



# Delaware Entity Law Compliance Checklist

## August 2021 Update

To learn more about how we can help you better manage your compliance needs, contact a CT Service Representative: 855.316.8948.

### I. CORPORATIONS

Below is a summary of the amendments to the Delaware General Corporation Law (Title 8, Chapter 1 of the Delaware Code) enacted by Senate Bill 113. Consult the full text of Senate Bill 113 and the relevant section of the General Corporation Law for more information.

TOPIC AREA	SUMMARY OF CHANGES	EFFECTIVE DATE/COMMENTS
<p><i>Corporate Stock Voted or Counted for Quorum Purposes</i></p> <p>Sec. 160</p>	<p>Sec. 160(c) was amended to clarify that a corporation's stock may not be voted or counted for quorum purposes if the stock belongs to a non-corporate entity in which the corporation holds a majority of the voting power, either directly or indirectly, to elect or appoint the other entity's governing body.</p>	<p>August 1, 2021</p> <p>Previously, Sec. 160(c) dealt with shares of stock belonging to the corporation or another corporation. The amendment added a reference to other kinds of entities.</p> <p>The amendment is not intended to be construed to create any negative implication with respect to the inclusion or exclusion of non-corporate entities in connection with any other section of the DGCL.</p>

## II. Limited Liability Companies

Below are amendments to the Delaware Limited Liability Company Act (Title 6, Chapter 18 of the Delaware Code). All amendments were enacted by Senate Bill 114. Consult the full text of Senate Bill 114 and the relevant sections of the Delaware Limited Liability Company Act for more information.

TOPIC AREA	SUMMARY OF CHANGES	EFFECTIVE DATE/COMMENTS
<p><i>Ratification of Void or Voidable Acts or Transactions</i></p> <p><b>Sec. 18-106</b></p>	<p>New subsection (e) was added to Sec. 18-106 to provide (1) that any act or transaction that may be taken by or in respect of an LLC under the LLC Act or an LLC agreement, but that is void or voidable when taken, may be ratified (or the failure to comply with any requirements of the LLC agreement making such act or transaction void or voidable may be waived) by the members, managers, or other persons whose approval would be required under the LLC agreement (i) for such act or transaction to be validly taken, or (ii) to amend the LLC agreement in a manner that would permit such act or transaction to be validly taken, in each case at the time of such ratification or waiver; provided, that if the void or voidable act or transaction was the issuance or assignment of any LLC interests, the interests purportedly issued or assigned shall be deemed not to have been issued or assigned for purposes of determining whether the void or voidable act or transaction was ratified or waived. Any act or transaction ratified, (or with respect to which the failure to comply is waived), shall be deemed validly taken at the time of such act or transaction.</p> <p>(2) If an amendment to an LLC agreement to permit an otherwise void or voidable act to be validly taken requires notice to any persons under the terms of such agreement, and the ratification or waiver of such act or transaction is effectuated by the persons whose approval would be required to amend such agreement, notice of the ratification or waiver must be given following such ratification or waiver to such persons who would have been entitled to notice of the amendment and who have not otherwise received notice of, or participated in, such ratification or waiver.</p>	<p>August 1, 2021</p> <p>The new subsection is not to be construed to limit the accomplishment of a ratification or waiver of a void or voidable act by other means permitted by law.</p> <p>The amendments allowing the ratification of acts or transactions that are void or voidable are intended to change the rule applied in <i>CompoSecure, L.L.C. v. Cardux, LLC</i>, 206 A.3d 807 (Del. 2018), and <i>Absalom Absalom Trust v. Saint Gervais LLC</i>, 2019 Del. Ch. LEXIS 239, in which the courts held that void acts or transactions generally may not be ratified.</p>

## II. Limited Liability Companies (CONT.)

TOPIC AREA	SUMMARY OF CHANGES	EFFECTIVE DATE/COMMENTS
<p><i>Acts or Transactions (continued)</i></p> <p><b>Sec. 18-106</b></p>	<p>(3) Upon the application of an LLC, or a member, manager, or any person claiming to be substantially and adversely affected by a ratification or waiver, the Delaware Court of Chancery may hear and determine the validity and effectiveness of any such ratification or waiver effected pursuant to the new ratification provisions. The LLC shall be named as a party and service of the application upon the LLC's registered agent shall be service upon the LLC.</p>	
<p><i>Divisions of LLCs</i></p> <p><b>Sec. 18-217</b></p>	<p>Sec. 18-217 was amended to eliminate a reference to Sec. 18-1203, which was repealed by S.B. 114</p>	<p>August 1, 2021</p> <p>Sec. 18-1203 dealt with the vote for certain mergers and amendments of statutory public benefit LLCs</p>
<p><i>Right To Obtain Information</i></p> <p><b>Sec. 18-305</b></p>	<p>Sec. 18-305 was amended to provide</p> <p>(1) that "information" includes books, records, and other documents.</p> <p>(2) that if a member is entitled to obtain information under the LLC Act or an LLC agreement for a purpose reasonably related to the member's interest as a member or other stated purpose, the member's right shall be to obtain such information as is necessary and essential to achieving that purpose.</p> <p>(3) that the rights of a member or manager to obtain or examine information (previously, to obtain information) may be expanded or restricted (previously, restricted) in an original LLC agreement or in any subsequent amendment thereto.</p>	<p>August 1, 2021</p>

## II. Limited Liability Companies (CONT.)

TOPIC AREA	SUMMARY OF CHANGES	EFFECTIVE DATE/COMMENTS
<p><i>Delegation of Managerial Authority</i></p> <p><b>Sec. 18-407</b></p>	<p>Sec. 18-407 was amended to provide that a member’s or manager’s delegation of any or all of the member’s or manager’s rights, powers and duties to manage and control the business and affairs of the LLC, may be made irrespective of whether the member or manager has a conflict of interest with respect to the matter as to which its rights, powers or duties are being delegated, and the person or persons to whom any such rights, powers or duties are being delegated shall not be deemed conflicted solely by reason of the conflict of interest of the member or manager. It also clarifies that any such delegation may be to a committee of one or more persons.</p>	<p>August 1, 2021</p> <p>These amendments are intended to create a different rule than that applied by the courts in cases such as <i>Wenske v. Bluebell Creameries, Inc.</i>, 214 A.3d 958 (Del. Ch. 2019) that held that a conflicted principal is legally disabled from delegating authority over matters in which the principal is conflicted, even where the delegatee is otherwise independent.</p>
<p><i>Statutory Public Benefit LLC</i></p> <p><b>Sec. 18-1201</b></p>	<p>Sec. 18-1201 was amended to clarify that an LLC may be formed as a statutory public benefit LLC or it may elect to become one, and to provide that if an LLC is not formed as a statutory public benefit LLC it may become one in the manner specified in its LLC agreement or by amending the LLC agreement and its certificate of formation to comply with the requirements of the subchapter governing statutory public benefit LLCs.</p>	<p>August 1, 2021</p>
<p><i>Contents of LLC Agreement of Statutory Public Benefit LLC</i></p> <p><b>Sec. 18-1202</b></p>	<p>Sec. 18-1202 of the LLC Act was amended to provide that the LLC agreement of a public benefit LLC must state that it is a statutory public benefit LLC and set forth the specific public benefit or benefits to be promoted by such entity.</p> <p>In the event of any inconsistency between the public benefit or benefits set forth in the LLC agreement and the certificate of formation the LLC agreement shall control as among the members, the managers and/or other persons who are party to or otherwise bound by such LLC agreement and the certificate of formation shall be amended to correct any inaccuracies.</p>	<p>August 1, 2021</p>

## II. Limited Liability Companies (CONT.)

TOPIC AREA	SUMMARY OF CHANGES	EFFECTIVE DATE/COMMENTS
<p><i>Other provisions regarding Statutory Public Benefit LLCs</i></p> <p>Sec. 18-1203</p> <p>Sec. 18-1204</p> <p>Sec. 18-1205</p>	<p>Sec. 18-1203 was repealed</p> <p>Secs. 18-1204 (duties of members and managers) and 18-1205 (periodic statements) were amended to reflect that the specific public benefit or benefits must now be set forth in the LLC agreement as well as the certificate of formation.</p>	<p>August 1, 2021</p> <p>Sec. 18-1203 dealt with the vote required for certain amendments and mergers</p>

### III. Limited Partnerships

Below are amendments to the Delaware Revised Uniform Limited Partnership Act (Title 6, Chapter 17 of the Delaware Code). All amendments were enacted by Senate Bill 116. Consult with Senate Bill 116 and the relevant sections of the Delaware Revised Uniform Limited Partnership Act for more information.

TOPIC AREA	SUMMARY OF CHANGES	EFFECTIVE DATE/COMMENTS
<p><i>Ratification of Void or Voidable Acts or Transactions</i></p> <p><b>Sec. 17-106</b></p>	<p>New subsection (e) was added to Sec. 17-106 to provide (1) that any act or transaction that may be taken by or in respect of an LP under RULPA or a partnership agreement, but that is void or voidable when taken, may be ratified (or the failure to comply with any requirements of the partnership agreement making such act or transaction void or voidable may be waived) by the partners or other persons whose approval would be required under the partnership agreement (i) for such act or transaction to be validly taken, or (ii) to amend the partnership agreement in a manner that would permit such act or transaction to be validly taken, in each case at the time of such ratification or waiver; provided, that if the void or voidable act or transaction was the issuance or assignment of any partnership interests, the interests purportedly issued or assigned shall be deemed not to have been issued or assigned for purposes of determining whether the void or voidable act or transaction was ratified or waived. Any act or transaction ratified, (or with respect to which the failure to comply is waived), shall be deemed validly taken at the time of such act or transaction.</p> <p>(2) If an amendment to a partnership agreement to permit an otherwise void or voidable act to be validly taken requires notice to any persons under the terms of such agreement, and the ratification or waiver of such act or transaction is effectuated by the persons whose approval would be required to amend such agreement, notice of the ratification or waiver must be given following such ratification or waiver to such persons who would have been entitled to notice of the amendment and who have not otherwise received notice of, or participated in, such ratification or waiver.</p> <p>New subsection (e) is not to be construed to limit the accomplishment of a ratification or waiver of a void or voidable act by other means permitted by law</p>	<p>August 1, 2021</p> <p>The amendments allowing the ratification of acts or transactions that are void or voidable are intended to change the rule applied in <i>CompoSecure, L.L.C. v. Cardux, LLC</i>, 206 A.3d 807 (Del. 2018), and <i>Absalom Absalom Trust v. Saint Gervais LLC</i>, 2019 Del. Ch. LEXIS 239, in which the courts held that void acts or transactions generally may not be ratified.</p>

### III. Limited Partnerships (CONT.)

TOPIC AREA	SUMMARY OF CHANGES	EFFECTIVE DATE/COMMENTS
<p><i>Ratification of Void or Voidable Acts or Transactions (continued)</i></p> <p>Sec. 17-106</p>	<p>(3) Upon the application of an LP, partner, or any person claiming to be substantially and adversely affected by a ratification or waiver, the Delaware Court of Chancery may hear and determine the validity and effectiveness of any such ratification or waiver effected pursuant to the new ratification provisions.</p>	
<p><i>Division of an LP</i></p> <p>Sec. 17-220</p>	<p>Sec. 17-220 was amended to eliminate a reference to Sec. 17-1203, which was repealed by S.B. 116</p>	<p>August 1, 2021</p> <p>Sec. 17-1203 dealt with the vote for amendments and mergers of statutory public benefit LPs</p>
<p><i>Right to obtain information</i></p> <p>Sec. 17-305</p>	<p>(1) that “information” includes books, records, and other documents</p> <p>(2) that if a limited partner is entitled to obtain information under RULPA or a partnership agreement for a purpose reasonably related to the limited partner’s interest as a limited partner or other stated purpose, the limited partner’s right shall be to obtain such information as is necessary and essential to achieving that purpose.</p> <p>(3) that the rights of a limited partner to obtain information may be expanded or restricted (previously, restricted) in an original partnership agreement or in any subsequent amendment thereto.</p>	<p>August 1, 2021</p> <p>This amendment is intended in part to change the law as set forth in <i>Murfey v. WHC Ventures, LLC</i>, 236 A.3d 337 (Del. 2020) that held that the necessary and essential test does not apply by default to a limited partner’s contractual rights to obtain information from a limited partnership for a stated purpose.</p>

### III. Limited Partnerships (CONT.)

TOPIC AREA	SUMMARY OF CHANGES	EFFECTIVE DATE/COMMENTS
<p><i>Delegation of Managerial Authority</i></p> <p><b>Sec. 17-403</b></p>	<p>Sec. 17-403 was amended to provide that a general partner’s delegation of any or all of the general partner’s rights, powers and duties to manage and control the business and affairs of the LP may be made irrespective of whether the general partner has a conflict of interest with respect to the matter as to which its rights, powers or duties are being delegated, and the person or persons to whom any such rights, powers or duties are being delegated shall not be deemed conflicted solely by reason of the conflict of interest of the general partner. It also clarifies that any such delegation may be to a committee of one or more persons.</p>	<p>August 1, 2021</p> <p>This amendment is intended to create a different rule than that applied by the courts in cases such as <i>Wenske v. Bluebell Creameries, Inc.</i>, 214 A.3d 958 (Del. Ch. 2019) that held that a conflicted principal is legally disabled from delegating authority over matters in which the principal is conflicted, even where the delegatee is otherwise independent.</p>
<p><i>Statutory Public Benefit LP</i></p> <p><b>Sec. 17-1201</b></p>	<p>Sec. 17-1201 was amended to clarify that an LP may be formed as a statutory public benefit LP or it may elect to become one, and to provide that if an LP is not formed as a statutory public benefit LP it may become one in the manner specified in its partnership agreement or by amending the agreement and certificate of limited partnership to comply with the requirements of the subchapter governing statutory public benefit LPs.</p>	<p>August 1, 2021</p> <p>This amendment reflects the current practice of the SOS.</p>
<p><i>Contents of Partnership Agreement of Statutory Public Benefit LP</i></p> <p><b>Sec. 17-1202</b></p>	<p>Sec. 17-1202 was amended to provide that the partnership agreement of a statutory public benefit LP must state that it is a statutory public benefit LP and set forth the specific public benefit or benefits to be promoted by such entity. In the event of any inconsistency between the public benefit or benefits set forth in the partnership agreement and the certificate of limited partnership, the partnership agreement shall control as among the partners and others who are party to or otherwise bound by the partnership agreement and the certificate of limited partnership shall be amended to correct any inaccuracies.</p>	<p>August 1, 2021</p>



### III. Limited Partnerships (CONT.)

TOPIC AREA	SUMMARY OF CHANGES	EFFECTIVE DATE/COMMENTS
<p><i>Other provisions regarding Statutory Public Benefit LPs</i></p> <p>Sec. 17-1203</p> <p>Sec. 17-1204</p> <p>Sec. 17-1205</p>	<p>Sec. 17-1203 was repealed</p> <p>Secs. 17-1204 (duties of general partners) and 17-1205 (periodic statements) were amended to reflect that the specific public benefit or benefits must now be set forth in the LLC agreement as well as the certificate of formation.</p>	<p>August 1, 2021</p> <p>Sec. 17-1203 dealt with the vote required for certain amendments and mergers</p>

## IV. Partnerships

Senate Bill 115 enacted amendments to the Delaware Revised Uniform Partnership Act (Title 6, Chapter 15 of the Delaware Code). Consult with Senate Bill 115 and the relevant provisions of the Delaware Revised Uniform Partnership Act for more information.

TOPIC AREA	SUMMARY OF CHANGES	EFFECTIVE DATE/COMMENTS
<p><i>Applicability of RUPA to Partnership</i></p> <p><b>Sec. 15-103</b></p>	<p>Sec. 15-103 was amended to clarify that unless the partnership agreement provides otherwise, the provisions of RUPA apply to a partnership that has a statement of partnership existence or a statement of qualification and a partnership agreement that has modified Sec. 15-201(a), Sec. 15-203, or Sec. 15-501.</p>	<p>August 1, 2021</p> <p>Sec. 15-201(a) provides that a partnership is a separate legal entity; Sec. 15-203 provides that property acquired by a partnership is property of the partnership and not its partners individually; and Sec. 15-501 provides a partner is not a co-owner of partnership property and has no interest in specific partnership property.</p>
<p><i>Ratification of Void or Voidable Acts or Transactions</i></p> <p><b>Sec. 15-202</b></p>	<p>New subsection (e) was added to Sec. 15-202 of to provide that any act or transaction that may be taken by or in respect of a partnership under RUPA or a partnership agreement, but that is void or voidable when taken, may be ratified (or the failure to comply with any requirements of the partnership agreement making such act or transaction void or voidable may be waived) by the partners or other persons whose approval would be required under the partnership agreement (i) for such act or transaction to be validly taken, or (ii) to amend the partnership agreement in a manner that would permit such act or transaction to be validly taken, in each case at the time of such ratification or waiver; provided, that if the void or voidable act or transaction was the issuance or assignment of any partnership interests, the interests purportedly issued or assigned shall be deemed not to have been issued or assigned for purposes of determining whether the void or voidable act or transaction was ratified or waived. Any act or transaction ratified, (or with respect to which the failure to comply is waived), shall be deemed validly taken at the time of such act or transaction.</p>	<p>August 1, 2021</p> <p>The amendments allowing the ratification of acts or transactions that are void or voidable are intended to change the rule applied in <i>CompoSecure, L.L.C. v. Cardux, LLC</i>, 206 A.3d 807 (Del. 2018), and <i>Absalom Absalom Trust v. Saint Gervais LLC</i>, 2019 Del. Ch. LEXIS 239, in which the courts held that void acts or transactions generally may not be ratified.</p>

## IV. Partnerships (CONT.)

TOPIC AREA	SUMMARY OF CHANGES	EFFECTIVE DATE/COMMENTS
<p><i>Ratification of Void or Voidable Acts or Transactions</i> (continued)</p> <p>Sec. 15-202</p>	<p>If an amendment to a partnership agreement to permit an otherwise void or voidable act to be validly taken requires notice to any persons under the terms of such agreement, and the ratification or waiver of such act or transaction is effectuated by the persons whose approval would be required to amend such agreement, notice of the ratification or waiver must be given following such ratification or waiver to such persons who would have been entitled to notice of the amendment and who have not otherwise received notice of, or participated in, such ratification or waiver.</p> <p>New subsection (e) is not to be construed to limit the accomplishment of a ratification or waiver of a void or voidable act by other means permitted by law</p> <p>Upon the application of a partnership, partner, or any person claiming to be substantially and adversely affected by a ratification or waiver, the Delaware Court of Chancery may hear and determine the validity and effectiveness of any such ratification or waiver effected pursuant to the new ratification provisions.</p>	
<p><i>Delegation of Managerial Authority</i></p> <p>Sec. 15-401</p>	<p>Sec. 15-401 was amended to provide that a partner’s delegation of any or all of the partner’s rights, powers and duties to manage and control the business and affairs of the partnership may be made irrespective of whether the partner has a conflict of interest with respect to the matter as to which its rights, powers or duties are being delegated, and the person or persons to whom any such rights, powers or duties are being delegated shall not be deemed conflicted solely by reason of the conflict of interest of the partner. It also clarifies that any such delegation may be to a committee of one or more persons.</p>	<p>August 1, 2021</p> <p>This amendment is intended to create a different rule than that applied by the courts in cases such as <i>Wenske v. Bluebell Creameries, Inc.</i>, 214 A.3d 958 (Del. Ch. 2019) that held that a conflicted principal is legally disabled from delegating authority over matters in which the principal is conflicted, even where the delegatee is otherwise independent.</p>

## IV. Partnerships (CONT.)

TOPIC AREA	SUMMARY OF CHANGES	EFFECTIVE DATE/COMMENTS
<p><i>Right to obtain information</i></p> <p><b>Sec. 15-403</b></p>	<p>Sec. 15-403 was amended to provide</p> <p>(1) that “information” includes books, records, and other documents</p> <p>(2) that if a partner is entitled to obtain information under RUPA or a partnership agreement for a purpose reasonably related to the partner’s interest as a partner or other stated purpose, the partner’s right shall be to obtain such information as is necessary and essential to achieving that purpose.</p> <p>(3) that the rights of a partner to obtain information may be expanded or restricted (previously, restricted) in an original partnership agreement or in any subsequent amendment thereto.</p>	<p>August 1, 2021</p>

## Here are links to the bills

SB 113

[https://legis.delaware.gov/json/BillDetail/  
GenerateHtmlDocument?legislationId=58600&legislationTypeId=1&docTypeId=2&legislationName=SB113](https://legis.delaware.gov/json/BillDetail/GenerateHtmlDocument?legislationId=58600&legislationTypeId=1&docTypeId=2&legislationName=SB113)

SB 114

[https://legis.delaware.gov/json/BillDetail/  
GenerateHtmlDocument?legislationId=58603&legislationTypeId=1&docTypeId=2&legislationName=SB114](https://legis.delaware.gov/json/BillDetail/GenerateHtmlDocument?legislationId=58603&legislationTypeId=1&docTypeId=2&legislationName=SB114)

SB 115

[https://legis.delaware.gov/json/BillDetail/  
GenerateHtmlDocument?legislationId=58601&legislationTypeId=1&docTypeId=2&legislationName=SB115](https://legis.delaware.gov/json/BillDetail/GenerateHtmlDocument?legislationId=58601&legislationTypeId=1&docTypeId=2&legislationName=SB115)

SB 116

[https://legis.delaware.gov/json/BillDetail/  
GenerateHtmlDocument?legislationId=58602&legislationTypeId=1&docTypeId=2&legislationName=SB116](https://legis.delaware.gov/json/BillDetail/GenerateHtmlDocument?legislationId=58602&legislationTypeId=1&docTypeId=2&legislationName=SB116)