

DEPARTMENT OF STATE
DIVISION OF CORPORATIONS

Statutory Authority: 29 Delaware Code, Sections 8703 and 8704 (29 **Del.C.** §§8703 & 8704)

FINAL

ORDER

102 Business Entity Name Standards and Process

Pursuant to 29 **Del.C.** § 8703(7), the Department of State (“DOS” or “the Department”) published proposed regulations to establish customer entity verification requirements for registered agents in the August 1, 2019 edition of the Delaware *Register of Regulations*. Having solicited and received public comment on the proposed regulations in accordance with the *Delaware Administrative Procedures Act*, 29 **Del.C.** Ch. 101, *et. seq.*, this is the Department’s Order adopting the proposed regulations, as modified by the public submissions outlined below.

SUMMARY OF THE EVIDENCE

1. Title 29, Sections 8703 and 8704 of the Delaware Code authorize the Department and the Division of Corporations to establish regulations in relation to all powers, duties and functions vested pursuant to the regulation of business organizations registered in Delaware, including but not limited to Titles 6 and 8 of the Delaware Code.

2. The Division of Corporations has the power to perform and shall be responsible for the performance of all the powers, duties and functions vested in the Secretary of State pursuant to Titles 6 and 8. 29 **Del.C.** §8704. Such vested powers, duties and functions including regulating the administration and operation of the Division as well as filings submitted to and accepted by the Division, for the creation and regulation of business organizations in Delaware. 8 **Del.C.** Ch. 1; 6 **Del.C.** Chs. 15, 17 and 18. As such, the Division is authorized to promulgate regulations for the administration and operation of the Division as well as for the regulation of corporations and other business entities in this State.

3. The purpose of this regulation is to clarify the standards in Delaware regarding the names of businesses, while, in a narrowly-tailored fashion, preventing the naming of a business likely to violate the law, mislead the public or to lead to a pattern and practice of abuse that might cause harm to the interests of the public or Delaware. In promulgating the regulations, DOS expressly determines that it’s Delaware Corporate Information System (“DCIS”) or successor system, which is the State’s computerized, online system for business organization filings, to be a non-public forum and not a platform for the exercise of legal rights. This regulation outlines the standards for entity names and the process of review, which carefully and narrowly tailors any alleged infringement on statutory requirements, public policies, or the rights of others, against the interests of the public and the State, including the State of Delaware’s interest in its reputation and brand in the global business world.

4. The Delaware *Register of Regulations* published the proposed regulations on August 1, 2019. Following publication in the Delaware *Register of Regulations*, DOS invited a period of thirty-seven (37) days, until September 6, 2019, for written comment from the public.

5. The public comments focused on minor, stylistic changes throughout the proposed regulations. The comments also corrected some statutory references to certain business organization statutes.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Delaware *Register of Regulations* published the proposed regulation to establish business entity name standards and procedures on August 1, 2019.

2. Following publication in the Delaware *Register of Regulations*, the DOS provided a period of thirty-seven (37) days, until September 6, 2019, for written comment from the public.

3. The public notice and opportunity to provide public comments in writing afforded by DOS complied in all respects with the *Delaware Administrative Procedures Act*, Section 10115 of Title 29 of the Delaware Code.

4. In response to the invitation for public comment, DOS received comments concerning the proposed regulation, as summarized above.

5. The Department finds that it is authorized to establish business entity name standards and procedures pursuant to 29 **Del.C.** §8704, 8 **Del.C.** Ch. 1; 6 **Del.C.** Chs. 15, 17 and 18.

6. The Department finds that it is necessary to adopt this proposed regulation to clarify the standards in Delaware regarding the names of businesses, while, in a narrowly-tailored fashion, prevent the naming of a business likely to violate the law, mislead the public or lead to a pattern and practice of abuse that might cause harm to the interests of the public or the State of Delaware.

7. The Department expressly finds that its Delaware Corporation Information System (“DCIS”) or successor system,

which is the State's computerized, online system for business organization filings, to be a non-public form and not a platform for the exercise of legal rights.

8. The Department adopts the changes to the proposed regulation as suggested by the public comment because the changes make the proposed regulation more stylistic and clearer to business entities and the general public.

9. The Department determines that the changes included in the regulation as the result of the public comment are procedural and stylistic, and not substantive in accordance with 29 Del.C. §10118(c). When the public notice fairly apprises the public of the issues contemplated by the agency in the rulemaking process, changes made to the proposed rule in consideration of the public comment do not require another notice period. *Collazuol v. Tulou*, 1996 WL 658966 (Del. Super. Oct. 31, 1996).

10. The Department also finds that the proposed regulation outlines the standards for entity names and the process of review, which carefully and narrowly tailors any alleged infringement on statutory requirements, public policies, or the rights of others, against the interests of the public and the State of Delaware, including Delaware's interest in its standing in the global business community.

11. The State of Delaware is home to more than one million business entities globally that take advantage of Delaware's complete package of business organization services. The Department reviewed and decided to clarify its policies and practices pertaining to business names in filings submitted to the Division of Corporations for its acceptance, on behalf of business entities. To establish uniform expectations for business entities with respect to filings with the Division of Corporations, the Department proposed these regulations to communicate to the public and business entities how these issues will be administered in the Department. The Department finds that the proposed regulation strikes the appropriate balance between protecting the interests of the public and the State of Delaware, without imposing illegal restrictions on business entities.

DECISION AND ORDER CONCERNING THE REGULATIONS

Having found that the proposed regulation is necessary, as outlined herein, the Department finds that the regulation shall be adopted as informed by the procedural changes offered in the public comment and adopted by this Order. The regulation changes will be effective on October 11, 2019 following publication of this Order in the Delaware *Register of Regulations* on October 1, 2019.

IT IS SO ORDERED this 24th day of September, 2019 by the Delaware Department of State.

The Honorable Kristopher Knight
Acting Secretary of State

102 Business Entity Name Standards and Process

1.0 Enabling Legislation

- 1.1 29 Del.C. [~~§§8703, 8704 enable~~ §8703 enables] the Secretary of State [~~and the Division of Corporations]~~ to establish regulations [~~in relation to all powers, duties and functions vested pursuant to the regulation of business organizations registered in Delaware, including but not limited to Titles 6 and 8 of the Delaware Code,~~ governing the administration and operation of the Department of State as may be deemed necessary by the Secretary of State and which are not inconsistent with the laws of this State.]]
- 1.2 The Division has the power to perform and shall be responsible for the performance of all the powers, duties and functions vested in the Secretary of State pursuant to [Titles Subtitle I of Title] 6 and [Title] 8. 29 Del.C. §8704. Such vested powers, duties, and functions include regulating the administration and operation of the Division as well as [the performance of the Secretary of State's duties and functions with respect to] filings submitted to and accepted by the Division[~~, for the creation and regulation of relating to] business [organizations entities incorporated or formed] in Delaware[, pursuant to] 8 Del.C. Ch. 1; 6 Del.C. Chs. 15, 17 and 18. [As such, the Division is authorized to promulgate regulations for the administration and operation of the Division as well as for the regulation of corporations and other business entities in this State.]~~

2.0 Purpose

- 2.1 The purpose of this regulation is to [update and] clarify the standards in Delaware regarding the names of [businesses Delaware business entities], while, in a narrowly-tailored fashion, preventing the naming of a business [entity in a manner that is] likely to violate the law, mislead the public or [te] lead to a pattern and practice of abuse that [might would] cause harm to the interests of the public or [the State of] Delaware.

2.2 The Division expressly determines that ~~[it's its]~~ Delaware Corporate Information System ("DCIS"), which is the State's computerized, online system for business organization filings, to be a non-public forum and not a platform for the exercise of legal rights. This regulation outlines the standards for entity names and the process of review, which carefully and narrowly ~~[tailors balances]~~ any alleged infringement on statutory requirements, public policies, ~~[or and]~~ the rights of others, against the interests of the public and ~~[the State of]~~ Delaware, including Delaware's interest in its ~~[reputation and brand standing]~~ in the global ~~[business world business-community]~~.

3.0 Definitions

The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:

"Business Entity" means any ~~[person,]~~ partnership (whether general (including a limited liability partnership) or limited (including a limited liability limited partnership), ~~[association,]~~ corporation[, or limited liability] company, ~~[single or jointly with others,]~~ organized or to be organized under the Delaware Code and filing or ~~[will seeking to]~~ file the ~~[requirement required]~~ documents with the Division of Corporations in the Department of State.

"Corporation" means an entity that is organized or incorporated in accordance with the Delaware Code and as expressly set forth at Title 8 of the Delaware Code.

"Department" means the Delaware Department of State.

"Division" means the Division of Corporations, Delaware Department of State.

"Limited Liability Company" means an entity that is ~~[organized or created formed]~~ in accordance with the requirements of a "limited liability company" or a "series" ~~[of a limited liability company,]~~ as ~~[set forth in the Delaware and as expressly]~~ defined at 6 Del.C. §18-101, as amended.

"Limited Partnership" means an entity that is ~~[organized or created formed]~~ in accordance with the requirements of a "limited ~~[liability]~~ partnership" as ~~[set forth in the Delaware Code and as expressly]~~ defined at 6 Del.C. §17-101, as amended.

"Partnership" means an entity that is ~~[organized or created formed]~~ in accordance with the requirements of a "partnership" as set forth in the Delaware Code at 6 Del.C. §15-202, as amended.

"Secretary" means the Secretary of ~~[the State of the State of]~~ Delaware ~~[Department of State]~~.

"Trust" means a statutory trust as set forth in the Delaware Code and as expressly defined in 12 Del.C. Ch. 38, as amended.

4.0 Standards

4.1 After receipt of a request to reserve a ~~[business]~~ name ~~[for a business entity]~~ or to accept a filing submitted on behalf ~~[of an existing Delaware (or out of state)]~~ of, a] business entity, the Division will review the proposed name of the business entity, subject to ~~[any a]~~ right of refusal by the Division, ~~[to ensure it meets if the proposed name fails to meet]~~ the following standards:

4.1.1 Does not contain words that discriminate against, disparage, or denigrate any of the protected classes, as provided under Federal Law (including the U.S. Civil Rights Act of 1964, as amended), to include but not limited to race, color, religion, sex including pregnancy, sexual orientation, national origin, disability, age (40 years or older), marital status or genetic information;

4.1.2 Does not contain words ~~[that could likely to]~~ facilitate, incite or foster any criminal act or offense as prohibited under Delaware law, as amended, to include but not be limited to those set forth in Title 11 of the Delaware Code:

4.1.2.1 Acts of terrorism, terroristic threatening or offensive touching (11 Del.C. Ch. 5);

4.1.2.2 Endanger the life or physical safety of an individual or threatening public safety (11 Del.C. Ch. 5);

4.1.2.3 Hate Crimes, Stalking, Cyberstalking, Bullying or Cyberbullying (11 Del.C. Ch. 5);

4.1.2.4 Narcotic drug, opioid or controlled substances (16 Del.C. Ch. 47) (Example: "Opioids-R-U's");

4.1.2.5 Fraud (6 Del.C. Subtitle II, 11 Del.C. Ch. 5);

4.1.2.6 Deadly weapon or dangerous instrument (11 Del.C. Ch. 5); or

4.1.2.7 Obscene or libelous language (11 Del.C. Ch. 5).

4.1.3 Does not contain words ~~[that could likely to]~~ cause ~~[potential]~~ public deception or confusion or ~~[result in]~~ difficulty in administration ~~[by the Division]~~ (Example: five-hundred-letter entity name);

4.1.4 Does not contain words likely to mislead the public about the ~~[nature business purpose]~~ of the business entity (8 Del.C. §102; 6 Del.C. §18-102); or

4.1.5 Does not contain words likely to lead to a pattern and practice of abuse that ~~might~~ would cause harm to the interests of the public or Delaware (8 Del.C. §102; 6 Del.C. §18-102).

5.0 Application

This regulation shall not be interpreted or applied by the Division in any manner that conflicts with ~~existing public policy or~~ statutory provisions in the Delaware Code[, **including those**] regulating the inclusion of the term “bank” or “trust” in a ~~corporate (or other legal entity) business entity~~ name. 8 Del.C. §102(a); 8 Del.C. §395[; 6 Del.C. §18-102; 6 Del.C. §17-102; 6 Del.C. §15-108].

23 DE Reg. 323 (10/01/19) (Final)