

2025 Delaware Entity Statutory Amendments

by Brian Burke and Amelia R. Messa

On August 1st, the 2025 amendments to Delaware's entity statutes went into effect.^[1] These include amendments to the Delaware General Corporation Law (the "DGCL"), the Delaware Limited Liability Company Act (the "LLC Act"), the Delaware Revised Uniform Limited Partnership Act (the "DRULPA"), and the Delaware Revised Uniform Partnership Act (the "DRUPA" and together with the LLC Act and the DRULPA, the "Alt Entity Acts"). Descriptions of some of the most notable amendments to each of the Delaware entity statutes are set forth below. There were also several other technical and clarifying amendments enacted for each of the statutes that are not discussed.

DGCL Amendments

Intra-Corporate Affairs

The DGCL permits a corporation to include a forum selection provision in its certificate of incorporation or bylaws, requiring internal corporate claims to be brought exclusively in Delaware courts. However, neither the bylaws nor the certificate of incorporation may impose fee-shifting on a stockholder in respect of internal corporate claims or may require a stockholder to bring internal corporate claims outside of Delaware courts. Consistent with the reasoning of the Delaware Supreme Court's decision in Salzberg v. Sciabacucchi, 227 A.3d 102 (Del. 2020), these same protections and restrictions are now statutorily expanded to "intra-corporate affairs" as well.

Nullification of Certificates

The DGCL and Alt Entity Acts provide that when an error is made either in or with respect to a filing for a corporation, LLC or partnership, a certificate of correction may be filed with the Secretary of State of the State of Delaware to correct such filing. The amendments this year to the DGCL and Alt Entity Acts clarify and confirm that a certificate of correction may be used not only to correct an error in a certificate, but also to nullify the filing of a certificate. In order to nullify a previously filed certificate, the certificate of correction is required to specify the inaccuracy or defect with respect to

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such certificate and it should state that the previously filed certificate shall be nullified.

Registered Agent Virtual Offices

Delaware corporations, LLCs, limited partnerships and general partnerships are all required to maintain a registered agent and registered office within the state of Delaware. The DGCL and each of the Alt Entity Acts were amended this year to provide that a registered agent may not provide its services through the use of a mail forwarding service or a “virtual office” which is defined as the “performance of duties or functions solely through the internet” or by “other means of remote communication.” In effect, this requires entities to have a registered agent that has an actual physical address in the state of Delaware.

Fractional Shares

Section 155 of the DGCL was amended so that corporations may not issue scrip or warrants in bearer form in lieu of fractional stock – but issuing scrip or warrants in registered form in lieu of fractional stock is still permitted.

Merger Filings with Foreign Corporations

When filing a merger certificate with a foreign corporation, the new amendments remove the requirement to list the authorized capital stock of the foreign corporation.

Revoking Dissolution

Section 311 of the DGCL now requires that a certificate of revocation of dissolution or certificate of restoration state the date of filing of the corporation’s original certificate of incorporation and state the date of filing of the corporation’s certificate of dissolution.

Revival and Defective Corporate Act

Section 312 of the DGCL was amended to provide that if a corporation is revived and it later files a certificate of validation with respect to acts taken when it was forfeited or void, then the corporation must pay the annual franchise taxes that would have been required during the period the certificate of incorporation was forfeited or void.

Reinstatement of a Foreign Corporation’s Business Qualification

When a foreign corporation reinstates its qualification to do business in Delaware, it must now file all annual reports and pay all required fees that would have been required to be filed or paid prior to such reinstatement.

Annual Reports

When filing annual reports, corporations must now disclose the nature of their business. Additionally, the revisions clarify that a third-party registered agent service may not also serve as the principal place of business of the corporation.

Franchise Taxes

The DGCL amendments also included updates in calculations for franchise taxes, providing that a certificate of validation will not reduce interest owed on franchise taxes for prior periods and furthermore the corporation is not entitled to any refund of any previously paid franchise taxes.

Alt Entity Amendments

Ratification of Void or Voidable Acts

Section 18-106 of the LLC Act, Section 17-106 of the DRULPA and Section 15-202 of the DRUPA provide a safe harbor mechanism to (i) ratify void or voidable acts taken with respect to the applicable entity or (ii) waive the failure to comply with the requirements of an underlying LLC or partnership agreement making an act void or voidable. Due to recent Delaware case law finding limitations in the operation of these safe harbor procedures, each of these sections in the Alt Entity Acts was amended this year to clarify the intended broad applicability of the safe harbors and to create a different result from how the Delaware courts had interpreted the former versions of the statutes. First, the amendments clarify that the ratifications or waivers can apply not just to acts or transactions by an LLC or partnership, but also to any void or voidable act or transaction taken by a partner, member, manager or other person in respect of such entity. Next, the amendments clarify that the ratification or waiver pursuant to the Alt Entity Acts may be accomplished not only through express actions of the parties, but also may be implied through statements, action, inaction or acquiescence. Finally, the statutes were amended to also clarify that whenever notice is required to be provided of a ratification or waiver, the giving of such notice will not constitute a condition to the ratification or waiver's effectiveness.

Amendments in Connection with a Division and Merger of a Registered Series

Consistent with the fact that an LLC agreement or partnership agreement may be amended in connection with a merger of an LLC or partnership, as applicable, the Alt Entity Acts were amended to confirm that an LLC agreement or partnership agreement may also be amended in connection with a division of an LLC or partnership or a merger of a registered series of such entity.

Winding up a Limited Partnership

Although typically the winding up of a dissolved limited partnership is completed by the general partner(s) of such entity, there are circumstances where a limited partnership may need to be wound up by someone other than the general partner and therefore, by someone not currently listed in the certificate of limited partnership. Section 17-202(f) of the DRULPA was amended this year to provide that in such a situation, the certificate of limited partnership is required to be amended to add the name and business, residence or mailing address of each liquidating trustee of the partnership, unless the limited partners are acting in such role, in which case the amendment is only required to state

that the limited partners are winding up the limited partnership's affairs.

The DRULPA was further amended to provide that in the situation where someone other than a general partner is winding up a dissolved limited partnership and a certificate needs to be filed with respect to such limited partnership, such certificate shall be executed either (i) by each of the liquidating trustees of the limited partnership or (ii) to the extent that the limited partners are winding up the limited partnership, then by the limited partners who own more than 50% of the then current percentage or other interest in the profits of such limited partnership.

Each of these amendments with respect to limited partnerships were also made with respect to registered series of a limited partnership.

Service of Process for Limited Partnerships

The DRULPA was amended this year to provide that, notwithstanding the fact that a person or entity may not have executed a certificate of limited partnership, when such person or entity serves as a general partner of a limited partnership or a liquidating trustee (in the case of a dissolved limited partnership), such person or entity has consented to both (i) the appointment of the registered agent of the limited partnership as such person's agent for purposes of service of process and (ii) if such registered agent is so served it will be legally valid to the same extent as if the general partner or liquidating trustee had been served with process in the State of Delaware.

Consolidations

Each of the Alt Entity Acts was amended to provide that when there is a consolidation of one or more entities and the resulting entity is a Delaware LLC or partnership, the certificate of consolidation must include as an attachment, the applicable certificate of formation, certificate of limited partnership or statement of partnership existence.

Foreign Partnerships

The amendments this year to the DRULPA and the DRUPA provide various changes with respect to the process for registration in Delaware for foreign limited partnerships and foreign limited liability partnerships, including specifications as to the contents of the filings to be made in Delaware.

[1] This is in addition to the amendments to the DGCL that went into effect on March 25, 2025. Those amendments included substantial revisions to Section 144 establishing safe harbors for interested transactions and to Section 220 narrowing available books and records demands.