



CHANGES TO DELAWARE ENTITY LAWS

AN UPDATE FOR AUGUST 2014



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**THE GREEK PHILOSOPHER
HERACLITUS ONCE WROTE:**

*Change is the only
constant in life.*

And so it goes for the rules governing **Delaware entities**.
The Delaware General Corporation Law continues to evolve,
with several major changes enacted this year.



Certificates of Validation

Delaware entities now have a way to remedy past defective corporate acts. On **April 1, 2014**, two new sections of the Delaware General Corporation Law (“DGCL”) came into effect, creating a process for doing so:

Section 204 of the DGCL outlines a mechanism for ratifying defective corporate acts. These include any past acts or transactions that are “void or voidable,” including:

- An over-issue of stock (known as “putative stock” as opposed to “valid stock”)
- Unauthorized election or appointment of directors
- Unauthorized corporate acts or transactions

Section 205 of the DGCL grants the Delaware Court of Chancery jurisdiction to examine ratifications made under Section 204 and assess the validity of any defective corporate act.

! Why it’s important:

Defective corporate acts pose a hidden risk to business entities. They can invalidate a board of directors’ past decisions, put the directors themselves in legal straits, leave the corporation in breach of contracts or warranties, and impact future capital investments and deals.

🔧 The fix:

Corporations can remedy defective acts by filing a certificate of validation with the Delaware Secretary of State. But first they must do the following:

1 The board of directors must adopt a resolution ratifying the defective corporate act.

The resolution should include:

- a description of the defective act
- the time when it occurred
- a mention of whether putative stock was issued (if “yes,” then include the number, type, and date of the stocks issued)
- the nature of any failed authorization, and
- the board’s statement of approval of the ratification

2 **If the defective act would have required stockholder approval, the company must submit the ratifying resolution to the stockholders for a vote.** The company must provide 20 days’ notice of the related stockholder meeting, including a copy of the ratifying resolution and a statement to the effect that any challenges to the ratification must be made within 120 days of its effective date.

3 **If the defective act wouldn’t have required stockholder approval, the company must notify all shareholders when the ratifying resolution is adopted.** This includes all who were stockholders at the time of the defective act, unless their addresses or identities cannot be retrieved. The notice must include a copy of the ratifying resolution and a statement to the effect that any challenges to the ratification must be made within 120 days of its effective date.

A certificate of validation is complete only when it includes a copy of the ratifying resolution along with the following information:

- date of its adoption by the board of directors, and, if applicable, by the stockholders
- whether a certificate was previously filed to ratify the act in question, and the title and date of that filing

If the defective act involved a name change, the name must have been available during the entire period during which the defective act was in force. NOTE: If the ratification involves a stock decrease, taxes and fees will not be adjusted or refunded.

\$ What it costs:

Delaware charges a basic filing fee of \$2,759 for certificates of validation, with the total fee varying according to stock. Delaware does not offer same-day or 24-hour service for Certificates of Validation. (In CSC’s experience, some filings have taken weeks to be completed.) Certificates of Validation can be pre-cleared, but not on an expedited basis.



Changes to the Delaware Franchise Tax Structure

On April 15, 2014, Delaware Gov. Jack Markell signed House Bill 265 (Chapter 212), increasing the minimum tax on corporations and alternative entities. The rates went into effect on July 1, 2014, for the 2014 and subsequent tax years. **Here are the new rates:**

Authorized Shares of Stock	Base Tax	Authorized Shares of Stock	Base Tax
1 - 5,000	\$175	220,001 - 230,000	\$1,900
5,001 - 10,000	\$250	230,001 - 240,000	\$1,975
10,001 - 20,000	\$325	240,001 - 250,000	\$2,050
20,001 - 30,000	\$400	250,001 - 260,000	\$2,125
30,001 - 40,000	\$475	260,001 - 270,000	\$2,200
40,001 - 50,000	\$550	270,001 - 280,000	\$2,275
50,001 - 60,000	\$625	280,001 - 290,000	\$2,350
60,001 - 70,000	\$700	290,001 - 300,000	\$2,425
70,001 - 80,000	\$775	300,001 - 310,000	\$2,500
80,001 - 90,000	\$850	310,001 - 320,000	\$2,575
90,001 - 100,000	\$925	500,000	\$3,925
100,001 - 110,000	\$1,000	1,000,000	\$7,675
110,001 - 120,000	\$1,075	2,000,000	\$15,175
120,001 - 130,000	\$1,150	3,000,000	\$22,675
130,001 - 140,000	\$1,225	4,000,000	\$30,175
140,001 - 150,000	\$1,300	5,000,000	\$37,675
150,001 - 160,000	\$1,375	6,000,000	\$45,175
160,001 - 170,000	\$1,450	7,000,000	\$52,675
170,001 - 180,000	\$1,525	8,000,000	\$60,175
180,001 - 190,000	\$1,600	9,000,000	\$67,675
190,001 - 200,000	\$1,675	10,000,000	\$75,175
200,001 - 210,000	\$1,750	23,970,001	\$180,000
210,001 - 220,000	\$1,825		

2014 Franchise Tax Rates

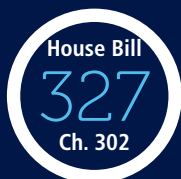
Authorized Shares Method: Minimum = \$175.00 Maximum = \$180,000.00

Assumed Par Value Method: Minimum = \$350.00 Maximum = \$180,000.00

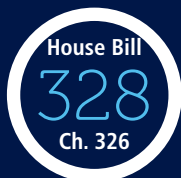
LLC/LP/GP Taxes = \$300.00

Delaware Business Entity Amendments

The following amendments came into effect on **August 1, 2014**:



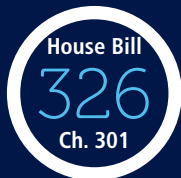
Amends the Limited Liability Company Act to require an LLC to maintain a current record of the name and last known address of each member and manager of the LLC. On request, the LLC must provide the name, business address and business telephone number of the person who has access to that record. The bill also clarifies consents and books and records requests by a member and provides additional means by which a dissolution may be revoked.



Amends the Revised Uniform Limited Partnership Act to require an LP to maintain a current record of the name and address of each partner. On request, the LP must provide the name, business address and business telephone number of a natural person who has access to that record.



Amends the General Corporation Law to authorize filing of certificates of amendment that either change the corporate name or delete historical provisions relating to the incorporator, initial directors or initial subscribers and provisions relating to previously effected changes to stock, without submitting the amendment for stockholder approval. The bill also eliminates a requirement that notice of a meeting at which an amendment is to be voted on contain a copy of the amendment or a summary, but only when notice constitutes a notice of interest availability of proxy materials for SEC purposes. In addition, the bill clarifies Section 251(h) added in 2013 with respect to certain merger agreements, but does not alter directors' fiduciary duties or the level of judicial scrutiny for Section 251(h) mergers. Also, the bill clarifies provisions relating to the incorporator's unavailability, provides that a voting trust agreement may be delivered to the principal place of business in lieu of the registered office, and clarifies consents by directors and stockholders.



Amends the Revised Uniform Partnership Act to clarify consents and books and records requests by a partner of a Delaware partnership.



Amends the Statutory Trusts Act to restrict the use of the word "bank" in the name of a statutory trust.



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