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DELAWARE STATE SENATE
144th GENERAL ASSEMBLY

SENATE BILL NO. 96

AN ACT TO AMEND 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 (Three-fifths of all members
elected to each house thereof concurring therein):

Section 1. Amend § 18-101(7), Chapter 18, Title 6 of the Delaware Code by deleting the word “or”
immediately prior to the word “oral” in the first sentence thereof and substituting in lieu thereof a “,” and by inserting the
words “or implied” immediately after the word “oral”.

Section 2. Amend § 18-101(11), Chapter 18, Title 6 of the Delaware Code by deleting the words “has
been” and substituting in lieu thereof the word “is” and by deleting the word “organized” and substituting in lieu thereof the
word “formed”.

Section 3. Amend § 18-104(a)(2), Chapter 18, Title 6 of the Delaware Code by inserting the words
“having a business office identical with such registered office,” immediately before the words “which agent”.

Section 4. Amend § 18-104(d), Chapter 18, Title 6 of the Delaware Code by deleting the words “deemed
to be” in the fourth sentence thereof.

Section 5. Amend § 18-104(e)(3), Chapter 18, Title 6 of the Delaware Code by inserting the words “and
foreign limited liability companies” immediately before the words “for which it serves” and by inserting the words “or
foreign limited liability company” immediately before the words “to which the service”.

Section 6. Amend § 18-104(e)(4), Chapter 18, Title 6 of the Delaware Code by inserting the words “and
foreign limited liability companies” immediately before the words “for which it serves”.

Section 7. Amend § 18-104(g), Chapter 18, Title 6 of the Delaware Code by inserting the words “and
each foreign limited liability company” immediately before the words “for which that registered agent serves” in the third
sentence thereof.

Section 8. Amend § 18-104(i)(4)b., Chapter 18, Title 6 of the Delaware Code by deleting each of the four
appearances of the words “deemed to be” therein.

21 Section 9. Amend § 18-201(d), Chapter 18, Title 6 of the Delaware Code by deleting the word “may” in
22 the first place where such word appears therein and substituting in lieu thereof the word “shall”, by inserting the words “or
23 otherwise existing” immediately after both appearances of the words “entered into”, and by inserting the words “or
24 reflected by” immediately after the words “as provided in”.

25 Section 10. Amend § 18-203, Chapter 18, Title 6 of the Delaware Code by inserting the words “or upon
26 the future effective date or time of a certificate of merger or consolidation if the limited liability company is not the
27 surviving or resulting entity in a merger or consolidation,” immediately before the words “or upon the filing of a certificate
28 of transfer” in the first sentence thereof, by inserting the words “or upon the future effective date or time of a certificate of
29 transfer” immediately after “or upon the filing of a certificate of transfer” in the first sentence thereof, by deleting the word
30 “a” immediately before the words “non-Delaware entity” in the first sentence thereof, by inserting the words “or upon the
31 future effective date or time of a certificate of conversion to non-Delaware entity” immediately before the “.” at the end of
32 the first sentence thereof, and by inserting the following as a new paragraph at the end of such section: “The Secretary of
33 State shall not issue a certificate of good standing with respect to a limited liability company if its certificate of formation is
34 cancelled.”.

35 Section 11. Amend § 18-206(a), Chapter 18, Title 6 of the Delaware Code by inserting the word
36 "domestic" immediately before the word "continuance" in the first sentence thereof.

37 Section 12. Amend § 18-206(a)(1), Chapter 18, Title 6 of the Delaware Code by inserting the word
38 "domestic" immediately before the word "continuance" in the first sentence thereof.

39 Section 13. Amend § 18-206(b), Chapter 18, Title 6 of the Delaware Code by deleting the word “or”
40 immediately after the words “ as specified in § 18-104(d)” in the second sentence thereof and substituting in lieu thereof a
41 “,”, by inserting the words “or § 18-1108(a)” immediately before the words “of this title,” in the second sentence thereof,
42 and by inserting the word "domestic" immediately before all three appearances of the word "continuance" in the sixth
43 sentence thereof.

44 Section 14. Amend § 18-206(d), Chapter 18, Title 6 of the Delaware Code by inserting the word
45 "domestic" immediately before the word "continuance".

46 Section 15. Amend § 18-209(a), Chapter 18, Title 6 of the Delaware Code by deleting the word “or”
47 immediately after the words “statutory trust,”, by deleting the word “or” immediately after the words “business trust” and
48 substituting in lieu thereof the word “, an”, and by inserting the words “or entity” immediately after the words
49 “unincorporated business”.

Section 16. Amend § 18-209(c)(8), Chapter 18, Title 6 of the Delaware Code by deleting the words “or limited partnership” in the first sentence thereof and substituting in lieu thereof the words “, partnership (whether general (including a limited liability partnership) or limited (including a limited liability limited partnership)) or statutory trust”, and by deleting the words “or a statutory trust organized under Chapter 38 of Title 12,” in the first sentence thereof.

Section 17. Amend § 18-209(g), Chapter 18, Title 6 of the Delaware Code by inserting the words “, and the merger or consolidation shall not constitute a dissolution of such limited liability company” immediately before the “.” at the end of the second sentence thereof.

Section 18. Amend § 18-209, Chapter 18, Title 6 of the Delaware Code by inserting a new subsection (h) at the end of such Section reading as follows: “(h) A limited liability company agreement may provide that a domestic limited liability company shall not have the power to merge or consolidate as set forth in this section.”.

Section 19. Amend § 18-210, Chapter 18, Title 6 of the Delaware Code by inserting the words “or series” immediately after the words “any class or group” in the first sentence thereof and by inserting the words “or continuance” immediately after the words “transfer to or domestication” in the first sentence thereof.

Section 20. Amend § 18-213(g), Chapter 18, Title 6 of the Delaware Code by deleting the word “continuance” immediately after the words “domestication or” in the third sentence thereof and substituting in lieu thereof the word “continuance”.

Section 21. Amend § 18-213, Chapter 18, Title 6 of the Delaware Code by inserting a new subsection (h) at the end of such section reading as follows: “(h) A limited liability company agreement may provide that a domestic limited liability company shall not have the power to transfer, domesticate or continue as set forth in this section.”.

Section 22. Amend § 18-215, Chapter 18, Title 6 of the Delaware Code by deleting the word “or” immediately after the word “managers” in the heading of the section and substituting in lieu thereof a “,” and by inserting the words “or assets” immediately after the word “interests” in the heading of the section.

Section 23. Amend § 18-215(a), Chapter 18, Title 6 of the Delaware Code by deleting the word “or” immediately after the word “managers” and substituting in lieu thereof a “,” and by deleting the word “having” immediately after the words “company interests” and substituting in lieu thereof the words “or assets. Any such series may have”.

Section 24. Amend § 18-215(b), Chapter 18, Title 6 of the Delaware Code by deleting the first appearance of the words “separate and distinct” in the first sentence thereof and substituting in lieu thereof the word “the”, by deleting the word “are” immediately before the word “maintained” in the first sentence thereof, by deleting the word “and” immediately after the second appearance of the word “series” in the first sentence thereof and substituting in lieu thereof the words “account for”, by deleting the words “any such series are held in such separate and distinct records

(directly or indirectly, including through a nominee or otherwise) and accounted for in such separate and distinct records” in the first sentence thereof and substituting in lieu thereof the words “such series”, and by inserting the following two sentences immediately after the first sentence thereof: “Assets associated with a series may be held directly or indirectly, including in the name of such series, in the name of the limited liability company, through a nominee or otherwise. Records maintained for a series that reasonably identify its assets, including by specific listing, category, type, quantity, computational or allocational formula or procedure (including a percentage or share of any asset or assets) or by any other method where the identity of such assets is objectively determinable, will be deemed to account for the assets associated with such series separately from the other assets of the limited liability company, or any other series thereof.”.

Section 25. Amend § 18-215, Chapter 18, Title 6 of the Delaware Code by redesignating subsections “(c)” through “(m)” thereof as “(d)” through “(n)” and inserting a new subsection (c) thereof reading as follows: “(c) A series established in accordance with subsection (b) of this section may carry on any lawful business, purpose or activity, whether or not for profit, with the exception of the business of banking as defined in § 126 of Title 8. Unless otherwise provided in a limited liability company agreement, a series established in accordance with subsection (b) of this section shall have the power and capacity to, in its own name, contract, hold title to assets (including real, personal and intangible property), grant liens and security interests, and sue and be sued.”.

Section 26. Amend newly designated § 18-215(h), Chapter 18, Title 6 of the Delaware Code by deleting the words “(h) and (k)” in the first sentence thereof and substituting in lieu thereof the words “(i) and (l)”.

Section 27. Amend newly designated § 18-215(k)(4), Chapter 18, Title 6 of the Delaware Code by deleting the word “(l)” and substituting in lieu thereof the word “(m)”.

Section 28. Amend newly designated § 18-215(n), Chapter 18, Title 6 of the Delaware Code by deleting the word “or” immediately after the word “managers” in the first sentence thereof and substituting in lieu thereof a “,”, by inserting the words “or assets” immediately before the words “having separate rights” in the first sentence thereof and by deleting the words “, unless otherwise provided in the limited liability company agreement, none” immediately after the words “other series thereof, and” in the second sentence thereof and substituting in lieu thereof the words “whether any”.

Section 29. Amend § 18-216(h), Chapter 18, Title 6 of the Delaware Code by deleting the first sentence thereof.

Section 30. Amend § 18-216, Chapter 18, Title 6 of the Delaware Code by inserting a new subsection (i) at the end of such section reading as follows: “(i) A limited liability company agreement may provide that a domestic limited liability company shall not have the power to convert as set forth in this section.”.

Section 31. Amend § 18-702(c), Chapter 18, Title 6 of the Delaware Code by inserting a new sentence at the end thereof reading as follows: “A limited liability company shall not have the power to issue a certificate of limited liability company interest in bearer form.”.

Section 32. Amend § 18-904(b)(2), Chapter 18, Title 6 of the Delaware Code by inserting the words “having a business office identical with such registered office,” immediately after the first “,” therein, by deleting the words “either an individual resident of the State of Delaware whose business office is identical with the foreign limited liability company’s registered office, or a domestic corporation, or a domestic limited partnership, or a domestic limited liability company, or a domestic statutory trust, or a foreign corporation, or a foreign limited partnership, or a foreign limited liability company authorized to do business in the State of Delaware having a business office identical with such registered office, which is generally open during normal business hours to accept service of process and otherwise perform the functions of a registered agent.” immediately after the words “which agent may be” and substituting in lieu thereof the words “any of:” and by inserting immediately thereafter new paragraphs a. through c. reading as follows:

- a. An individual resident in the State of Delaware,
- b. A domestic limited liability company, a domestic corporation, a domestic partnership (whether general (including a limited liability partnership) or limited (including a limited liability limited partnership)), or a domestic statutory trust, or
- c. A foreign corporation, a foreign partnership (whether general (including a limited liability partnership) or limited (including a limited liability limited partnership)), a foreign limited liability company (other than the foreign limited liability company itself), or a foreign statutory trust.”.

Section 33. Amend § 18-904(e), Chapter 18, Title 6 of the Delaware Code by deleting the words “deemed to be” immediately before the word “cancelled” in the fourth sentence thereof.

Section 34. Amend § 18-906, Chapter 18, Title 6 of the Delaware Code by deleting the word “and” immediately after “18-104(i)(4)” in the second sentence thereof and substituting in lieu thereof a “,” and by inserting the words “and 18-1107(h)” immediately before the words “of this title” in the second sentence thereof.

Section 35. Amend § 18-1105(a)(3), Chapter 18, Title 6 of the Delaware Code by inserting the word “domestic” immediately before the word “continuance”.

Section 36. Amend § 18-1108(a), Chapter 18, Title 6 of the Delaware Code by deleting the words “deemed to be”.

Section 37. This Act shall become effective August 1, 2007.

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 § 18-101(7) of the Act to conform the definition of limited liability company agreement to the definition of partnership agreement under the Delaware Revised Uniform Partnership Act to include implied agreements.

Section 2. This section amends § 18-101(11) of the Act to clarify the intended meaning of such subsection.

Section 3. This section amends § 18-104(a)(2) of the Act to confirm that the business office of a limited liability company’s registered agent shall be identical to the registered office of the limited liability company in the State of Delaware.

Section 4. This section amends § 18-104(d) of the Act to make a technical change.

Section 5. This section amends § 18-104(e)(3) of the Act to confirm that such subsection also applies to a foreign limited liability company.

Section 6. This section amends § 18-104(e)(4) of the Act to confirm that such subsection also applies to a foreign limited liability company.

Section 7. This section amends § 18-104(g) of the Act to confirm that such subsection also applies to a foreign limited liability company.

Section 8. This section amends § 18-104(i)(4)b. of the Act to make technical changes.

Section 9. This section amends § 18-201(d) of the Act to confirm that a limited liability company agreement is required by the Act and to make changes conforming to the amendments to § 18-101(7).

Section 10. This section amends § 18-203 of the Act to make technical changes, and to confirm that a certificate of good standing shall not be issued for a limited liability company if its certificate of formation is cancelled.

Sections 11, 12, 13, 14, and 35. Sections 11, 12, 13, 14, and 35 amend §§ 18-206 and 18-1105 of the Act to make technical changes.

Section 15. This section amends § 18-209(a) of the Act to confirm the flexibility that exists under § 18-209.

Section 16. This section amends § 18-209(c)(8) of the Act to provide that a certificate of merger need not contain a consent to jurisdiction where the surviving or resulting entity is a Delaware general partnership, and to simplify the wording of such subsection.

Section 17. This section amends § 18-209(g) of the Act to confirm that a merger or consolidation of a domestic limited liability company does not constitute a dissolution of such limited liability company unless otherwise agreed.

Sections 18, 21 and 30. Sections 18, 21 and 30 amend §§ 18-209, 18-213 and 18-216 of the Act by adding new subsections that confirm the ability to provide in the limited liability company agreement that a limited liability company does not have power to merge or consolidate under § 18-209 of the Act, transfer, domesticate or continue under § 18-213 of the Act, or convert under § 18-216 of the Act. These amendments are not intended to imply that the limited liability company agreement may not deny other powers to the limited liability company.

Section 19. This section amends § 18-210 of the Act to make technical changes and to confirm the flexibility that exists under § 18-210.

Section 20. This section amends § 18-213(g) of the Act to make a technical change.

Sections 22 and 23. These sections amend § 18-215 of the Act to provide that a limited liability company agreement may establish a series of assets.

Section 24. This section amends § 18-215(b) of the Act to clarify the requirements regarding the manner in which assets must be accounted for pursuant to such subsection and to confirm the flexibility that exists thereunder.

Section 25. This section redesignates existing subsections and adds a new subsection (c) to § 18-215 of the Act to confirm the broad purposes and powers permitted of a series established under subsection 18-215(b) of the Act.

Section 26. This section amends newly designated § 18-215(h) to make conforming changes.

Section 27. This section amends newly designated § 18-215(k)(4) to make a conforming change.

Section 28. This section amends newly designated § 18-215(n) of the Act to make conforming changes and to make technical changes.

Section 29. This section amends § 18-216(h) of the Act to make a technical change.

Section 31. This section amends § 18-702(c) of the Act to provide that a limited liability company shall not have the power to issue a certificate of limited liability company interest in bearer form.

Section 32. This section amends § 18-904(b)(2) of the Act to conform such subsection to § 18-104 regarding the types of entities that may serve as registered agents and confirm that the business office of a foreign limited liability company's registered agent shall be identical to the registered office of the foreign limited liability company in the State of Delaware.

Section 33. This section amends § 18-904(e) of the Act to make a technical change.

Section 34. This section amends § 18-906 of the Act to make a technical change.

Section 36. This section amends § 18-1108(a) of the Act to make a technical change.

Section 37. This section provides that the proposed amendments of the Act shall become effective

August 1, 2007.

Author: Senator Adams