agent from acting as a registered agent,
61 such foreign limited liability company shall not be permitted to do business in the State of Delaware and its registration
62 shall be canceled. If the Court enjoins a person or entity from acting as a registered agent as provided in this section and no
63 new registered agent shall have been obtained and designated in the time and manner aforesaid, service of legal process
64 against the domestic or foreign limited liability company for which the registered agent had been acting shall thereafter be
65 upon the Secretary of State in accordance with § 18-105 or § 18-911 of this title. The Court of Chancery may, upon
66 application of the Secretary of State on notice to the former registered agent, enter such orders as it deems appropriate to
67 give the Secretary of State access to information in the former registered agent's possession in order to facilitate
68 communication with the domestic and foreign limited liability companies the former registered agent served.

69 Section 6. Amend § 18-201, Chapter 18, Title 6 of the Delaware Code to add a new subsection (e) to read as
70 follows:

71 (e) A certificate of formation substantially complies with § 18-201(a)(2) of this title if it contains the name of
72 the registered agent and the address of the registered office even if the certificate of formation does not expressly designate
73 such person as the registered agent or such address as the registered office or the address of the registered agent.

74 Section 7. Amend § 18-209(a), Chapter 18, Title 6 of the Delaware Code by making deletions as shown by strike
75 through and insertions as shown by underline as follows:

76 (a) As used in this section and in § 18-204 of this title, "other business entity" means a corporation, a
77 statutory trust, a business trust, an association, a real estate investment trust, a common-law trust, or any other incorporated
78 or unincorporated business or entity, including a partnership (whether general (including a limited liability partnership) or
79 limited (including a limited liability limited partnership)), and a foreign limited liability company, but excluding a domestic
80 limited liability company. As used in this section and in §§ 18-210 and 18-301 of this title, "plan of merger" means a

81 writing approved by a domestic limited liability company, in the form of resolutions or otherwise, that states the terms and
82 conditions of a merger under subsection (i) of this section.

83 Section 8. Amend § 18-212(a), Chapter 18, Title 6 of the Delaware Code by making deletions as shown by strike
84 through and insertions as shown by underline as follows:

85 (a) As used in this section and in § 18-204 of this title, "non-United States entity" means a foreign limited
86 liability company (other than ~~one~~ 1 formed under the laws of a state) or a corporation, a statutory trust, a business trust, an
87 association, a real estate investment trust, a common-law trust or any other incorporated or unincorporated business or
88 entity, including a partnership (whether general (including a limited liability partnership) or limited (including a limited
89 liability limited partnership)) formed, incorporated, created or that otherwise came into being under the laws of any foreign
90 country or other foreign jurisdiction (other than any state).

91 Section 9. Amend § 18-214(a), Chapter 18, Title 6 of the Delaware Code by making deletions as shown by strike
92 through and insertions as shown by underline as follows:

93 (a) As used in this section and in § 18-204 of this title, the term "other entity" means a corporation, a
94 statutory trust, a business trust, an association, a real estate investment trust, a common-law trust or any other incorporated
95 or unincorporated business or entity, including a partnership (whether general (including a limited liability partnership) or
96 limited (including a limited liability limited partnership)) or a foreign limited liability company.

97 Section 10. Amend § 18-216(a), Chapter 18, Title 6 of the Delaware Code by making deletions as shown by strike
98 through and insertions as shown by underline as follows:

99 (a) Upon compliance with this section, a domestic limited liability company may convert to a corporation, a
100 statutory trust, a business trust, an association, a real estate investment trust, a common-law trust or any other incorporated
101 or unincorporated business or entity, including a partnership (whether general (including a limited liability partnership) or
102 limited (including a limited liability limited partnership)) or a foreign limited liability company.

103 Section 11. Amend § 18-407, Chapter 18, Title 6 of the Delaware Code by making deletions as shown by strike
104 through and insertions as shown by underline as follows:

105 Unless otherwise provided in the limited liability company agreement, a member or manager of a limited liability
106 company has the power and authority to delegate to 1 or more other persons any or all of the member's or manager's, as the
107 case may be, rights, ~~and~~ powers and duties to manage and control the business and affairs of the limited liability company, ~~including to delegate~~
108 ~~including to delegate~~ Any such delegation may be to agents, officers and employees of a member or manager or the limited
109 liability company, and ~~to delegate~~ by a management agreement or another agreement with, or otherwise to, other persons.
110 Unless otherwise provided in the limited liability company agreement, such delegation by a member or manager shall be

irrevocable if it states that it is irrevocable. Unless otherwise provided in the limited liability company agreement, such delegation by a member or manager of a limited liability company shall not cause the member or manager to cease to be a member or manager, as the case may be, of the limited liability company or cause the person to whom any such rights ~~and~~, powers and duties have been delegated to be a member or manager, as the case may be, of the limited liability company. No other provision of this chapter shall be construed to restrict a member's or manager's power and authority to delegate any or all of its rights, powers and duties to manage and control the business and affairs of the limited liability company.

Section 12. Amend § 18-1107(a), Chapter 18, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

(a) For purposes of any tax imposed by the State of Delaware or any instrumentality, agency or political subdivision of the State of Delaware, a domestic limited liability company ~~formed under this chapter~~ or a foreign limited liability company qualified to do business in the State of Delaware ~~as a foreign limited liability company~~ shall be classified as a partnership unless classified otherwise for federal income tax purposes, in which case the domestic or foreign limited liability company shall be classified in the same manner as it is classified for federal income tax purposes. For purposes of any tax imposed by the State of Delaware or any instrumentality, agency or political subdivision of the State of Delaware, a member or an assignee of a member of a domestic limited liability company ~~formed under this chapter~~ or a foreign limited liability company qualified to do business in the State of Delaware ~~as a foreign limited liability company~~ shall be treated as either a resident or nonresident partner unless classified otherwise for federal income tax purposes, in which case the member or assignee of a member shall have the same status as such member or assignee of a member has for federal income tax purposes.

Section 13. This Act shall become effective August 1, 2017.

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.

Sections 1 through 5 and 12. These sections amend Sections 18-101(4), 18-101(11), 18-102(5), 18-104(g), 18-104(i)(4) and 18-1107(a) of the Act to clarify and confirm the distinction between domestic limited liability companies and foreign limited liability companies and to make certain other conforming changes.

Section 6. This section adds subsection (e) to Section 18-201 of the Act to confirm and clarify that a certificate of formation substantially complies with Section 18-201(a)(2) if it contains the name of the registered agent and the address of the registered office even if the certificate of formation does not expressly designate such person as the registered agent or such address as the registered office or the address of the registered agent.

Section 7. This section amends Section 18-209(a) of the Act relating to mergers and consolidations to confirm that "other business entity" includes any incorporated or unincorporated business or entity (other than a domestic limited liability company).

Section 8. This section amends Section 18-212(a) of the Act relating to the domestication of non-United States entities to confirm that the term "non-United States entity" includes any incorporated or unincorporated non-United States business or entity.

Section 9. This section amends Section 18-214(a) of the Act relating to conversions to a limited liability company to confirm that the term "other entity" includes any incorporated or unincorporated business or entity (other than a domestic limited liability company).

Section 10. This section amends Section 18-216(a) of the Act relating to a conversion of a limited liability company to confirm that a domestic limited liability company may convert to any incorporated or unincorporated business or entity (other than a domestic limited liability company).

Section 11. This section amends Section 18-407 of the Act to confirm and clarify the broad power and authority of a member or manager to delegate any or all of the member's or manager's rights, powers and duties to manage and control the business and affairs of a limited liability company, including any core governance functions.

Section 13. This section provides that the proposed amendments of the Act shall become effective August 1, 2017.

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