

2006 AMENDMENTS TO THE DELAWARE LIMITED LIABILITY COMPANY ACT

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Introduction

The Delaware Limited Liability Company Act, 6 *Del. C.* § 18-101 *et seq.* (the “Act”), has been amended in 2006, as it is periodically, for the purpose of keeping it current and maintaining its preeminence. The 2006 amendments to the Act were contained in Delaware State House Bill No. 414, and became effective August 1, 2006.¹ *See* 75 *Del. Laws*, c. 317. Among the provisions of the Act that have been amended are those concerning: the scope of the defined term “person”; registered agents; domestication, transfer and continuance, and conversion, of a limited liability company; meetings of members and meetings of managers of a limited liability company; and revival of a limited liability company whose certificate of formation has been cancelled.

Scope of defined term “person” [§ 18-101]. New language has been included in Section 18-101(12) of the Act to confirm the broad scope of the defined term “person”. That term is integral to many provisions of the Act, including those dealing with who may become a member or manager of a Delaware limited liability company. The language added to Section 18-101(12) confirms that an association (including any group, organization, co-tenancy, plan, board, council or committee), a government (including a country, state, county or any other governmental subdivision, agency or instrumentality), or a series of a series entity (such as under Section 18-215(b) of the Act), is a “person” for purposes of the Act.

Registered agents [§ 18-104]. Section 18-104 of the Act has been amended in various respects, including the addition of a more explicit prescription of the duties of a registered agent. A new provision has been added to Section 18-104, requiring that a limited liability company must provide to its registered agent contact information for a natural person who is authorized to receive communications from the registered agent, and requiring that the registered agent maintain that information in its records. Also, the Secretary of State is now expressly authorized to issue regulations governing registered agents and to bring a lawsuit in the Delaware Court of Chancery to enjoin any person or entity for cause (e.g., non-compliance with statutory requirements) from acting as a registered agent. Finally, a new Section 18-104(i)(4) has been added to the Act. It provides that the certificate of formation of a Delaware limited liability company, or the registration of a foreign limited liability company, will be canceled if the company fails, within a prescribed period, to obtain and designate a new registered agent if the Court of Chancery enjoins that company’s registered agent from acting as such. (Conforming changes have been made to Sections 18-203, 18-206, and 18-906.)

¹ The amendments to Sections 18-104, 18-203, 18-206, 18-906, and 18-1109 of the Act, contained in House Bill No. 414, become effective as of January 1, 2007. *See* 75 *Del. Laws*, c. 317, §§ 2 -5 and 35-38.

Domestication, transfer and continuance, and conversion, of a limited liability company [§§ 18-212, 18-213, 18-214, and 18-216]. The Act has been amended to make technical changes to Sections 18-212 (domestication of a non-U.S. entity as a Delaware limited liability company), 18-213 (transfer, domestication, or continuance of a Delaware limited liability company to or in a foreign jurisdiction), 18-214 (conversion of an entity to a Delaware limited liability company), and 18-216 (approval of conversion of a Delaware limited liability company).

Meetings of members [§ 18-302]. Section 18-302(d) of the Act addresses the manner in which members of limited liability companies may take action. The 2006 amendments to that Section clarify that meetings of members may be held by conference telephone or similar communications equipment unless otherwise provided in the limited liability company agreement.

Meetings of managers [§ 18-404]. Similar to Section 18-302(d) of the Act, Section 18-404(d) addresses the manner in which managers of limited liability companies may take action. Like the new amendments to Section 18-302(d), the 2006 amendments to Section 18-404(d) clarify that meetings of managers may be held by conference telephone or similar communications equipment unless otherwise provided in the limited liability company agreement.

Revival of a limited liability company [§ 18-1109]. Section 18-1109, which permits revival of a limited liability company whose certificate of formation has been canceled pursuant to Sections 18-104(d) (resignation of registered agent without appointment of a successor) or 18-1108(a) (failure to pay annual tax for a three-year period) of the Act, has been amended to permit also the revival of a limited liability company whose certificate of formation has been canceled pursuant to new Section 18-104(i)(4) (regarding the failure of a limited liability company to appoint a replacement after its registered agent has been enjoined from acting as such).