

**DEPARTMENT OF STATE
DIVISION OF CORPORATIONS**

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

PROPOSED

PUBLIC NOTICE

102 Business Entity Name Standards and Procedures

In compliance with the State's Administrative Procedures Act (Title 29, Chapter 101 of the Delaware Code) and under the authority of 29 **Del.C.** §§8703, 8704, the Delaware Department of State, Division of Corporations, proposes to introduce regulations governing business entity name standards and procedures.

In accordance with 29 **Del.C.** §10116, persons wishing to submit written comments, suggestions, briefs, and compilations of data or other written materials concerning the proposed regulations should direct them to the following address:

Kristopher Knight
Deputy Secretary of State
Department of State
820 N. French St., 4th Floor
Wilmington, DE 19801

Comments may also be directed via electronic mail to dos_corpregs@state.de.us. Any written submission in response to this notice and relevant to the proposed regulations must be received by the Department of State no later than 4:30 p.m. EST, Friday, September 6, 2019.

The action concerning determination of whether to adopt the proposed regulations will be based upon the results of Department analysis and the consideration of the written comments and any other written materials filed by the public.

Background

The State of Delaware is the premiere home to more than one million business entities globally that take advantage of Delaware's complete package of business organization services, including modern and flexible business organization laws, a highly-respected Judiciary and legal community, a business-friendly government, and a highly-professional, customer service oriented staff. Keeping with its cutting-edge and unique position in the business world, the Division reviewed and decided to update its policies and practices pertaining to business names in filings submitted to the Division for its acceptance, on behalf of business entities.

In order to establish uniform expectations for business entities with respect to filings with the Division of Corporations, the Department has proposed these regulations to communicate to the public and business entities how these issues will be administered in the Department of State.

Summary of Proposal

The purpose of this notice is to advise the public that the Department of State proposes to promulgate rules and regulations to publicly establish the standards and procedures with respect to business entity names and filings submitted to the Department of State, Division of Corporations. The regulations provide a public framework to ensure that business entities understand the standards regarding entity names and the procedures followed within the Division of Corporations for entity names. The proposed regulations are to be implemented consistently, so as to ensure fair and uniform treatment of filings submitted to the Division of Corporations on behalf of entities.

102 Business Entity Name Standards and Process

1.0 Enabling Legislation

- 1.1 29 Del.C. §§8703, 8704 enable 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.
- 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 6 and 8. 29 Del.C. §8704. Such vested powers, duties, and functions include 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.

2.0 Purpose

- 2.1 The purpose of this regulation is to update and 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.
- 2.2 The Division expressly determines that 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 any alleged infringement on statutory requirements, public policies, or the rights of others, against the interests of the public and Delaware, including Delaware’s interest in its reputation and brand in the global business world.

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, company, single or jointly with others, organized or to be organized under the Delaware Code and filing or will file the requirement 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 in accordance with the requirements of a “limited liability company” or a “series” 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 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 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 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 or to accept a filing submitted on behalf of an existing Delaware (or out of state) business entity, the Division will review the proposed name of the business entity, subject to any right of refusal by the Division, to ensure it meets 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 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-Us”);
 - 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 cause potential public deception or confusion or difficulty in administration (Example: five-hundred-letter entity name):

4.1.4 Does not contain words likely to mislead the public about the nature 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 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 statutory provisions in the Delaware Code regulating the inclusion of the term “bank” or “trust” in a corporate (or other legal entity) name. 8 Del.C. §102(a); 8 Del.C. §395.

23 DE Reg. 105 (08/01/19) (Prop.)