

DEPARTMENT OF STATE
DIVISION OF CORPORATIONS

Statutory Authority: 8 Delaware Code, Section 132; 6 Delaware Code, Sections 15-111, 17-104 and 18-104 (8 **Del.C.** §132; 6 **Del.C.** §§15-111, 17-104 & 18-104)

PROPOSED

PUBLIC NOTICE

Registered Agent Customer Entity Verification Requirements

In compliance with the State's Administrative Procedures Act (Title 29, Chapter 101 of the Delaware Code) and under the authority of House Bill 404 of the 149th Delaware General Assembly, as amended by House Amendment No. 1 and Senate Amendment No. 2, 81 **Del. Laws**, Ch. 334, which modifies 8 **Del.C.** §132 and 6 **Del.C.** §§15-111, 17-104 and 18-104, the Delaware Department of State proposes to introduce regulations related to the requirements for registered agents with respect to entities and entity filings with the Department.

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, Monday, October 15, 2018.

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

On July 17, 2018, the Governor of Delaware signed into law House Bill 404 of the 149th Delaware General Assembly, as amended by House Amendment No. 1 and Senate Amendment No. 2, 81 **Del. Laws**, Ch. 334.

This legislation clarifies that registered agents must comply with regulations established by the Secretary of State regarding both the verification of the identity of the communications contacts for which the Registered Agent maintains a record and the reduction of risk of unlawful business purposes. In order to establish consistent and uniform expectations for Registered Agents to verify customer entities with respect to filings with the Department of State, the Department of State has proposed these regulations to communicate to the public 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 establish the requirements for registered agents with respect to entities and entity filings with the Department of State. The regulations provide a framework to ensure that Registered Agents understand their responsibilities to verify customer entities in accordance with House Bill 404 of the 149th Delaware General Assembly, as amended by House Amendment No. 1 and Senate Amendment No. 2, 81 **Del. Laws**, Ch. 334. These responsibilities include searching the federal Office of Foreign Asset Control to protect the public against the formation of entities in Delaware by individuals, groups or entities that are blocked from making transactions in the United States. The proposed regulations are to be implemented consistently, so as to ensure fair and uniform treatment of Registered Agents in their filings with the Department of State on behalf of entities.

Statutory Authority

House Bill 404 of the 149th Delaware General Assembly, as amended by House Amendment No. 1 and Senate Amendment No. 2, 81 **Del. Laws**, Ch. 334; 8 **Del.C.** §132; 6 **Del.C.** §§15-111, 17-104 and 18-104; 29 **Del.C.** §8703(7).

Registered Agent Customer Entity Verification Requirements

1.0 Enabling Legislation

House Bill 404 of the 149th Delaware General Assembly, as amended by House Amendment No. 1 and Senate Amendment No. 2, 81 Del. Laws, Ch. 334, modifies 8 Del.C. §132; 6 Del.C. §§17-104 and 18-104 to enable the Secretary to establish regulations for Registered Agents to verify the identification of their customer business entities.

2.0 Purpose

The purpose of this regulation is to clarify the obligation of Registered Agents in Delaware to comply with regulations issued by the Secretary pertaining to Business Entity Formation in matters involving filings submitted to the Secretary on behalf of corporations, partnerships, trusts, limited partnerships, and limited liability companies. This regulation outlines the standards for Registered Agents regarding verification of customer entities in accordance with House Bill 404 of the 149th Delaware General Assembly, as amended by House Amendment No. 1 and Senate Amendment No. 2, 81 Del. Laws, Ch. 334.

3.0 Definitions

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

"Blocked Persons" means those persons or entities listed as such with the Office of Foreign Assets Control.

"Business Entity Formation" means any person, partnership, association, corporation, company, singly or jointly with others, that organizes under the Delaware Code and files the required documents with the Division of Corporations in the Department of State, but shall expressly exclude a nonprofit association as set forth at 6 Del.C. §1910.

"Business Entity Representation" means any person, partnership (whether general (including a limited liability partnership) or limited (including a limited liability limited partnership)), association, corporation, company, singly or jointly with others, that acts and/or speaks on behalf of any person or entity as a registered agent.

"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.

"Customer Information" means any and all information or documents relating to the true and correct identity of a potential customer of a Registered Agent that includes, but is not limited to, full name, complete address (to include background information related to a P.O. Box address), photographs, background information, or any other information as needed to verify identification.

"Department" means the 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" as set forth in the Delaware Code and as expressly defined at 6 Del.C. §18-101, as amended.

"Limited Liability 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.

"Office of Foreign Assets Control" means the office or its equivalent office(s) as created by federal laws and administered by order of the United States Department of the Treasury or its successor(s) or equivalent department(s).

"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.

"Registered Agents" means an agent or agents as defined or described in accordance with the Delaware Code and as expressly set forth at 8 Del.C. §132 and 6 Del.C. §§15-111, 17-104 and 18-104.

"Secretary" means the Secretary of the Delaware Department of State.

"Specially Designated Nationals" means individuals, groups and entities as defined or described as "Specially Designated Nationals" by the Office of Foreign Assets Control.

"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 Procedures

- 4.1 Registered Agents are required to complete the following steps to verify filings submitted to the Secretary on behalf of corporations, partnerships, limited partnerships, trusts, and limited liability companies in the course of Business Entity Representation:
 - 4.1.1 Prior to engaging in business:
 - 4.1.1.1 Registered Agents will take reasonable steps to verify the identity of potential customers. Such steps may include, but are not limited to, the use of software or third party services to perform background or identification verification or obtaining such documents sufficient for identity.
 - 4.1.2 New Customer Information:
 - 4.1.2.1 Registered Agents shall compare new customer information against the register and lists of the Office of Foreign Assets Control (“OFAC”), before accepting any new customer. Customer information shall include the full name and complete address of the submitting customer (whether business or individual).
 - 4.1.2.2 For Business Entity Formation or Business Entity Representation, Registered Agents shall collect and retain the full name, business address and business telephone number of the current communications contact(s) and any other such information that shall hereafter be required by statute. In addition, Registered Agents may collect additional information, including, but not limited to officers, directors, members, managing members, partners, or owners. All such information collected shall be compared against OFAC.
 - 4.1.3 Updating names and addresses of related parties:
 - 4.1.3.1 Registered Agents shall request (at minimum annually) updates to the communications contact(s) and any other information required by statute. To the extent additional information has been collected, Registered Agents may, at their discretion, request updates to such information. All updated information shall be compared against OFAC.
 - 4.1.4 Entity and Customer Information transferred from another Registered Agent:
 - 4.1.4.1 Registered Agents shall compare all entity and customer information transferred from another registered agent against the register and lists of OFAC, or its successor, before accepting the customer.
 - 4.1.4.2 Entity information shall include the full name, business address and business telephone number of communications contact(s), any other information required by statute along with any additional information collected by the previous registered agent.
 - 4.1.5 Quarterly Review:
 - 4.1.5.1 Registered Agents shall review complete customer registry against the OFAC register or lists at a minimum on a quarterly basis.
 - 4.1.6 Notifications:
 - 4.1.6.1 Registered Agents shall sign up for notifications and updates from OFAC, to include but not limited to updates on specific sanctions.
 - 4.1.7 OFAC Search Lists:
 - 4.1.7.1 Registered Agents shall search for either individuals or corporate entities on all OFAC lists, to include but not limited to “Specially Designated Nationals” and “Blocked Persons” lists. Registered Agents may use software or third party services to perform a search of OFAC lists.