

TITLE 6

Commerce and Trade

SUBTITLE II

Other Laws Relating to Commerce and Trade

CHAPTER 18. LIMITED LIABILITY COMPANY ACT

Subchapter I. General Provisions

§ 18-101 Definitions.

As used in this chapter unless the context otherwise requires:

- (1) "Bankruptcy" means an event that causes a person to cease to be a member as provided in § 18-304 of this title.
- (2) "Certificate of formation" means the certificate referred to in § 18-201 of this title, and the certificate as amended.
- (3) "Contribution" means any cash, property, services rendered or a promissory note or other obligation to contribute cash or property or to perform services, which a person contributes to a limited liability company in the person's capacity as a member.
- (4) "Foreign limited liability company" means a limited liability company formed under the laws of any state or under the laws of any foreign country or other foreign jurisdiction and denominated as such under the laws of such state or foreign country or other foreign jurisdiction.
- (5) "Knowledge" means a person's actual knowledge of a fact, rather than the person's constructive knowledge of the fact.
- (6) "Limited liability company" and "domestic limited liability company" means a limited liability company formed under the laws of the State of Delaware and having 1 or more members.
- (7) "Limited liability company agreement" means any agreement (whether referred to as a limited liability company agreement, operating agreement or otherwise), written, oral or implied, of the member or members as to the affairs of a limited liability company and the conduct of its business. A member or manager of a limited liability company or an

assignee of a limited liability company interest is bound by the limited liability company agreement whether or not the member or manager or assignee executes the limited liability company agreement. A limited liability company is not required to execute its limited liability company agreement. A limited liability company is bound by its limited liability company agreement whether or not the limited liability company executes the limited liability company agreement. A limited liability company agreement of a limited liability company having only 1 member shall not be unenforceable by reason of there being only 1 person who is a party to the limited liability company agreement. A limited liability company agreement is not subject to any statute of frauds (including § 2714 of this title). A limited liability company agreement may provide rights to any person, including a person who is not a party to the limited liability company agreement, to the extent set forth therein. A written limited liability company agreement or another written agreement or writing:

- a. May provide that a person shall be admitted as a member of a limited liability company, or shall become an assignee of a limited liability company interest or other rights or powers of a member to the extent assigned:
 1. If such person (or a representative authorized by such person orally, in writing or by other action such as payment for a limited liability company interest) executes the limited liability company agreement or any other writing evidencing the intent of such person to become a member or assignee; or
 2. Without such execution, if such person (or a representative authorized by such person orally, in writing or by other action such as payment for a limited liability company interest) complies with the conditions for becoming a member or assignee as set forth in the limited liability company agreement or any other writing; and
- b. Shall not be unenforceable by reason of its not having been signed by a person being admitted as a member or becoming an assignee as provided in paragraph (7)a. of this section, or by reason of its having been signed by a representative as provided in this chapter.

(8) "Limited liability company interest" means a member's share of the profits and losses of a limited liability company and a member's right to receive distributions of the limited liability company's assets.

(9) "Liquidating trustee" means a person carrying out the winding up of a limited liability company.

(10) "Manager" means a person who is named as a manager of a limited liability company in, or designated as a manager of a limited liability company pursuant to, a limited liability company agreement or similar instrument under which the limited liability company is formed.

(11) "Member" means a person who is admitted to a limited liability company as a member as provided in § 18-301 of this title or, in the case of a foreign limited liability company, in accordance with the laws of the state or foreign country or other foreign jurisdiction under which the foreign limited liability company is formed.

(12) "Person" means a natural person, partnership (whether general or limited), limited liability company, trust (including a common law trust, business trust, statutory trust, voting trust or any other form of trust), estate, association (including any group, organization, co-tenancy, plan, board, council or committee), corporation, government (including a country, state, county or any other governmental subdivision, agency or instrumentality), custodian, nominee or any other individual or entity (or series thereof) in its own or any representative capacity, in each case, whether domestic or foreign.

(13) "Personal representative" means, as to a natural person, the executor, administrator, guardian, conservator or other legal representative thereof and, as to a person other than a natural person, the legal representative or successor thereof.

(14) "State" means the District of Columbia or the Commonwealth of Puerto Rico or any state, territory, possession or other jurisdiction of the United States other than the State of Delaware.

68 Del. Laws, c. 434, § 1; 69 Del. Laws, c. 260, § 1; 70 Del. Laws, c. 75, §§ 1-3; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 77, §§ 1, 2; 71 Del. Laws, c. 341, § 1; 72 Del. Laws, c. 129, § 1; 73 Del. Laws, c. 83, § 1; 73 Del. Laws, c. 295, §§ 1, 2; 74 Del. Laws, c. 275, § 1; 75 Del. Laws, c. 51, § 1; 75 Del. Laws, c. 317, § 1; 76 Del. Laws, c. 105, §§ 1, 2; 76 Del. Laws, c. 387, § 1; 77 Del. Laws, c. 287, § 1.;

§ 18-102 Name set forth in certificate.

The name of each limited liability company as set forth in its certificate of formation:

- (1) Shall contain the words "Limited Liability Company" or the abbreviation "L.L.C." or the designation "LLC";
- (2) May contain the name of a member or manager;
- (3) Must be such as to distinguish it upon the records in the office of the Secretary of State from the name on such records of any corporation, partnership, limited partnership, statutory trust or limited liability company reserved, registered, formed or organized under the laws of the State of Delaware or qualified to do business or registered as a foreign corporation, foreign limited partnership, foreign statutory trust, foreign partnership, or foreign limited liability company in the State of Delaware; provided however, that a limited liability company may register under any name which is not such as to distinguish it upon the records in the office of the Secretary of State from the name on such records of any domestic or foreign corporation, partnership, limited partnership, or statutory trust or foreign limited liability company reserved, registered, formed or organized under the laws of the State of Delaware with the written consent of the other corporation, partnership, limited partnership, statutory trust or foreign limited liability company, which written consent shall be filed with the Secretary of State;

provided further, that, if on July 31, 2011, a limited liability company is registered (with the consent of another limited liability company) under a name which is not such as to distinguish it upon the records in the office of the Secretary of State from the name on such records of such other domestic limited liability company, it shall not be necessary for any such limited liability company to amend its certificate of formation to comply with this subsection;

(4) May contain the following words: "Company," "Association," "Club," "Foundation," "Fund," "Institute," "Society," "Union," "Syndicate," "Limited" or "Trust" (or abbreviations of like import); and

(5) Shall not contain the word "bank," or any variation thereof, except for the name of a bank reporting to and under the supervision of the State Bank Commissioner of this State or a subsidiary of a bank or savings association (as those terms are defined in the Federal Deposit Insurance Act, as amended, at 12 U.S.C. § 1813), or a limited liability company regulated under the Bank Holding Company Act of 1956, as amended, 12 U.S.C. § 1841 et seq., or the Home Owners' Loan Act, as amended, 12 U.S.C. § 1461 et seq.; provided, however, that this section shall not be construed to prevent the use of the word "bank," or any variation thereof, in a context clearly not purporting to refer to a banking business or otherwise likely to mislead the public about the nature of the business of the limited liability company or to lead to a pattern and practice of abuse that might cause harm to the interests of the public or the State as determined by the Division of Corporations in the Department of State.

68 Del. Laws, c. 434, § 1; 69 Del. Laws, c. 260, § 2; 70 Del. Laws, c. 75, § 4; 72 Del. Laws, c. 389, § 1; 73 Del. Laws, c. 83, § 2; 73 Del. Laws, c. 329, § 25; 78 Del. Laws, c. 95, § 1; 78 Del. Laws, c. 270, § 1.;

§ 18-103 Reservation of name.

(a) The exclusive right to the use of a name may be reserved by:

(1) Any person intending to organize a limited liability company under this chapter and to adopt that name;

(2) Any domestic limited liability company or any foreign limited liability company registered in the State of Delaware which, in either case, proposes to change its name;

(3) Any foreign limited liability company intending to register in the State of Delaware and adopt that name; and

(4) Any person intending to organize a foreign limited liability company and intending to have it register in the State of Delaware and adopt that name.

(b) The reservation of a specified name shall be made by filing with the Secretary of State an application, executed by the applicant, specifying the name to be reserved and the name and address of the applicant. If the Secretary of State finds that the name is available for use by a domestic or foreign limited liability company, the Secretary shall reserve the name for the exclusive use of the applicant for a period of 120 days. Once having so reserved a name, the

same applicant may again reserve the same name for successive 120-day periods. The right to the exclusive use of a reserved name may be transferred to any other person by filing in the office of the Secretary of State a notice of the transfer, executed by the applicant for whom the name was reserved, specifying the name to be transferred and the name and address of the transferee. The reservation of a specified name may be canceled by filing with the Secretary of State a notice of cancellation, executed by the applicant or transferee, specifying the name reservation to be canceled and the name and address of the applicant or transferee. Unless the Secretary of State finds that any application, notice of transfer, or notice of cancellation filed with the Secretary of State as required by this subsection does not conform to law, upon receipt of all filing fees required by law the Secretary shall prepare and return to the person who filed such instrument a copy of the filed instrument with a notation thereon of the action taken by the Secretary of State.

(c) A fee as set forth in § 18-1105(a)(1) of this title shall be paid at the time of the initial reservation of any name, at the time of the renewal of any such reservation and at the time of the filing of a notice of the transfer or cancellation of any such reservation.

68 Del. Laws, c. 434, § 1; 69 Del. Laws, c. 260, § 3; 70 Del. Laws, c. 186, § 1.;

§ 18-104 Registered office; registered agent.

(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, having a business office identical with such registered office, 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)), a foreign limited liability company, or a foreign statutory trust.

(b) A registered agent may change the address of the registered office of the limited liability company(ies) for which it is registered agent to another address in the State of Delaware by paying a fee as set forth in § 18-1105(a)(2) of this title and filing with the Secretary of State a certificate, executed by such registered agent, setting forth the address at which such registered agent has maintained the registered office for each of the limited liability companies for which it is a registered agent, and further certifying to the new address to which each such registered office will be changed on a given day, and at which new address such registered agent will thereafter maintain the registered office for each of the limited

liability companies for which it is a registered agent. Upon the filing of such certificate, the Secretary of State shall furnish to the registered agent a certified copy of the same under the Secretary's hand and seal of office, and thereafter, or until further change of address, as authorized by law, the registered office in the State of Delaware of each of the limited liability companies for which the agent is a registered agent shall be located at the new address of the registered agent thereof as given in the certificate. In the event of a change of name of any person acting as a registered agent of a limited liability company, such registered agent shall file with the Secretary of State a certificate executed by such registered agent setting forth the new name of such registered agent, the name of such registered agent before it was changed, and the address at which such registered agent has maintained the registered office for each of the limited liability companies for which it is a registered agent, and shall pay a fee as set forth in § 18-1105(a)(2) of this title. Upon the filing of such certificate, the Secretary of State shall furnish to the registered agent a certified copy of the certificate under the Secretary of State's own hand and seal of office. A change of name of any person acting as a registered agent of a limited liability company as a result of a merger or consolidation of the registered agent with or into another person which succeeds to its assets and liabilities by operation of law shall be deemed a change of name for purposes of this section. Filing a certificate under this section shall be deemed to be an amendment of the certificate of formation of each limited liability company affected thereby, and each such limited liability company shall not be required to take any further action with respect thereto to amend its certificate of formation under § 18-202 of this title. Any registered agent filing a certificate under this section shall promptly, upon such filing, deliver a copy of any such certificate to each limited liability company affected thereby.

(c) The registered agent of 1 or more limited liability companies may resign and appoint a successor registered agent by paying a fee as set forth in § 18-1105(a)(2) of this title and filing a certificate with the Secretary of State stating that it resigns and the name and address of the successor registered agent. There shall be attached to such certificate a statement of each affected limited liability company ratifying and approving such change of registered agent. Upon such filing, the successor registered agent shall become the registered agent of such limited liability companies as have ratified and approved such substitution, and the successor registered agent's address, as stated in such certificate, shall become the address of each such limited liability company's registered office in the State of Delaware. The Secretary of State shall then issue a certificate that the successor registered agent has become the registered agent of the limited liability companies so ratifying and approving such change and setting out the names of such limited liability companies. Filing of such certificate of resignation shall be deemed to be an amendment of the certificate of formation of each limited liability company affected thereby, and each such limited liability company shall not be required to take any further action with respect thereto to amend its certificate of formation under § 18-202 of this title.

(d) The registered agent of 1 or more limited liability companies may resign without appointing a successor registered agent by paying a fee as set forth in § 18-1105(a)(2) of this title and filing a certificate of resignation with the Secretary of State, but such resignation shall not become effective until 30 days after the certificate is filed. The certificate shall

contain a statement that written notice of resignation was given to each affected limited liability company at least 30 days prior to the filing of the certificate by mailing or delivering such notice to the limited liability company at its address last known to the registered agent and shall set forth the date of such notice. After receipt of the notice of the resignation of its registered agent, the limited liability company for which such registered agent was acting shall obtain and designate a new registered agent, to take the place of the registered agent so resigning. If such limited liability company fails to obtain and designate a new registered agent as aforesaid prior to the expiration of the period of 30 days after the filing by the registered agent of the certificate of resignation, the certificate of formation of such limited liability company shall be canceled. After the resignation of the registered agent shall have become effective as provided in this section and if no new registered agent shall have been obtained and designated in the time and manner aforesaid, service of legal process against each limited liability company for which the resigned registered agent had been acting shall thereafter be upon the Secretary of State in accordance with § 18-105 of this title.

(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 and foreign limited liability companies for which it serves as registered agent and forward same to the limited liability company or foreign limited liability company to which the service or communication is directed; and
- (4) Forward to the limited liability companies and foreign 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 50 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) of this section; 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) of this section;

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 paragraph (i)(2)a. of this section, 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 50 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 and each foreign limited liability company for which that registered agent 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) of this section. 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 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 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) of this section and/or the requirements of subsection (f) or (g) of this section 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 30 days after such notice is given, the certificate of formation of such limited liability company shall be canceled. If such a limited liability company is a foreign limited liability company and fails to obtain and designate a new registered agent within 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 canceled. If any other affected limited liability company is a domestic limited liability company and fails to obtain and designate a new registered agent within 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 canceled. If any other affected limited liability company is a foreign limited liability company and fails to obtain and designate a new registered agent within 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 canceled. 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.

(k) As contained in any certificate of formation, application for registration as a foreign limited liability company, or other document filed in the office of the Secretary of State under this chapter, the address of a registered agent or registered office shall include the street, number, city and postal code.

68 Del. Laws, c. 434, § 1; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 77, §§ 3, 4; 73 Del. Laws, c. 83, § 3; 73 Del. Laws, c. 329, § 26; 75 Del. Laws, c. 317, §§ 2, 3; 76 Del. Laws, c. 105, §§ 3-8; 78 Del. Laws, c. 95, § 2.;

§ 18-105 Service of process on domestic limited liability companies.

(a) Service of legal process upon any domestic limited liability company shall be made by delivering a copy personally to any manager of the limited liability company in the State of Delaware or the registered agent of the limited liability company in the State of Delaware, or by leaving it at the dwelling house or usual place of abode in the State of Delaware of any such manager or registered agent (if the registered agent be an individual), or at the registered office or other place of business of the limited liability company in the State of

Delaware. If the registered agent be a corporation, service of process upon it as such may be made by serving, in the State of Delaware, a copy thereof on the president, vice-president, secretary, assistant secretary or any director of the corporate registered agent. Service by copy left at the dwelling house or usual place of abode of a manager or registered agent, or at the registered office or other place of business of the limited liability company in the State of Delaware, to be effective, must be delivered thereat at least 6 days before the return date of the process, and in the presence of an adult person, and the officer serving the process shall distinctly state the manner of service in the officer's return thereto. Process returnable forthwith must be delivered personally to the manager or registered agent.

(b) In case the officer whose duty it is to serve legal process cannot by due diligence serve the process in any manner provided for by subsection (a) of this section, it shall be lawful to serve the process against the limited liability company upon the Secretary of State, and such service shall be as effectual for all intents and purposes as if made in any of the ways provided for in subsection (a) of this section. Process may be served upon the Secretary of State under this subsection by means of electronic transmission but only as prescribed by the Secretary of State. The Secretary of State is authorized to issue such rules and regulations with respect to such service as the Secretary of State deems necessary or appropriate. In the event that service is effected through the Secretary of State in accordance with this subsection, the Secretary of State shall forthwith notify the limited liability company by letter, directed to the limited liability company at its address as it appears on the records relating to such limited liability company on file with the Secretary of State or, if no such address appears, at its last registered office. Such letter shall be sent by a mail or courier service that includes a record of mailing or deposit with the courier and a record of delivery evidenced by the signature of the recipient. Such letter shall enclose a copy of the process and any other papers served on the Secretary of State pursuant to this subsection. It shall be the duty of the plaintiff in the event of such service to serve process and any other papers in duplicate, to notify the Secretary of State that service is being effected pursuant to this subsection, and to pay the Secretary of State the sum of \$50 for the use of the State of Delaware, which sum shall be taxed as part of the costs in the proceeding if the plaintiff shall prevail therein. The Secretary of State shall maintain an alphabetical record of any such service setting forth the name of the plaintiff and defendant, the title, docket number and nature of the proceeding in which process has been served upon the Secretary, the fact that service has been effected pursuant to this subsection, the return date thereof, and the day and hour when the service was made. The Secretary of State shall not be required to retain such information for a period longer than 5 years from the Secretary's receipt of the service of process.

68 Del. Laws, c. 434, § 1; 70 Del. Laws, c. 186, § 1; 77 Del. Laws, c. 287, § 2.;

§ 18-106 Nature of business permitted; powers.

(a) A limited liability company may carry on any lawful business, purpose or activity, whether or not for profit, with the exception of the business of banking as defined in § 126 of Title 8.

(b) A limited liability company shall possess and may exercise all the powers and privileges granted by this chapter or by any other law or by its limited liability company agreement, together with any powers incidental thereto, including such powers and privileges as are necessary or convenient to the conduct, promotion or attainment of the business, purposes or activities of the limited liability company.

(c) Notwithstanding any provision of this chapter to the contrary, without limiting the general powers enumerated in subsection (b) of this section, a limited liability company shall, subject to such standards and restrictions, if any, as are set forth in its limited liability company agreement, have the power and authority to make contracts of guaranty and suretyship and enter into interest rate, basis, currency, hedge or other swap agreements or cap, floor, put, call, option, exchange or collar agreements, derivative agreements, or other agreements similar to any of the foregoing.

(d) Unless otherwise provided in a limited liability company agreement, a limited liability company has the power and authority to grant, hold or exercise a power of attorney, including an irrevocable power of attorney.

68 Del. Laws, c. 434, § 1; 71 Del. Laws, c. 77, § 5; 72 Del. Laws, c. 129, § 2; 73 Del. Laws, c. 295, § 3; 75 Del. Laws, c. 51, § 2; 77 Del. Laws, c. 287, § 3.;

§ 18-107 Business transactions of member or manager with the limited liability company.

Except as provided in a limited liability company agreement, a member or manager may lend money to, borrow money from, act as a surety, guarantor or endorser for, guarantee or assume 1 or more obligations of, provide collateral for, and transact other business with, a limited liability company and, subject to other applicable law, has the same rights and obligations with respect to any such matter as a person who is not a member or manager.

68 Del. Laws, c. 434, § 1; 69 Del. Laws, c. 260, § 4.;

§ 18-108 Indemnification.

Subject to such standards and restrictions, if any, as are set forth in its limited liability company agreement, a limited liability company may, and shall have the power to, indemnify and hold harmless any member or manager or other person from and against any and all claims and demands whatsoever.

68 Del. Laws, c. 434, § 1.;

§ 18-109 Service of process on managers and liquidating trustees.

(a) A manager or a liquidating trustee of a limited liability company may be served with process in the manner prescribed in this section in all civil actions or proceedings brought in the State of Delaware involving or relating to the business of the limited liability company or a violation by the manager or the liquidating trustee of a duty to the limited liability company or any member of the limited liability company, whether or not the manager or the liquidating trustee is a manager or a liquidating trustee at the time suit is commenced. A manager's or a liquidating trustee's serving as such constitutes such person's consent to the

appointment of the registered agent of the limited liability company (or, if there is none, the Secretary of State) as such person's agent upon whom service of process may be made as provided in this section. Such service as a manager or a liquidating trustee shall signify the consent of such manager or liquidating trustee that any process when so served shall be of the same legal force and validity as if served upon such manager or liquidating trustee within the State of Delaware and such appointment of the registered agent (or, if there is none, the Secretary of State) shall be irrevocable. As used in this subsection (a) and in subsections (b), (c) and (d) of this section, the term "manager" refers (i) to a person who is a manager as defined in § 18-101(10) of this title and (ii) to a person, whether or not a member of a limited liability company, who, although not a manager as defined in § 18-101(10) of this title, participates materially in the management of the limited liability company; provided however, that the power to elect or otherwise select or to participate in the election or selection of a person to be a manager as defined in § 18-101(10) of this title shall not, by itself, constitute participation in the management of the limited liability company.

(b) Service of process shall be effected by serving the registered agent (or, if there is none, the Secretary of State) with 1 copy of such process in the manner provided by law for service of writs of summons. In the event service is made under this subsection upon the Secretary of State, the plaintiff shall pay to the Secretary of State the sum of \$50 for the use of the State of Delaware, which sum shall be taxed as part of the costs of the proceeding if the plaintiff shall prevail therein. In addition, the Prothonotary or the Register in Chancery of the court in which the civil action or proceeding is pending shall, within 7 days of such service, deposit in the United States mails, by registered mail, postage prepaid, true and attested copies of the process, together with a statement that service is being made pursuant to this section, addressed to such manager or liquidating trustee at the registered office of the limited liability company and at the manager's or liquidating trustee's address last known to the party desiring to make such service.

(c) In any action in which any such manager or liquidating trustee has been served with process as hereinabove provided, the time in which a defendant shall be required to appear and file a responsive pleading shall be computed from the date of mailing by the Prothonotary or the Register in Chancery as provided in subsection (b) of this section; however, the court in which such action has been commenced may order such continuance or continuances as may be necessary to afford such manager or liquidating trustee reasonable opportunity to defend the action.

(d) In a written limited liability company agreement or other writing, a manager or member may consent to be subject to the nonexclusive jurisdiction of the courts of, or arbitration in, a specified jurisdiction, or the exclusive jurisdiction of the courts of the State of Delaware, or the exclusivity of arbitration in a specified jurisdiction or the State of Delaware, and to be served with legal process in the manner prescribed in such limited liability company agreement or other writing. Except by agreeing to arbitrate any arbitrable matter in a specified jurisdiction or in the State of Delaware, a member who is not a manager may not

waive its right to maintain a legal action or proceeding in the courts of the State of Delaware with respect to matters relating to the organization or internal affairs of a limited liability company.

(e) Nothing herein contained limits or affects the right to serve process in any other manner now or hereafter provided by law. This section is an extension of and not a limitation upon the right otherwise existing of service of legal process upon nonresidents.

(f) The Court of Chancery and the Superior Court may make all necessary rules respecting the form of process, the manner of issuance and return thereof and such other rules which may be necessary to implement this section and are not inconsistent with this section.

68 Del. Laws, c. 434, § 1; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 77, § 6; 72 Del. Laws, c. 129, § 3; 72 Del. Laws, c. 389, §§ 2, 3.;

§ 18-110 Contested matters relating to managers; contested votes.

(a) Upon application of any member or manager, the Court of Chancery may hear and determine the validity of any admission, election, appointment, removal or resignation of a manager of a limited liability company, and the right of any person to become or continue to be a manager of a limited liability company, and, in case the right to serve as a manager is claimed by more than 1 person, may determine the person or persons entitled to serve as managers; and to that end make such order or decree in any such case as may be just and proper, with power to enforce the production of any books, papers and records of the limited liability company relating to the issue. In any such application, the limited liability company shall be named as a party and service of copies of the application upon the registered agent of the limited liability company shall be deemed to be service upon the limited liability company and upon the person or persons whose right to serve as a manager is contested and upon the person or persons, if any, claiming to be a manager or claiming the right to be a manager; and the registered agent shall forward immediately a copy of the application to the limited liability company and to the person or persons whose right to serve as a manager is contested and to the person or persons, if any, claiming to be a manager or the right to be a manager, in a postpaid, sealed, registered letter addressed to such limited liability company and such person or persons at their post-office addresses last known to the registered agent or furnished to the registered agent by the applicant member or manager. The Court may make such order respecting further or other notice of such application as it deems proper under these circumstances.

(b) Upon application of any member or manager, the Court of Chancery may hear and determine the result of any vote of members or managers upon matters as to which the members or managers of the limited liability company, or any class or group of members or managers, have the right to vote pursuant to the limited liability company agreement or other agreement or this chapter (other than the admission, election, appointment, removal or resignation of managers). In any such application, the limited liability company shall be named as a party and service of the application upon the registered agent of the limited liability company shall be deemed to be service upon the limited liability company, and no

other party need be joined in order for the Court to adjudicate the result of the vote. The Court may make such order respecting further or other notice of such application as it deems proper under these circumstances.

(c) As used in this section, the term "manager" refers to a person:

- a. Who is a manager as defined in § 18-101(10) of this title; and
- b. Whether or not a member of a limited liability company, who, although not a manager as defined in § 18-101(10) of this title, participates materially in the management of the limited liability company;

provided however, that the power to elect or otherwise select or to participate in the election or selection of a person to be a manager as defined in § 18-101(10) of this title shall not, by itself, constitute participation in the management of the limited liability company.

(d) Nothing herein contained limits or affects the right to serve process in any other manner now or hereafter provided by law. This section is an extension of and not a limitation upon the right otherwise existing of service of legal process upon nonresidents.

69 Del. Laws, c. 260, § 5; 71 Del. Laws, c. 77, § 7; 76 Del. Laws, c. 387, § 2.;

§ 18-111 Interpretation and enforcement of limited liability company agreement.

Any action to interpret, apply or enforce the provisions of a limited liability company agreement, or the duties, obligations or liabilities of a limited liability company to the members or managers of the limited liability company, or the duties, obligations or liabilities among members or managers and of members or managers to the limited liability company, or the rights or powers of, or restrictions on, the limited liability company, members or managers, or any provision of this chapter, or any other instrument, document, agreement or certificate contemplated by any provision of this chapter, may be brought in the Court of Chancery.

As used in this section, the term "manager" refers to a person:

- (1) Who is a manager as defined in § 18-101(10) of this title; and
- (2) Whether or not a member of a limited liability company, who, although not a manager as defined in § 18-101(10) of this title, participates materially in the management of the limited liability company;

provided however, that the power to elect or otherwise select or to participate in the election or selection of a person to be a manager as defined in § 18-101(10) of this title shall not, by itself, constitute participation in the management of the limited liability company.

69 Del. Laws, c. 260, § 6; 76 Del. Laws, c. 387, § 3; 77 Del. Laws, c. 58, § 1.;