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HOUSE OF REPRESENTATIVES
147th GENERAL ASSEMBLY

HOUSE BILL NO. 126

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 § 18-209(b), Title 6 of the Delaware Code by making insertions as shown by underlining as
2 follows:

3 (b) Pursuant to an agreement of merger or consolidation, 1 or more domestic limited liability companies may
4 merge or consolidate with or into 1 or more domestic limited liability companies or 1 or more other business entities
5 formed or organized under the laws of the State of Delaware or any other state or the United States or any foreign country
6 or other foreign jurisdiction, or any combination thereof, with such domestic limited liability company or other business
7 entity as the agreement shall provide being the surviving or resulting domestic limited liability company or other business
8 entity. Unless otherwise provided in the limited liability company agreement, an agreement of merger or consolidation or a
9 plan of merger shall be approved by each domestic limited liability company which is to merge or consolidate by the
10 members or, if there is more than one class or group of members, then by each class or group of members, in either case, by
11 members who own more than 50 percent of the then current percentage or other interest in the profits of the domestic
12 limited liability company owned by all of the members or by the members in each class or group, as appropriate. In
13 connection with a merger or consolidation hereunder, rights or securities of, or interests in, a domestic limited liability
14 company or other business entity which is a constituent party to the merger or consolidation may be exchanged for or
15 converted into cash, property, rights or securities of, or interests in, the surviving or resulting domestic limited liability
16 company or other business entity or, in addition to or in lieu thereof, may be exchanged for or converted into cash,
17 property, rights or securities of, or interests in, a domestic limited liability company or other business entity which is not the
18 surviving or resulting limited liability company or other business entity in the merger or consolidation, may remain
19 outstanding or may be cancelled. Notwithstanding prior approval, an agreement of merger or consolidation or a plan of
20 merger may be terminated or amended pursuant to a provision for such termination or amendment contained in the
21 agreement of merger or consolidation or plan of merger.

22 Section 2. Amend § 18-212(j), Title 6 of the Delaware Code by making insertions as shown by underlining as
23 follows:

24 (j) In connection with a domestication hereunder, rights or securities of, or interests in, the non-United States
25 entity that is to be domesticated as a domestic limited liability company may be exchanged for or converted into cash,
26 property, rights or securities of, or interests in, such domestic limited liability company or, in addition to or in lieu thereof,
27 may be exchanged for or converted into cash, property, rights or securities of, or interests in, another domestic limited
28 liability company or other entity, may remain outstanding or may be cancelled.

29 Section 3. Amend § 18-213(f), Title 6 of the Delaware Code by making insertions as shown by underlining as
30 follows:

31 (f) In connection with a transfer or domestication or continuance of a domestic limited liability company to or in
32 another jurisdiction pursuant to subsection (a) of this section, rights or securities of, or interests in, such limited liability
33 company may be exchanged for or converted into cash, property, rights or securities of , or interests in, the entity or
34 business form in which the limited liability company will exist in such other jurisdiction as a consequence of the transfer or
35 domestication or continuance or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property,
36 rights or securities of, or interests in, another entity or business form, may remain outstanding or may be cancelled.

37 Section 4. Amend § 18-214(i), Title 6 of the Delaware Code by making insertions as shown by underlining as
38 follows:

39 (i) In connection with a conversion hereunder, rights or securities of or interests in the other entity which is to be
40 converted to a domestic limited liability company may be exchanged for or converted into cash, property, or rights or
41 securities of or interests in such domestic limited liability company or, in addition to or in lieu thereof, may be exchanged
42 for or converted into cash, property, or rights or securities of or interests in another domestic limited liability company or
43 other entity, may remain outstanding or may be cancelled.

44 Section 5. Amend § 18-216(d), Title 6 of the Delaware Code by making insertions as shown by underlining as
45 follows:

46 (d) In connection with a conversion of a domestic limited liability company to another entity or business form
47 pursuant to this section, rights or securities of or interests in the domestic limited liability company which is to be converted
48 may be exchanged for or converted into cash, property, rights or securities of or interests in the entity or business form into
49 which the domestic limited liability company is being converted or, in addition to or in lieu thereof, may be exchanged for
50 or converted into cash, property, rights or securities of or interests in another entity or business form, may remain
51 outstanding or may be cancelled.

52 Section 6. Amend § 18-703(d), Title 6 of the Delaware Code by making insertions as shown by underlining as
53 follows:

54 (d) The entry of a charging order is the exclusive remedy by which a judgment creditor of a member or a member's
55 assignee may satisfy a judgment out of the judgment debtor's limited liability company interest and attachment,
56 garnishment, foreclosure or other legal or equitable remedies are not available to the judgment creditor, whether the limited
57 liability company has 1 member or more than 1 member.

58 Section 7. Amend § 18-1101, Title 6 of the Delaware Code by inserting a new subparagraph (j) at the end thereof
59 as shown by underlining as follows:

60 (j) The provisions of this chapter shall apply whether a limited liability company has 1 member or more than 1
61 member.

62 Section 8. Amend § 18-1104, Title 6 of the Delaware Code by making insertions as shown by underlining as
63 follows:

64 In any case not provided for in this chapter, the rules of law and equity, including the rules of law and equity
65 relating to fiduciary duties and the law merchant, shall govern.

66 Section 9. This Act shall become effective August 1, 2013.

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 amends the provisions of the Act relating to mergers to confirm that rights or securities of, or interests in, a constituent party that is the surviving entity in a merger may remain outstanding in connection with the merger.

Sections 2, 3, 4 and 5 amend the provisions of the Act relating to domestication, transfer, continuance and conversion to confirm that in connection with a domestication, transfer, continuance or conversion, rights or securities of, or interests in, an entity that is domesticating or converting to a limited liability company and rights or securities of, or interests in, a limited liability company that is transferring to or domesticating or continuing in another jurisdiction or converting to a different type of entity or another jurisdiction may remain outstanding in connection with such domestication, transfer, continuance or conversion.

Section 6 amends § 18-703(d) of the Act to confirm that a charging order is the sole and exclusive remedy by which a judgment creditor of a member or a member's assignee may satisfy a judgment out of the judgment debtor's limited liability company interest and that attachment, garnishment, foreclosure or other legal or equitable remedies are not available to the judgment creditor, whether the limited liability company has 1 member or more than 1 member.

Section 7 amends § 18-1101 of the Act by adding a new subsection (j) that confirms that the provisions of the Act shall apply whether a limited liability company has 1 member or more than 1 member.

Section 8 amends Section 18-1104 to confirm that in some circumstances fiduciary duties not explicitly provided for in the limited liability company agreement apply. For example, a manager of a manager-managed limited liability company would ordinarily have fiduciary duties even in the absence of a provision in the limited liability company agreement establishing such duties. Section 18-1101(c) continues to provide that such duties may be expanded, restricted or eliminated by the limited liability company agreement.

Section 9 provides that the proposed amendments of the Act shall become effective August 1, 2013.