



Delaware Entity Laws Compliance Checklist – 2024 Update

from CT Corporation

Topic Area	Summary of Changes	Effective Date/Comments
I. Corporations	<p>Below is a summary of the amendments to the Delaware General Corporation Law (Title 8, Chapter 1 of the Delaware Code). These amendments were enacted by Senate Bill 313. Consult the full text of Senate Bill 313 and the relevant sections of the General Corporation Law for more information.</p>	
Specific Powers of a Corporation Sec. 122	<p>Sec. 122 is amended in several respects including the following:</p> <p>(a) To provide that a corporation has the powers set forth in this section whether or not so provided in its certificate of incorporation;</p> <p>(b) To provide that any contract or other appointment or delegation of authority that empowers an officer or agent to act on behalf of the corporation shall be subject to Sec. 141(a);</p> <p>(c) To add a new subsection (18) to provide that notwithstanding Sec. 141(a) a corporation has the power to make contracts with one or more current or prospective stockholders (or one or more beneficial owners of stock), in its or their capacity as such, in exchange for such minimum consideration as determined by the board of directors (which may include inducing stockholders or beneficial owners of stock to take, or refrain from taking, one or more actions); provided that no provision of such contract shall be enforceable against the corporation to the extent such contract provision is contrary to the certificate of incorporation or would be contrary to the laws of Delaware (other than Sec. 115 of the GCL) if included in the certificate of incorporation.</p> <p>New Subsection (18) includes a non-exclusive list of contract provisions by which the corporation may agree to:</p> <p>(a) restrict or prohibit itself from taking actions specified in the contract,</p> <p>(b) require the approval or consent of one or more persons or bodies before the corporation may take actions specified in the contract (which persons or bodies may include the board of directors or one or more current or future directors, stockholders or beneficial owners of stock of the corporation), and</p>	<p>August 1, 2024</p> <p>The amendments to Sec. 122 are a response to the Delaware Court of Chancery’s decision in <i>West Palm Beach Firefighters Pension Fund v. Moelis & Co.</i>, C.A. No. 2023-0309 (Del. Ch. 2/23/24) in the which court held that provisions in a shareholders’ agreement that gave a shareholder veto rights with respect to various corporate actions violated Sec. 141(a) of the GCL, which provides that the business and affairs of a corporation shall be managed by or under the direction of the board of directors unless otherwise provided in the certificate of incorporation.</p>

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	<p>(c) covenant that the corporation or one or more persons or bodies will take, or refrain from taking, actions specified in the contract (which persons or bodies may include the board of directors or one or more current or future directors, stockholders or beneficial owners of stock of the corporation).</p> <p>New Subsection (18) includes a proviso confirming that no provision of a contract shall be enforceable against the corporation to the extent such contract provision is contrary to the certificate of incorporation or would be contrary to the laws of Delaware (other than Sec. 115 of the GCL) if included in the certificate of incorporation. For purposes of applying this proviso, a restriction, prohibition or covenant in any such contract that relates to any specified action shall not be deemed contrary to Delaware law or the certificate of incorporation by reason of a provision of Delaware law or the certificate of incorporation that authorizes or empowers the board of directors (or any one or more directors) to take such action.</p> <p>With respect to all contracts made under Subsection (18), the corporation shall be subject to the remedies available under the law governing the contract, including for any failure to perform or comply with its agreements under such contract.</p>	
Authorization of Agreements and Other Instruments Sec. 147	<p>A new Sec. 147 is added, providing that whenever the GCL expressly requires the board of directors to approve or take other action with respect to any agreement, instrument or document, such agreement, instrument or document may be approved by the board of directors in final form or in substantially final form.</p> <p>New Sec. 147 also provides that if the board of directors shall have acted to approve or take other action with respect to an agreement, instrument or document that is required by the GCL to be filed with the Secretary of State or referenced in any certificate so filed, the board of directors may, at any time after providing such approval or taking such other action and prior to the effectiveness of such filing with the Secretary of State, adopt a resolution ratifying the agreement, instrument or document.</p> <p>A ratification under this section shall be deemed to be effective as of the time of the original approval or other action by the board of directors and to satisfy any requirement under the GCL that the board of directors approve or take other action with respect to such agreement, instrument or document in a specific manner or sequence.</p> <p>Ratification under this section shall not be deemed to be the exclusive means of ratifying an agreement, instrument or document approved by the board of directors pursuant to this section, but shall be in addition to any ratification or validation that may be available under Secs. 204 and 205 or under the common law.</p>	<p>August 1, 2024</p> <p>The addition of Sec. 147 is a response to the Delaware Court of Chancery's opinion in <i>Sjunde AP-Fonden v. Activision Blizzard, Inc.</i>, C.A. No. 2022-1001 (Del. Ch. 2/29/24) in which the court held, based on the allegations of the complaint, that the board of directors violated Sec. 251(b) when it approved a version of the merger agreement that was not essentially in final form because it failed to include several essential terms.</p>
Delivery of Notice; Notice by Electronic Transmission Sec. 232	<p>Sec. 232 is amended to provide that if a notice is given pursuant to Sec. 232 (a)(1) or (a)(2) each document enclosed with the notice or annexed or appended to the notice shall be deemed part of the notice solely for purposes of determining whether notice was duly given under the GCL, the certificate of incorporation or bylaws.</p>	<p>August 1, 2024</p>

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<p>Remedies; Appointment of Stockholder Representatives</p> <p>Sec. 261</p>	<p>Sec. 261 is amended to provide that any agreement of merger or consolidation, other than a merger effected pursuant to Sec. 251(g) may provide:</p> <p>(1) That parties to an agreement of merger or consolidation may, through express provision in the agreement, specify the penalties or consequences of a party's failure to perform its obligations under, or comply with the terms and conditions of, such agreement before the effective time of the merger, or to consummate the merger or consolidation contemplated by such agreement.</p> <p>Such penalties or consequences may include an obligation to make payments to the other party if the merger or consolidation is not consummated, including damages based on the lost premium that stockholders of a constituent corporation would be entitled to receive if the merger becomes effective in accordance with the terms of the agreement and reverse termination fees. In the event a corporation is entitled to so receive such payment, the corporation may enforce the other party's payment obligation, and, upon receipt of any such payment, the corporation is entitled to retain the amount of any such payment.</p> <p>(2) That parties to an agreement of merger or consolidation may, through express provision in the agreement, appoint one or more persons to serve as the representative of stockholders of any constituent corporation, including stockholders whose shares shall be cancelled, converted or exchanged in the merger or consolidation, and to delegate to such person(s) the exclusive authority to enforce the rights of such stockholders, such as rights to receive payments and enforce stockholders' rights under an escrow or indemnification arrangement, and to enter into settlements with respect thereto. Any such appointment of a representative of stockholders of a constituent corporation may be made effective as of, or at any time following, the time at which the agreement of merger or consolidation is adopted by stockholders in accordance with the requirements of this subchapter, and thereafter shall be binding on all stockholders of such constituent corporation.</p> <p>Any provision of the agreement of merger or consolidation adopted pursuant to this subsection may be made dependent upon facts (including, but not limited to, the occurrence of any event, including a determination or action by any person or body, including the corporation) ascertainable outside of such agreement, provided that the manner in which such facts shall operate upon the terms of the agreement is clearly and expressly set forth in the agreement of merger or consolidation.</p>	<p>August 1, 2024</p> <p>The amendments to Sec. 261 are a response to the Delaware Court of Chancery's decision <i>Crispo v. Musk</i>, 304 A.3d 567 (Del. Ch. 2023), in which the court brought into question the enforceability of provisions in a merger agreement vesting in the target company the right to recover damages for the stockholders' lost premiums upon a party's failure to perform or consummate the merger.</p>

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Amendments to Certificate of Incorporation of the Surviving Corporation; Disclosure Schedules Sec. 268	<p>A new Sec. 268 is added to provide:</p> <p>(a) That if an agreement of merger (other than one entered into under Sec. 251(g)) provides, with respect to a constituent corporation, that all of the shares of capital stock of the constituent corporation issued and outstanding immediately before the effective time of the merger are converted into or exchanged for cash, property, rights or securities (other than stock of the surviving corporation), then (i) the merger agreement approved by the board need not include any provision relating to the certificate of incorporation of the surviving corporation, (ii) the board of directors or any person acting at its direction may approve any amendment or amendment and restatement of the certificate of the surviving corporation, and (iii) no alteration or change to the certificate of incorporation of the surviving corporation will be deemed to constitute an amendment to the merger agreement.</p> <p>(b) Unless otherwise expressly provided by an agreement of merger or consolidation, any disclosure letter, disclosure schedules or similar documents or instruments delivered in connection with the agreement that modify, supplement, qualify, or make exceptions to representations, warranties, covenants or conditions contained in the agreement shall not be deemed part of the agreement for purposes of any provision of this title but shall have the effects provided in the agreement.</p>	August 1, 2024 The addition of Sec. 268 is a response to allegations in the <i>Activision</i> case regarding the board of directors' failure to approve the certificate of incorporation of the survivor or approve final or substantially final disclosure schedules.

II. Limited Liability Companies

Below is a summary of amendments to the Delaware Limited Liability Company Act (Title 6, Chapter 18 of the Delaware Code). All amendments were enacted by House Bill 336. Consult the full text of House Bill 336 and the relevant sections of the Delaware Limited Liability Company Act for more information.

Mergers and Consolidations Sec. 18-209	Sec. 18-209 is amended to permit a certificate of merger or a certificate of ownership and merger to state any amendments to the certificate of formation of the surviving domestic LLC as are desired to be effected by the merger or to restate the certificate of formation in its entirety.	August 1, 2024 Previously, only the surviving LLC's name and registered agent or registered office could be amended.
Revocation of Termination of Protected Series Sec. 18-215	Sec. 18-215 is amended to confirm and clarify that the references to "other persons" in the subsection governing the revocation of the termination of a protected series refers to other persons whose approval is required for such termination of the protected series pursuant to the limited liability company agreement.	August 1, 2024
Revocation of Dissolution of Registered Series Sec. 18-218	Sec. 18-218 is amended to confirm and clarify that the references to "other persons" in the subsection governing the revocation of the dissolution of the registered series refers to other persons whose approval is required for such dissolution of the registered series pursuant to the limited liability company agreement.	August 1, 2024

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Merger and Consolidation of Registered Series Sec. 18-221	Sec. 18-221 is amended to permit a certificate of merger of registered series to state any amendments to the certificate of registered series of a surviving registered series in a merger as are desired to be effected by the merger.	August 1, 2024 Previously only the survivor's name could be amended.
Revocation of Dissolution Sec. 18-806	Sec. 18-806 is amended to confirm and clarify that the references to "other persons" in the subsection governing the revocation of the dissolution of the LLC refers to other persons whose approval is required for such dissolution of the LLC pursuant to the limited liability company agreement.	August 1, 2024

III. Limited Partnerships

Below are amendments to the Delaware Revised Uniform Limited Partnership (Title 6, Chapter 17 of the Delaware Code). All amendments were enacted by House Bill 337. Consult the full text of House Bill 337 and the relevant sections of the Delaware Revised Uniform Limited Partnership Act for more information.

Execution of Certificates Sec. 17-204	Sec. 17-204 is amended to provide: (a) That a certificate of merger or certificate of ownership and merger that amends the certificate of limited partnership of the surviving limited partnership to reflect the admission of one or more new general partners of the surviving domestic limited partnership, must be signed by each new general partner. (b) That a certificate of merger or consolidation of a registered series that amends the certificate of registered series of the surviving registered series to reflect the association of one or more new general partners with the surviving registered series, must be signed by each new general partner	August 1, 2024 Because House Bill 337 contains amendments that permit certain merger certificates to add a new general partner, Sec. 17-204 is amended to require each new general partner to sign the merger certificate.
Merger Sec. 17-211	Sec. 17-211 is amended to permit a certificate of merger or a certificate of ownership and merger to state any amendments to the certificate of limited partnership of a surviving LP or statement of qualification of a surviving LLLP as are desired to be effected by the merger or to restate the certificate of LP or statement of qualification of LLLP in its entirety.	August 1, 2024 Previously, only the surviving LP's name and registered agent or registered office could be amended.
Revocation of Termination of Protected Series Sec. 17-218	Sec. 17-218 is amended to confirm and clarify that the references to "other persons" in the subsection governing the revocation of the termination of a protected series refers to other persons whose approval is required for such termination of the protected series pursuant to the partnership agreement.	August 1, 2024

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Revocation of Dissolution of Registered Series Sec. 17-221	Secs. 17-221 is amended to confirm and clarify that the references to “other persons” in the subsection governing the revocation of the dissolution of registered series refers to other persons whose approval is required for such dissolution of the registered series pursuant to the partnership agreement.	August 1, 2024
Merger and Consolidation of Registered Series Sec. 17-224	Sec. 17-224 is amended to permit a certificate of merger of registered series to state any amendments to the certificate of registered series of a surviving registered series in a merger as are desired to be effected by the merger.	August 1, 2024 Previously only the survivor’s name could be amended.
Revocation of Dissolution Sec. 17-806	Sec. 17-806 is amended to confirm and clarify that the references to “other persons” in the subsection governing the revocation of the dissolution of the LP refers to other persons whose approval is required for such dissolution of the LP pursuant to the partnership agreement.	August 1, 2024
IV. Partnerships House Bill 339 enacted amendments to the Delaware Revised Uniform Partnership Act (Title 6, Chapter 15 of the Delaware Code). Consult with House Bill 339 and the relevant provisions of the Delaware Revised Uniform Partnership Act for more information.		
Merger and Consolidation Sec. 15-902	Sec. 15-902 is amended to (a) Permit a certificate of merger or a certificate of ownership and merger to state any amendments to the statement of partnership existence of a surviving partnership, or statement of qualification of a surviving LLP as are desired to be effected by the merger or to restate such statement in its entirety. (b) To require a domestic partnership that is causing a merger under Sec. 15-902(m) to file a statement of partnership existence if it has not already done so.	August 1, 2024 Previously, only the GP or LP’s name and registered agent or registered office could be amended.
V. Statutory Trusts House Bill 338 enacted amendments to the Delaware Statutory Trust Act (Title 12, Chapter 38 of the Delaware Code). Below are selected highlights. Consult with House Bill 338 to see all of the amendments and the relevant provisions of the Delaware Statutory Act for more information.		
Definitions Sec. 3801	Sec. 3801 is amended to provide that any series of statutory trust is bound by the governing agreement whether or not it executes the agreement.	August 1, 2024

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Management of Statutory Trust Sec. 3806	Sec. 3806 is amended to provide that the trustees may authorize the beneficial owners to direct the voting of securities held by the statutory trust.	August 1, 2024
Merger and Consolidation Sec. 3815	Sec. 3815 is amended to confirm that an amendment to the governing instrument or a new governing instrument may be effected only with respect to the governing instrument of the surviving or resulting statutory trust.	August 1, 2024 In addition, the term surviving person was changed to surviving entity.
Conversion of other Business Entities to Statutory Trust Sec. 3820	Sec. 3820 is amended to provide that the approval of a conversion to a statutory trust and the approval of the governing instrument are required to occur prior to the time the certificate of conversion becomes effective.	August 1, 2024 Formerly, prior to the time of filing the certificate of conversion.
Domestication of non-US Entities Sec. 3822	Sec. 3822 is amended to provide that the approval of a domestication to a statutory trust and the approval of the governing instrument are required to occur prior to the time the certificate of domestication becomes effective.	August 1, 2024 Formerly, prior to the time of filing the certificate of domestication.
Reserved Power of State to Amend or Repeal Charter; Construction and Application of Chapter and Governing Instrument; Short Title Secs. 3827; 3828; 3829	Sec. 3827, 3828, and 3829 are amended to clarify that the sections apply to all of Title 12, Chapter 38 and not just to Subchapter 1 of Chapter 38.	August 1, 2024

The full text of the legislation addressed by this checklist can be accessed here:

House Bill 313

<https://legis.delaware.gov/json/BillDetail/GenerateHtmlDocument?legislationId=141480&legislationTypeId=1&docTypeId=2&legislationName=SB313>

House Bill 336

<https://legis.delaware.gov/json/BillDetail/GenerateHtmlDocument?legislationId=141006&legislationTypeId=1&docTypeId=2&legislationName=HB336>

House Bill 337

<https://legis.delaware.gov/json/BillDetail/GenerateHtmlDocument?legislationId=141007&legislationTypeId=1&docTypeId=2&legislationName=HB337>

House Bill 339

<https://legis.delaware.gov/json/BillDetail/GenerateHtmlDocument?legislationId=141005&legislationTypeId=1&docTypeId=2&legislationName=HB339>

House Bill 338

<https://legis.delaware.gov/json/BillDetail/GenerateHtmlDocument?legislationId=141008&legislationTypeId=1&docTypeId=2&legislationName=HB338>

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This chart is not intended as legal advice and is accurate as of the publication date. State and local statute should be consulted for specific language and information.