

## DELAWARE LLC CHANGES EFFECTIVE AUGUST 1, 2019

By Joan Helwig, COGENCY GLOBAL INC.

On June 19<sup>th</sup>, 2019, Delaware Governor John Carney signed Senate Bill 91 into law amending the Delaware Limited Liability Company Act (Delaware Code, Title 6, Chapter 18, Sections 18-101 to 18-1109). The bill becomes effective on August 1<sup>st</sup>, 2019 along with some provisions from last year's Senate Bill No. 183.

Here is important information from the bill.

### DEFINITIONS

Senate Bill Number 183 adds a new provision to section 18-215 (b) which authorizes the establishment of protected series. Section 18-101 includes definitions of "protected series", "registered series", and "series". Senate Bill 91 adds more references to registered and protected series throughout the Limited Liability Company Act. For example, it includes those terms within the definition of Member and Manager in Section 18-101 and in filing a certificate of conversion in Section 18-206.

### NAME STANDARD AND RESERVATION

Senate Bill 183 changes Section 18-102 (3) to include registered series as another name required to be distinguishable on the records of the office of the Secretary of State. Senate Bill 91 further amends Section 18-102 to provide that the name set forth in the certificate must be distinguishable from the name on Secretary of State records of a registered series of a limited partnership as well as that of a registered series of a limited liability company.

Senate Bill 183 amends Section 18-103 (a) to include registered series of a limited liability company in the name reservation provision. It provides that any person intending to form a registered series of a limited liability company under Chapter 18 and to adopt that name in accordance with Section 18-218(e) may reserve the exclusive right to that name.

### SERVICE OF PROCESS

Senate Bill 183 amends Sections 18-104 and 18-105 to include the addition of protected series and registered series in service of process provisions. Pursuant to Section 18-104, as amended, registered agents can accept service of process directed to any registered or protected series and forward annual tax statements to registered series for which they serve as registered agents. Section 18-105 includes directions for service of process on protected and registered series. Senate Bill 91 amends the resignation of registered agent provisions in Section 18-104 to include a requirement for information on the certificate of resignation relating to the communications contact for the affected limited liability company that was provided to the registered agent.

### CANCELLATION AND GOOD STANDING

Senate Bill 183 amends Section 18-203 to provide that a certificate of cancellation of a limited liability company must set forth if the limited liability company has formed one or more registered series whose certificate of registered series has not been

---

● **CORPORATE HQ**  
COGENCY GLOBAL INC.  
10 E 40<sup>TH</sup> ST, 10<sup>TH</sup> FL  
NY, NY 10016  
**D: +1.212.947.7200**  
**P: 800.221.0102**  
**F: 800.944.6607**

● **EUROPEAN HQ**  
COGENCY GLOBAL (UK) LIMITED  
REGISTERED IN ENGLAND & WALES,  
REGISTRY #8010712  
6 LLOYDS AVE, UNIT 4CL  
LONDON EC3N 3AX  
**+44 (0)20.3961.3080**

● **ASIA PACIFIC HQ**  
COGENCY GLOBAL (HK) LIMITED  
A HONG KONG LIMITED COMPANY  
UNIT B, 1/F, LIPPO LEIGHTON TOWER  
103 LEIGHTON RD, CAUSEWAY BAY  
HONG KONG  
**P: +852.2682.9633**  
**F: +852.2682.9790**



canceled prior to the filing of the certificate of cancellation, the name of each such registered series. The Secretary of State will not issue a certificate of good standing with respect to a limited liability company (or any registered series thereof) if its certificate of formation is canceled.

Section 18-206 is amended to add that the Secretary of State will not issue a certificate of good standing with respect to any limited liability company or registered series with a certificate held in suspension pursuant to this subsection.

## **OTHER CHANGES RESULTING FROM SENATE BILL 183 IN OTHER AREAS RELATING TO REGISTERED SERIES:**

### **FORMATION AND CONVERSION**

Section 18-218 is added which sets forth the requirements for formation of registered series.

Section 18-219 is amended to provide that a protected series of a domestic limited liability company may convert to a registered series of such domestic limited liability company by complying with the section and filing in the office of the Secretary of State in accordance with Section 18-206 of this title (Title 6).

Section 18-220 is amended to provide that upon compliance with the section, a registered series of a domestic limited liability company may convert to a protected series of such domestic limited liability company. Section 18-206, as amended, provides that upon the filing of a certificate of conversion of protected series to registered series, or upon the future effective date or time of a certificate of conversion of protected series to registered series, the protected series with respect to which such filing is made is converted to a registered series with the effect provided in Section 18-219. Upon the filing of a certificate of conversion of registered series to protected series, or upon the future effective date or time of a certificate of conversion of registered series to protected series, the protected series filing such certificate is converted to a protected series with the effect provided in Section 18-220.

### **MERGER AND CONSOLIDATION**

Section 18-221 is added which provides that pursuant to an agreement of merger or consolidation, one or more registered series may merge or consolidate with or into one or more other registered series of the same limited liability company with such registered series as the agreement will provide being the surviving or resulting registered series. The procedure for approval by each registered series is included.

Section 18-1105 is amended to include registered series and protected series in fee provisions.

Section 18-1107 is amended to include provisions for an annual tax for registered series in the amount of \$75 per registered series.

Section 18-1110 includes provisions for revival of a registered series whose certificate of registered series has been cancelled pursuant to Section 18-1108(b) of Title 6.

### **APPRAISAL RIGHTS-CONTRACTUAL**

Senate Bill 91 amends Section 18-210 to provide that a limited liability company agreement or an agreement of merger or consolidation or plan of merger or a plan of division may provide for the availability of certain contractual appraisal rights

---

● **CORPORATE HQ**  
 COGENCY GLOBAL INC.  
 10 E 40<sup>TH</sup> ST, 10<sup>TH</sup> FL  
 NY, NY 10016  
**D: +1.212.947.7200**  
**P: 800.221.0102**  
**F: 800.944.6607**

● **EUROPEAN HQ**  
 COGENCY GLOBAL (UK) LIMITED  
 REGISTERED IN ENGLAND & WALES,  
 REGISTRY #8010712  
 6 LLOYDS AVE, UNIT 4CL  
 LONDON EC3N 3AX  
**+44 (0)20.3961.3080**

● **ASIA PACIFIC HQ**  
 COGENCY GLOBAL (HK) LIMITED  
 A HONG KONG LIMITED COMPANY  
 UNIT B, 1/F, LIPPO LEIGHTON TOWER  
 103 LEIGHTON RD, CAUSEWAY BAY  
 HONG KONG  
**P: +852.2682.9633**  
**F: +852.2682.9790**



with respect to certain interests in connection with any amendment of a limited liability company agreement, any merger or consolidation in which the limited liability company or a registered series of the limited liability company is a constituent party to the merger or consolidation, any division of the limited liability company, any conversion of the limited liability company to another business form, any conversion of a protected series of the limited liability company to a registered series of such limited liability company, any conversion of a registered series of the limited liability company to a protected series of such limited liability company.

## FORM OF DOCUMENT, EXECUTION AND DELIVERY

Senate Bill 91 adds Section 18-113 to provide that certain acts or transactions contemplated or governed by law may be provided for in a document, and an electronic transmission is the equivalent of a written document.

Section 18-113 includes a definition of 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 118(a)(3) delineates the procedure for delivery of electronic transmission including utilization of information processing systems

Section 118 (a)(3) as amended also provides that one or more persons are not prohibited from conducting a transaction in accordance with Chapter 12A of Title 6 so long as a part or parts of the transaction there governed by Chapter 18 are documented, signed or delivered in accordance with its applicable provisions. There are limitations. Section 18-113(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 Chapter 18, and the limited liability company agreement and Section 18-113(b) includes a list of inapplicable actions.

Senate Bill 91 further provides that in the event that any of the chapter is deemed to modify, limit or supersede the Electronic Signatures in Global and National Commerce Act, 115 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).

## FEES

Section 18-1105 is amended to include establishment of a fee of up to \$175 per certificate for the Secretary of State's issuing any certificate via the Division's online services.

Full text of [Senate Bill 91](#) and synopsis of [Senate Bill 183](#).

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

### ● CORPORATE HQ

COGENCY GLOBAL INC.  
10 E 40<sup>TH</sup> ST, 10<sup>TH</sup> FL  
NY, NY 10016  
D: +1.212.947.7200  
P: 800.221.0102  
F: 800.944.6607

### ● EUROPEAN HQ

COGENCY GLOBAL (UK) LIMITED  
REGISTERED IN ENGLAND & WALES,  
REGISTRY #8010712  
6 LLOYDS AVE, UNIT 4CL  
LONDON EC3N 3AX  
+44 (0)20.3961.3080

### ● ASIA PACIFIC HQ

COGENCY GLOBAL (HK) LIMITED  
A HONG KONG LIMITED COMPANY  
UNIT B, 1/F, LIPPO LEIGHTON TOWER  
103 LEIGHTON RD, CAUSEWAY BAY  
HONG KONG  
P: +852.2682.9633  
F: +852.2682.9790