

2008 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 2008, as it is periodically, for the purpose of keeping it current and maintaining its preeminence. The 2008 amendments to the Act were contained in Delaware State House Bills Nos. 429 and 520, and became effective August 1, 2008.¹ *See* 76 *Del. Laws*, c. 387. Among the provisions of the Act that have been amended are those concerning: defined terms; subject matter jurisdiction of the Delaware Court of Chancery; execution of certificates filed with the Delaware Secretary of State; and annual tax payable to the Delaware Secretary of State.

Defined terms [§ 18-101]. Section 18-101 of the Act provides definitions for various terms that are used in the statute. Among them is “person,” defined in Section 18-101(12), which appears frequently throughout the Act. House Bill No. 429 amended the Act’s definition of “person” in 2008 to confirm that the intended broad scope of the word “trust” as used in that definition includes a common law trust, business trust, statutory trust, voting trust, and any other form of trust.

Subject matter jurisdiction of the Delaware Court of Chancery [§§ 18-110 and 18-111]. Sections 18-110 and 18-111 of the Act establish that certain actions may be brought in the Court of Chancery of the State of Delaware. Each such Section has been amended by the addition of a definition for the term “manager” as used therein, which applies instead of the general definition of that term set forth in Section 18-101(10). “Manager” as used in Sections 18-110 and 18-111 now carries the same meaning as is established for that term in Section 18-109(a) of the Act (which deals with service of process on “managers” and liquidating trustees). As this particularized definition is broader than the general definition it supplants, the 2008 amendments to Sections 18-110 and 18-111 have the effect of broadening the subject matter jurisdiction of the Court of Chancery.

Execution of certificates filed with the Delaware Secretary of State [§§ 18-204, 18-212, and 18-214]. Section 18-204 of the Act addresses the execution of certificates filed with the Secretary of State of the State of Delaware. As amended in 2008, Section 18-204(a) clarifies that a certificate of conversion to limited liability company or a certificate of limited liability company domestication may be executed either by an authorized person of the limited liability company or by a person authorized to execute such certificate on behalf of the “other entity” or

¹ The amendment to Section 18-1107 of the Act, contained in House Bill No. 520, however, became effective as of January 1, 2008. *See* 76 *Del. Laws*, c. 287, §§ 3 and 4.

“non-United States entity,” as the case may be, filing it. Conforming amendments were made to Sections 18-204(c) (regarding the effect of such execution), 18-212(a) (regarding domestication of a “non-United States entity”), and 18-214(a) (regarding conversion of an “other entity”).

Annual tax [§ 18-1107]. House Bill No. 520 amended Section 18-1107 of the Act, increasing the annual tax payable by limited liability companies from \$200 to \$250.