HOUSE OF REPRESENTATIVES
143rd GENERAL ASSEMBLY

HOUSE BILL NO. 414

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:

Section 1. Amend § 18-101(12), Chapter 18, Title 6 of the Delaware Code by inserting “limited liability company,” immediately prior to the word “trust”, by inserting “(including any group, organization, co-tenancy, plan, board, council or committee)” immediately after the word “association”, by inserting “government (including a country, state, county or any other governmental subdivision, agency or instrumentality),” immediately prior to the word “custodian”, by inserting “(or series thereof)” immediately after the word “entity”, and by deleting “, and a limited liability company or foreign limited liability company” at the end thereof.

Section 2. Amend § 18-104(a), Chapter 18, Title 6 of the Delaware Code by deleting said subsection in its entirety and substituting in lieu thereof the following:

“(a) Each limited liability company shall have and maintain in the State of Delaware:

(1) A registered office, which may but need not be a place of its business in the State of Delaware;

and

(2) A registered agent for service of process on the limited liability company, which agent may be any of

a. the limited liability company itself,

b. an individual resident in the State of Delaware,

c. a domestic limited liability company (other than the limited liability company itself), 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

d. a foreign corporation, a foreign partnership (whether general (including a limited liability partnership) or limited (including a limited liability limited partnership)), or a foreign statutory trust, or
liability partnership) or limited (including a limited liability limited partnership)), a foreign limited
liability company, or a foreign statutory trust.”.

Section 3. Amend § 18-104, Chapter 18, Title 6 of the Delaware Code by inserting new subsections (e), (f), (g), (h), (i)
and (j) as follows:

"(e) Every registered agent shall:

(1) If an entity, maintain a business office in the State of Delaware which is generally open, or if an
individual, be generally present at a designated location in the State of Delaware, at sufficiently frequent times to accept
service of process and otherwise perform the functions of a registered agent;

(2) If a foreign entity, be authorized to transact business in the State of Delaware;

(3) Accept service of process and other communications directed to the limited liability companies for which
it serves as registered agent and forward same to the limited liability company to which the service or communication is
directed; and

(4) Forward to the limited liability companies for which it serves as registered agent the statement for the
annual tax described in § 18-1107 of this Title or an electronic notification of same in a form satisfactory to the Secretary
of State.

(f) Any registered agent who at any time serves as registered agent for more than fifty entities (a “Commercial
Registered Agent”), whether domestic or foreign, shall satisfy and comply with the following qualifications:

(1) A natural person serving as a Commercial Registered Agent shall:

a. Maintain a principal residence or a principal place of business in the State of Delaware;

b. Maintain a Delaware business license;

c. Be generally present at a designated location within the State of Delaware during normal
business hours to accept service of process and otherwise perform the functions of a registered agent as specified
in subsection (e); and

d. Provide the Secretary of State upon request with such information identifying and enabling
communication with such Commercial Registered Agent as the Secretary of State shall require.

(2) A domestic or foreign corporation, a domestic or foreign partnership (whether general (including a
limited liability partnership) or limited (including a limited liability limited partnership)), a domestic or foreign limited
liability company, or a domestic or foreign statutory trust serving as a Commercial Registered Agent shall:

a. Have a business office within the State of Delaware which is generally open during normal
business hours to accept service of process and otherwise perform the functions of a registered agent as specified in subsection (e);

b. Maintain a Delaware business license;

c. Have generally present at such office during normal business hours an officer, director or managing agent who is a natural person; and

d. Provide the Secretary of State upon request with such information identifying and enabling communication with such Commercial Registered Agent as the Secretary of State shall require.

(3) For purposes of this subsection and subsection (i)(2)a., a Commercial Registered Agent shall also include any registered agent which has an officer, director or managing agent in common with any other registered agent or agents if such registered agents at any time during such common service as officer, director or managing agent collectively served as registered agents for more than fifty entities, whether domestic or foreign.

(g) Every limited liability company formed under the laws of the State of Delaware or qualified to do business in the State of Delaware shall provide to its registered agent and update from time to time as necessary the name, business address and business telephone number of a natural person who is a member, manager, officer, employee or designated agent of the limited liability company, who is then authorized to receive communications from the registered agent. Such person shall be deemed the communications contact for the limited liability company. Every registered agent shall retain (in paper or electronic form) the above information concerning the current communications contact for each limited liability company for which he, she, or it serves as registered agent. If the limited liability company fails to provide the registered agent with a current communications contact, the registered agent may resign as the registered agent for such limited liability company pursuant to this section.

(h) The Secretary of State is authorized to issue such rules and regulations as may be necessary or appropriate to carry out the enforcement of subsections (e), (f) and (g) of this Section, and to take actions reasonable and necessary to assure registered agents’ compliance with subsections (e), (f) and (g). Such actions may include refusal to file documents submitted by a registered agent.

(i) Upon application of the Secretary of State, the Court of Chancery may enjoin any person or entity from serving as a registered agent or as an officer, director or managing agent of a registered agent.

(1) Upon the filing of a complaint by the Secretary of State pursuant to this Section, the Court may make such orders respecting such proceeding as it deems appropriate, and may enter such orders granting interim or final relief as it deems proper under the circumstances.

(2) Any one (1) or more of the following grounds shall be a sufficient basis to grant an injunction pursuant
to this Section:

a. With respect to any registered agent who at any time within one (1) year immediately prior to
the filing of the Secretary of State’s complaint is a Commercial Registered Agent, failure after notice and warning
to comply with the qualifications set forth in subsection (e) and/or the requirements of subsections (f) or (g)
above;

b. The person serving as a registered agent, or any person who is an officer, director or managing
agent of an entity registered agent, has been convicted of a felony or any crime which includes an element of
dishonesty or fraud or involves moral turpitude; or

c. The registered agent has engaged in conduct in connection with acting as a registered agent that
is intended to or likely to deceive or defraud the public.

(3) With respect to any order the Court enters pursuant to this Section with respect to an entity that has acted
as a registered agent, the Court may also direct such order to any person who has served as an officer, director or managing
agent of such registered agent. Any person who, on or after January 1, 2007, serves as an officer, director or managing
agent of an entity acting as a registered agent in the State of Delaware shall be deemed thereby to have consented to the
appointment of such registered agent as agent upon whom service of process may be made in any action brought pursuant
to this Section, and service as an officer, director or managing agent of an entity acting as a registered agent in the State of
Delaware shall be a signification of the consent of such person that any process when so served shall be of the same legal
force and validity as if served upon such person within the State of Delaware, and such appointment of the registered agent
shall be irrevocable.

(4) Upon the entry of an order by the Court enjoining any person or entity from acting as a registered agent,
the Secretary of State shall mail or deliver notice of such order to each affected limited liability company
a. that has specified the address of a place of business in a record of the Secretary of State, to the
address specified, or

b. an address of which the Secretary of State has obtained from the limited liability company’s
former registered agent, to the address obtained.

If such a limited liability company is a domestic limited liability company and fails to obtain and
designate a new registered agent within thirty (30) days after such notice is given, the certificate of formation of
such limited liability company shall be deemed to be cancelled. If such a limited liability company is a foreign
limited liability company and fails to obtain and designate a new registered agent within thirty (30) days after such notice is given, such foreign limited liability company shall not be permitted to do business in the State of Delaware and its registration shall be deemed to be cancelled. If any other affected limited liability company is a domestic limited liability company and fails to obtain and designate a new registered agent within sixty (60) days after entry of an order by the Court enjoining such limited liability company’s registered agent from acting as a registered agent, the certificate of formation of such limited liability company shall be deemed to be cancelled. If any other affected limited liability company is a foreign limited liability company and fails to obtain and designate a new registered agent within sixty (60) days after entry of an order by Court enjoining such limited liability company’s registered agent from acting as a registered agent, such foreign limited liability company shall not be permitted to do business in the State of Delaware and its registration shall be deemed to be cancelled. If the Court enjoins a person or entity from acting as a registered agent as provided in this Section and no new registered agent shall have been obtained and designated in the time and manner aforesaid, service of legal process against the limited liability company for which the registered agent had been acting shall thereafter be upon the Secretary of State in accordance with § 18-105 or § 18-911 of this Title. The Court of Chancery may, upon application of the Secretary of State on notice to the former registered agent, enter such orders as it deems appropriate to give the Secretary of State access to information in the former registered agent’s possession in order to facilitate communication with the limited liability companies the former registered agent served.

(j) The Secretary of State is authorized to make a list of registered agents available to the public, and to establish such qualifications and issue such rules and regulations with respect to such listing as the Secretary of State deems necessary or appropriate.”.

Section 4. Amend § 18-203, Chapter 18, Title 6 of the Delaware Code by inserting “or § 18-104(i)(4)” immediately after “§ 18-104(d)” in the first sentence thereof.

Section 5. Amend § 18-206(b), Chapter 18, Title 6 of the Delaware Code by inserting “or § 18-104(i)(4)” immediately after “§ 18-104(d)” in the second sentence thereof.

Section 6. Amend § 18-209(b), Chapter 18, Title 6 of the Delaware Code by deleting the word “companies” in the last two (2) places where such word appears in the first sentence thereof and substituting in lieu thereof the word “company”.

Section 7. Amend § 18-212(a), Chapter 18, Title 6 of the Delaware Code by inserting “a statutory trust,” immediately before “a business trust”, by deleting the word “or” immediately after “a business trust” and substituting in lieu thereof “, an”, and by inserting “or entity” immediately after “any other unincorporated business”.

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Section 8. Amend § 18-212(c)(4), Chapter 18, Title 6 of the Delaware Code by deleting the word “and” at the end thereof.

Section 9. Amend § 18-212(c)(5), Chapter 18, Title 6 of the Delaware Code by deleting the “.” at the end thereof and substituting in lieu thereof “; and”.

Section 10. Amend § 18-212(c), Chapter 18, Title 6 of the Delaware Code by inserting a new subsection (6) thereof reading as follows:

“(6) That the domestication has been approved in the manner provided for by the document, instrument, agreement or other writing, as the case may be, governing the internal affairs of the non-United States entity and the conduct of its business or by applicable non-Delaware law, as appropriate.”.

Section 11. Amend § 18-212(g), Chapter 18, Title 6 of the Delaware Code by inserting the word “the” immediately after “Prior to” and by inserting the word “of” immediately after the word “filing”.

Section 12. Amend § 18-212(h), Chapter 18, Title 6 of the Delaware Code by inserting “(and also in the non-United States entity, if and for so long as the non-United States entity continues its existence in the foreign jurisdiction in which it was existing immediately prior to the domestication)” immediately after the first appearance of the words “to which such non-United States entity has been domesticated” in the first sentence thereof, by inserting “(and also of the non-United States entity, if and for so long as the non-United States entity continues its existence in the foreign jurisdiction in which it was existing immediately prior to the domestication)” immediately after the words “the property of such domestic limited liability company” in the first sentence thereof, and by inserting “(and also to the non-United States entity, if and for so long as the non-United States entity continues its existence in the foreign jurisdiction in which it was existing immediately prior to the domestication)” immediately after the second appearance of the words “to which such non-United States entity has been domesticated” in the first sentence thereof.

Section 13. Amend § 18-212(i), Chapter 18, Title 6 of the Delaware Code by deleting from the first sentence thereof “the limited liability company shall,” by inserting “the limited liability company shall” immediately after “the State of Delaware,” in the first sentence thereof, by inserting “and the domestication shall constitute a continuation of the existence of the domesticating non-United States entity in the form of a domestic limited liability company” immediately before the “.” at the end of the first sentence thereof, by inserting the word “and” immediately before “the domestication shall not be deemed to constitute a dissolution” in the second sentence thereof, and by deleting “, and the domestication shall constitute a continuation of the existence of the domesticating non-United States entity in the form of a domestic limited liability company” immediately before the “.” at the end of the second sentence thereof.

Section 14. Amend § 18-213(a), Chapter 18, Title 6 of the Delaware Code by inserting “or continue” immediately after the word “domesticate”.

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Section 15. Amend § 18-213(b), Chapter 18, Title 6 of the Delaware Code by inserting “or continuance” immediately after all nine (9) appearances of the word “domestication” in the first four (4) sentences thereof, by inserting the word “domestic” immediately before “continuance if the limited liability company’s existence” in the fourth sentence thereof, and by inserting the word “domestic” immediately before “continuance shall state” in the fifth sentence thereof.

Section 16. Amend § 18-213(b)(3), Chapter 18, Title 6 of the Delaware Code by inserting “or continued and the name of the entity or business form formed, incorporated, created or that otherwise comes into being as a consequence of the transfer of the limited liability company to, or its domestication or continuance in, such foreign jurisdiction” immediately before the “;” at the end of the paragraph thereof.

Section 17. Amend § 18-213(b)(4), Chapter 18, Title 6 of the Delaware Code by inserting the word “to” immediately before “or domestication”, by deleting the word “to” immediately after the word “domestication” and substituting in lieu thereof “or continuance in”, and by inserting the word “domestic” immediately after “certificate of transfer and”.

Section 18. Amend § 18-213(b)(7), Chapter 18, Title 6 of the Delaware Code by inserting “or continued” immediately after the word “domesticated” in the second sentence thereof.

Section 19. Amend § 18-213(b)(8), Chapter 18, Title 6 of the Delaware Code by inserting the word “domestic” immediately before both appearances of the word “continuance”.

Section 20. Amend § 18-213(c), Chapter 18, Title 6 of the Delaware Code by inserting “or continuance” immediately after the word “domestication” in the second sentence thereof.

Section 21. Amend § 18-213(d), Chapter 18, Title 6 of the Delaware Code by inserting “or continuance” immediately after all five (5) appearances of the word “domestication” in said subsection and by inserting “and shall not be deemed to constitute a dissolution of such limited liability company” immediately before the “.” at the end of the second sentence thereof.

Section 22. Amend § 18-213(e), Chapter 18, Title 6 of the Delaware Code by inserting the word “domestic” before all three appearances of the word “continuance” in said subsection, by inserting “or business form” immediately after “and the entity” in the second sentence thereof, and by inserting “or continuance” immediately after the word “domestication” in the second sentence thereof.

Section 23. Amend § 18-213(f), Chapter 18, Title 6 of the Delaware Code by inserting “or continuance” immediately after both appearances of the word “domestication” therein and by inserting “entity or” immediately before both appearances of “business form” therein.

Section 24. Amend § 18-213(g), Chapter 18, Title 6 of the Delaware Code by inserting “or continued” immediately after the first, third, sixth and ninth appearances of the word “domesticated” in said subsection, by inserting “or continued entity or”
immediately after the second, eighth and tenth appearances of the word “domesticated” in said subsection, by inserting “and shall constitute a continuation of the existence of such limited liability company in the form of the transferred or domesticated or continued entity or business form” immediately before the “.” at the end of the first sentence thereof, by inserting “or continuance” immediately after the word “domestication” in said second sentence, by deleting “business form” immediately after the fourth appearance of the word “domesticated” in said subsection and substituting in lieu thereof “or continued entity or business form (and also in the limited liability company that has transferred, domesticated or continued, if and for so long as such limited liability company continues its existence as a domestic limited liability company)”, by deleting “business form” immediately after the fifth appearance of the word “domesticated” in said subsection and substituting in lieu thereof “or continued entity or business form (and also of the limited liability company that has transferred, domesticated or continued, if and for so long as such limited liability company continues its existence as a domestic limited liability company)”, by deleting “business form,” immediately after the seventh appearance of the word “domesticated” in said subsection and substituting in lieu thereof “or continued entity or business form (and also to the limited liability company that has transferred, domesticated or continued, if and for so long as such limited liability company continues its existence as a domestic limited liability company)”, and by inserting “or continuation” immediately after the word “domestication” in the third sentence thereof.

Section 25. Amend § 18-214(a), Chapter 18, Title 6 of the Delaware Code by inserting the word “a” immediately before “statutory trust” and immediately before “business trust”, by deleting the word “or” immediately after “business trust” and substituting in lieu thereof “, an”, and by inserting “or entity” immediately after “unincorporated business”.

Section 26. Amend § 18-214(g), Chapter 18, Title 6 of the Delaware Code by inserting the word “and” immediately after “and distribute its assets,” in the first sentence thereof, by deleting “, and the conversion shall constitute a continuation of the existence of the converting other entity in the form of a domestic limited liability company” immediately before the “.” at the end of the first sentence thereof, by deleting “the limited liability company shall,” immediately before “for all purposes” in the second sentence thereof, by inserting “the limited liability company shall” immediately after “the State of Delaware,” in the second sentence thereof, and by inserting “and the conversion shall constitute a continuation of the existence of the converting other entity in the form of a domestic limited liability company” immediately before the “.” at the end of the second sentence thereof.

Section 27. Amend § 18-216(a), Chapter 18, Title 6 of the Delaware Code by inserting the word “a” immediately before “statutory trust” and immediately before “business trust,” by deleting the word “or” immediately after “business trust” and substituting in lieu thereof “, an”, and by inserting “or entity” immediately after “unincorporated business”.

Section 28. Amend § 18-216(c), Chapter 18, Title 6 of the Delaware Code by inserting “entity or” immediately before “business form” and by inserting immediately before the “.” at the end thereof “, and the conversion shall not constitute a
dissolution of such limited liability company. When a limited liability company has converted to another entity or business form pursuant to this Section, for all purposes of the laws of the State of Delaware, the other entity or business form shall be deemed to be the same entity as the converting limited liability company and the conversion shall constitute a continuation of the existence of the limited liability company in the form of such other entity or business form”.

Section 29. Amend § 18-216(d), Chapter 18, Title 6 of the Delaware Code by inserting “entity or” immediately before all three (3) appearances of “business form” therein.

Section 30. Amend § 18-216(e), Chapter 18, Title 6 of the Delaware Code by inserting “entity or” immediately before “business form” in the first sentence thereof.

Section 31. Amend § 18-216(e)(3), Chapter 18, Title 6 of the Delaware Code by inserting “entity or” immediately before “business form” and by inserting “, and the name of such entity or business form” immediately before the “;” at the end of said subsection.

Section 32. Amend § 18-216(h), Chapter 18, Title 6 of the Delaware Code by inserting “entity or” immediately before all seven (7) appearances of “business form” in said subsection and by deleting the word “interest” immediately after “rights, privileges, powers and” in the third sentence thereof and substituting in lieu thereof the word “interests”.

Section 33. Amend § 18-302(d), Chapter 18, Title 6 of the Delaware Code by inserting the following sentence at the beginning thereof: “Unless otherwise provided in a limited liability company agreement, meetings of members may be held by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this subsection shall constitute presence in person at the meeting.”.

Section 34. Amend § 18-404(d), Chapter 18, Title 6 of the Delaware Code by inserting the following sentence at the beginning thereof: “Unless otherwise provided in a limited liability company agreement, meetings of managers may be held by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this subsection shall constitute presence in person at the meeting.”.

Section 35. Amend § 18-906, Chapter 18, Title 6 of the Delaware Code by inserting the following sentence immediately after the first sentence thereof: “The registration of a foreign limited liability company shall be cancelled as provided in § 18-104(i)(4) and § 18-904(e) of this Title.”.

Section 36. Amend § 18-1109(a), Chapter 18, Title 6 of the Delaware Code by adding “or § 18-104(i)(4)” immediately after “§ 18-104(d)” in the first sentence thereof.

Section 37. Amend § 18-1109(c), Chapter 18, Title 6 of the Delaware Code by inserting “or § 18-104(i)(4)” immediately after all five (5) appearances of “§ 18-104(d)” in such subsection.
Section 38. This Section provides that the proposed amendments in Section 1 and Sections 6 through 34 of this Bill shall become effective August 1, 2006. Sections 2 through 5 and Sections 35, 36 and 37 of this Bill shall become effective on January 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(12) of the Act to confirm the broad scope of the defined term “person”.

Sections 2 and 3. These Sections amend § 18-104 of the Act to expand the types of entities that may serve as registered agents; prescribe the duties of a registered agent; require that persons or entities serving as registered agent for more than fifty entities (a “Commercial Registered Agent”) be generally open during normal business hours and have a natural person present to operate such office and communicate with the Secretary of State on request; require Delaware limited liability companies to provide registered agents with a designated natural person to receive communications from the registered agent and require the registered agent to maintain in its records the identity of such persons; authorize the Secretary of State to issue regulations to enforce these provisions; authorize the Secretary of State to bring a lawsuit in the Court of Chancery to enjoin any person or entity from acting as a registered agent, or as an officer, or director or managing agent of a registered agent, any person or entity who fails to comply with the statutory requirements, who has been convicted of a felony or any crime involving dishonesty, fraud or moral turpitude, or who has used the office of registered agent in a manner intended to defraud the public; provide that the certificate of formation or registration of a domestic or foreign limited liability company will be cancelled if it fails, within a prescribed period, to obtain and designate a new registered agent if the Court of Chancery enjoins any person or entity from acting as a registered agent for such limited liability company; and authorize the Secretary of State to make a list of registered agents available to the public.

Section 4. This Section amends § 18-203 of the Act to conform to new § 18-104(i)(4) of the Act which provides for the cancellation of a certificate of formation in the circumstances therein provided.

Section 5. This Section amends § 18-206(b) of the Act to conform to new § 18-104(i)(4) of the Act which provides for the cancellation of a certificate of formation in the circumstances therein provided.

Section 6. This Section amends § 18-209(b) of the Act to correct words used in the subsection.

Sections 7-32. Sections 7 through 32 of the Bill make technical changes to § 18-212 (domestication of non-US entities), § 18-213 (transfer or continuance of domestic limited liability companies), § 18-214 (conversion of certain entities to a limited liability company) and § 18-216 (approval of conversion of a limited liability company) of the Act to conform these Sections to the parallel provisions in the Delaware General Corporation Law adopted in 2005.

Section 33. This Section amends § 18-302(d) of the Act to clarify that meetings of members of a Delaware limited liability company may be held by conference telephone or similar communications equipment unless otherwise provided in a limited liability company agreement.

Section 34. This Section amends § 18-404(d) of the Act to clarify that meetings of managers of a Delaware limited liability company may be held by conference telephone or similar communications equipment unless otherwise provided in a limited liability company agreement.

Section 35. This Section amends § 18-906 of the Act to conform to the provisions of § 18-904(e) and new § 18-104(i)(4) of the Act which provide for the cancellation of the registration of a foreign limited liability company under the circumstances therein provided.

Sections 36 and 37. These Sections amend § 18-1109 of the Act to permit the revival of a certificate of formation of a limited liability company whose certificate of formation has been cancelled pursuant to new § 18-104(i)(4).

Section 38. This Section provides that the proposed amendments in Section 1 and Sections 6 through 34 of this Bill shall become effective August 1, 2006 and that the proposed amendments in Sections 2 through 5 and Sections 35, 36 and 37 of this Bill shall become effective on January 1, 2007.