

## DELAWARE GOVERNOR APPROVES GENERAL CORPORATION LAW AMENDMENTS

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On June 19<sup>th</sup>, 2019, Delaware Governor John Carney signed Senate Bill Number 88, amending Title 8, Chapter 1, Sections 101-398 of the Delaware General Corporation Law and Title 8, Section 503 of the Franchise Tax Law. The act is generally effective on August 1<sup>st</sup>, 2019, with the amendments to Section 503 relating to certain rates and composition of franchise tax being effective for the tax year beginning on January 1<sup>st</sup>, 2019.

Below are highlights of some of the key changes in the legislation.

### ORGANIZATIONAL MEETINGS

Changes to Section 108 concerning organizational meetings of incorporators and directors include:

- Amendment to Section 108(b) to include the option of giving notice of a meeting by electronic transmission.
- Amendment to Section 108(c) to include an option of action without a meeting with consent by electronic transmission as well as a provision that any person (whether, or not, then an incorporator or director) may consent at a future time.

### FORM OF DOCUMENT, EXECUTION, AND DELIVERY

Section 116(a) is added to provide that certain acts or transactions contemplated or governed by law or the certificate of incorporation or bylaws may be provided for in a document, and an electronic transmission will be deemed the equivalent of a written document. The added section includes the definition of “Document” and “Electronic Signature”. “Document” means (i) any tangible medium on which information is inscribed, and includes handwritten, typed, printed or similar instruments, and copies of such instruments and (ii) an electronic transmission. Whenever Title 8, Chapter 1 or the certificate of incorporation or bylaws requires a signature, the signature may be a manual, facsimile, conformed or electronic signature. “Electronic signature” means an electronic symbol or process that is attached to, or logically associated with, a document and executed or adopted by a person with an intent to authenticate or adopt the document.

Section 116(a) describes delivery of an electronic transmission system through a designated information processing system and methods of delivery.

Section 116(a) also provides that persons are not prohibited from conducting a transaction in accordance with Chapter 12A of Title 6 (UETA) so long as a part or parts of the transaction that are governed by the chapter are documented, signed, or delivered in accordance with applicable Delaware law. There are limitations. Section 116(a) applies only for purposes of determining whether an act or transaction has been documented, and the document has been signed and delivered in accordance with Delaware law, the certificate of incorporation and the bylaws.

Section 116(b) includes a list of inapplicable actions.

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Section 166(c) further provides that in the event that any of the Delaware chapter is deemed to modify, limit or supersede the Electronic Signatures in Global and National Commerce Act (15 U.S.C. Sections 7001 et seq.), the provisions of the Delaware chapter will control to the fullest extent permitted by section 7002(a)(2) of such act.

## RESIGNATION OF AGENT PROVISIONS AND DIRECTOR ACTION

The resignation of registered agent provisions in Section 136 are amended to include a requirement for information on the certificate of resignation relating to the communications contact for the affected corporation that was provided to the registered agent.

Section 141 is amended to include that after an action is taken, the consent or consents relating thereto must be filed with the minutes of the proceedings of the board of directors or the committee thereof, in the same paper or electronic form as the minutes are maintained.

## STOCKHOLDERS' OR MEMBERS' CONSENT IN LIEU OF MEETING.

Section 228(d) is amended to delineate the timing and method of delivery of stockholder or member consent by electronic transmission, including use of information processing systems.

## NOTICE DELIVERY TO STOCKHOLDERS

Section 232 is amended to list methods of notice delivery to stockholders and sets forth requirements for notice by electronic mail. A notice by electronic mail must include a prominent legend that the communication is an important notice regarding the corporation. Definitions of "electronic mail" and "electronic mail transmission" are also included. There are also provisions where notices may not be given by electronic transmission.

## APPRAISAL RIGHTS

Senate Bill 88 amends Section 262 to provide that a stockholder's share appraisal demands in certain actions may be delivered to the corporation by electronic transmission if directed to an information processing system (if any) expressly designated for that purpose in the notice of appraisal.

## REVIVAL

Section 313(a) is amended to provide an exempt corporation whose certificate of incorporation or charter has become forfeited pursuant to Section 136(b) for failure to obtain a registered agent may also file a certificate of revival after submitting satisfactory proof of exemption classification to the Secretary of State.

## FEES

Section 391(a) is amended to include a fee of up to \$175 per certificate for the Secretary of State's issuing any certificate via the Division's online services.

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## FRANCHISE TAX

Title 8, Section 503 is amended to increase the annual franchise tax rate for regulated investment companies to \$400 (from \$350) per annum per each \$1,000,000 or fraction thereof in excess of \$1,000,000 of the average gross assets during the taxable year. The maximum tax increases to \$100,000 from \$90,000.

[Full text of Senate Bill 88.](#)

*This article is provided for informational purposes only and should not be considered, or relied upon, as legal advice.*

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