

**CHAPTER 38. TREATMENT OF DELAWARE STATUTORY TRUSTS:  
Subchapter II. Foreign Statutory Trusts**

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**CHAPTER 38. TREATMENT OF DELAWARE STATUTORY TRUSTS: Subchapter II.  
Foreign Statutory Trusts § 3851 - § 3863**

**§ 3851. Law governing.**

Subject to the Constitution of the State:

(1) The laws of the state, territory, possession or other jurisdiction or country under which a foreign statutory trust is organized govern its organization and internal affairs and the liability of its beneficial owners and trustees; and

(2) A foreign statutory trust may not be denied registration by reason of any difference between those laws and the laws of the State.

*71 Del. Laws, c. 335, § 11; 73 Del. Laws, c. 329, § 1.;*

**§ 3852. Registration required; application.**

(a) Before doing business in the State, a foreign statutory trust shall register with the Secretary of State. In order to register, a foreign statutory trust shall submit to the Secretary of State:

(1) A copy executed by a trustee or other authorized person of an application for registration as a foreign statutory trust, setting forth:

a. The name of the foreign statutory trust and, if different, the name under which it proposes to register and do business in the State;

b. The state, territory, possession or other jurisdiction or country where formed, the date of its formation and a statement from a trustee or other authorized person that, as of the date of filing, the foreign statutory trust validly exists as a statutory trust under the laws of the jurisdiction of its formation;

c. The nature of the business or purposes to be conducted or promoted in the State;

d. The address of the registered office and the name and address of the registered agent for service of process required to be maintained by § 3854(b) of this title;

e. A statement that the Secretary of State is appointed the agent of the trust for service of process under the circumstances set forth in § 3860(b) of this title; and

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f. The date on which the foreign statutory trust first did, or intends to do, business in the State.

(2) A fee as set forth in § 3862 of this title shall be paid.

(b) [Repealed.]

*71 Del. Laws, c. 335, § 11; 73 Del. Laws, c. 329, § 1; 75 Del. Laws, c. 418, § 19.;*

### **§ 3853. Issuance of registration.**

(a) If the Secretary of State finds that an application for registration conforms to law and all requisite fees have been paid, the Secretary of State shall:

(1) Certify that the application has been filed in the Secretary of State's office by endorsing upon the original application the word "Filed," and the date and hour of the filing. This endorsement is conclusive of the date and time of its filing in the absence of actual fraud;

(2) File and index the endorsed application.

(b) The Secretary of State shall prepare and return to the person who filed the application or the person's representative a copy of the original signed application, similarly endorsed, and shall certify such copy as a true copy of the original signed application.

(c) The filing of the application with the Secretary of State shall make it unnecessary to file any other documents under Chapter 31 of Title 6.

*71 Del. Laws, c. 335, § 11; 70 Del. Laws, c. 186, § 1.;*

### **§ 3854. Name; registered office; registered agent.**

(a) A foreign statutory trust may register with the Secretary of State under any name (whether or not it is the name under which it is registered in the jurisdiction of its formation) that could be registered by a domestic statutory trust; provided however, that a foreign statutory trust may register under any name which is not such as to distinguish it upon the records in the Office of the Secretary of State from the name on such records of any domestic or foreign corporation, partnership, statutory trust, limited liability company or limited partnership reserved, registered, formed or organized under the laws of the State with the written consent of the other corporation, partnership, statutory trust, limited liability company or limited partnership, which written consent shall be filed with the Secretary of State.

(b) Each foreign statutory trust shall have and maintain in the State:

(1) A registered office which may but need not be a place of its business in the State; and

(2) A registered agent for service of process on the foreign statutory trust, which agent may be either an individual resident of the State whose business office is identical with the foreign statutory trust's registered office, or a domestic corporation, or a domestic limited partnership, or a statutory trust, or a domestic limited liability company, or a foreign corporation, or a foreign limited partnership, or a foreign statutory trust, or a foreign limited liability company authorized to do business in the State having a business office identical with such registered office, which is generally open during normal business hours to accept service of process and otherwise perform the functions of a registered agent.

(c) A registered agent may change the address of the registered office of the foreign statutory trust or trusts for which the registered agent is registered agent to another address in the State by paying a fee as set forth in § 3862 of this title and filing with the Secretary of State a certificate, executed by such registered agent, setting forth the address at which such registered agent has maintained the registered office for each of the foreign statutory trusts for which it is a registered agent and further certifying to the new address to which each such registered office will be changed on a given day and at which new address such registered agent will thereafter maintain the registered office for each of the foreign statutory trusts for which it is registered agent. Upon the filing of such certificate, the Secretary of State shall furnish to the registered agent a certified copy of the same under the Secretary's hand and seal of office, and thereafter, or until further change of address, as authorized by law the registered offices in the State each of the foreign statutory trusts for which the agent is registered agent shall be located at the new address of the registered agent thereof as given in the certificate. In the event of a change of name of any person acting as a registered agent of a foreign statutory trust, such registered agent shall file with the Secretary of State a certificate, executed by such registered agent, setting forth the new name of such registered agent, the name of such registered agent before it was changed, and the address at which such registered agent has maintained the registered office for each of the foreign statutory trusts for which it is registered agent, and shall pay a fee as set forth in § 3862 of this title. Upon the filing of such certificate, the Secretary of State shall furnish to the registered agent a certified copy of the same under the Secretary's hand and seal of office. A change of name of any person acting as a registered agent of a foreign statutory trust as a result of the merger or consolidation of the registered agent, with or into another person which succeeds to its assets and liabilities by operation of law, shall be deemed a change of name for purposes of this section. Filing a certificate under this section shall be deemed to be an amendment of the application of each foreign statutory trust affected thereby, and each foreign statutory trust shall not be required to take any further action with respect thereto to amend its application under § 3855 of this title. Any registered agent filing a certificate under this section shall promptly, upon such filing, deliver a copy of any such certificate to each foreign statutory trust affected thereby.

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(d) The registered agent of 1 or more foreign statutory trusts may resign and appoint a successor registered agent by paying a fee as set forth in § 3862 of this title and filing a certificate with the Secretary of State stating that it resigns and the name and address of the successor registered agent. There shall be attached to such certificate a statement of each affected foreign statutory trust ratifying and approving such change of registered agent. Upon such filing, the successor registered agent shall become the registered agent of such foreign statutory trust as has ratified and approved such substitution and the successor registered agent's address, as stated in such certificate, shall become the address of each such foreign statutory trust's registered office in the State. The Secretary of State shall then issue a certificate that the successor registered agent has become the registered agent of the foreign statutory trusts so ratifying and approving such change and setting out the names of such foreign statutory trusts. Filing of such certificate of resignation shall be deemed to be an amendment of the application of each foreign statutory trust affected thereby, and each such foreign statutory trust shall not be required to take any further action with respect thereto to amend its application under § 3855 of this title.

(e) The registered agent of 1 or more foreign statutory trusts may resign without appointing a successor registered agent by paying a fee as set forth in § 3862 of this title and filing a certificate of resignation with the Secretary of State, but such resignation shall not become effective until 30 days after the certificate is filed. The certificate shall contain a statement that written notice of resignation was given to each affected foreign statutory trust at least 30 days prior to the filing of the certificate by mailing or delivering such notice to the foreign statutory trust at its address last known to the registered agent and shall set forth the date of such notice. After receipt of the notice of the resignation of its registered agent, the foreign statutory trust for which such registered agent was acting shall obtain and designate a new registered agent to take the place of the registered agent so resigning. If such foreign statutory trust fails to obtain and designate a new registered agent as aforesaid prior to the expiration of the period of 30 days after the filing by the registered agent of the certificate of resignation, such foreign statutory trust shall not be permitted to do business in the State and its registration shall be deemed to be canceled. After the resignation of the registered agent shall have become effective as provided in this section and if no new registered agent shall have been obtained and designated in the time and manner aforesaid, service of legal process against the foreign statutory trust for which the resigned registered agent had been acting shall thereafter be upon the Secretary of State in accordance with § 3861 of this title.

*71 Del. Laws, c. 335, § 11; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 328, §§ 18, 19; 73 Del. Laws, c. 329, § 1.;*

**§ 3855. Amendments to application.**

If any statement in the application for registration of a foreign statutory trust was false when made or any arrangements or other facts described have changed, making the application false in any respect, the foreign statutory trust shall promptly file in the Office of the Secretary of State a certificate, executed by a trustee or other authorized person, correcting such statement, together with a fee as set forth in § 3862 of this title.

*71 Del. Laws, c. 335, § 11; 73 Del. Laws, c. 329, § 1.;*

**§ 3856. Cancellation of registration.**

A foreign statutory trust may cancel its registration by filing with the Secretary of State a certificate of cancellation, executed by a trustee or other authorized person, together with a fee as set forth in § 3862 of this title. A cancellation does not terminate the authority of the Secretary of State to accept service of process on the foreign statutory trust with respect to causes of action arising out of the doing of business in the State.

*71 Del. Laws, c. 335, § 11; 73 Del. Laws, c. 329, § 1.;*

**§ 3857. Doing business without registration.**

(a) A foreign statutory trust doing business in the State may not maintain any action, suit or proceeding in the State until it has registered in the State, and has paid to the State all fees and penalties for the years or parts thereof, during which it did business in the State without having registered.

(b) The failure of a foreign statutory trust to register in the State does not:

(1) Impair the validity of any contract or act of the foreign statutory trust;

(2) Impair the right of any other party to the contract to maintain any action, suit or proceeding on the contract; or

(3) Prevent the foreign statutory trust from defending any action, suit or proceeding in any court of the State.

(c) A beneficial owner or a trustee of a foreign statutory trust is not liable for the obligations of the foreign statutory trust solely by reason of the statutory trust's having done business in the State without registration.

(d) Any foreign statutory trust doing business in the State without first having registered shall be fined and shall pay to the Secretary of State \$200 for each year or part thereof during which the foreign statutory trust failed to register in the State.

*71 Del. Laws, c. 335, § 11; 73 Del. Laws, c. 329, § 1.;*

**§ 3858. Foreign statutory trusts doing business without having qualified; injunctions.**

The Court of Chancery shall have jurisdiction to enjoin any foreign statutory trust, or any agent thereof, from doing any business in the State if such foreign statutory trust has failed to register under this subchapter or if such foreign statutory trust has secured a certificate of the Secretary of State under § 3853 of this title on the basis of false or misleading representations. The Attorney General shall, upon the Attorney General's own motion or upon the relation of proper parties, proceed for this purpose by complaint in any county in which such foreign statutory trust is doing or has done business.

*71 Del. Laws, c. 335, § 11; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 329, § 1.;*

**§ 3859. Execution -- liability.**

Section 3811(c) of this title shall be applicable to foreign statutory trusts as if they were domestic statutory trusts.

*71 Del. Laws, c. 335, § 11; 73 Del. Laws, c. 329, § 1.;*

**§ 3860. Service of process on registered foreign statutory trusts.**

(a) Service of legal process upon any foreign statutory trust shall be made by delivering a copy personally to any trustee of the foreign statutory trust in the State or the registered agent of the foreign statutory trust in the State, or by leaving it at the dwelling house or usual place of abode in the State of any such trustee or registered agent (if the registered agent be an individual), or at the registered office or other place of business of the foreign statutory trust in the State. If the registered agent be a corporation, service of process upon it as such may be made by serving, in the State, a copy thereof on the president, vice-president, secretary, assistant secretary or any director of the corporate registered agent. Service by copy left at the dwelling house or usual place of abode of any trustee or registered agent, or at the registered office or other place of business of the foreign statutory trust in the State, to be effective must be delivered thereat at least 6 days before the return date of the process, and in the presence of an adult person, and the officer serving the process shall distinctly state the manner of service in the officer's return thereto. Process returnable forthwith must be delivered personally to the trustee or registered agent.

(b) In case the officer whose duty it is to serve legal process cannot by due diligence serve the process in any manner provided for by subsection (a) of this section, it shall be lawful to serve the process against the foreign statutory trust upon the Secretary of State, and such service shall be as effectual for all intents

and purposes as if made in any of the ways provided for in subsection (a) of this section. In the event service is effected through the Secretary of State in accordance with this subsection, the Secretary of State shall forthwith notify the foreign statutory trust by letter, certified mail, return receipt requested, directed to the foreign statutory trust at its last registered office. Such letter shall enclose a copy of the process and any other papers served on the Secretary of State pursuant to this subsection. It shall be the duty of the plaintiff in the event of such service to serve process and any other papers in duplicate, to notify the Secretary of State that service is being effected pursuant to this subsection, and to pay to the Secretary of State the sum of \$50 for the use of the State, which sum shall be taxed as a part of the costs in the proceeding if the plaintiff shall prevail therein. The Secretary of State shall maintain an alphabetical record of any such service setting forth the name of the plaintiff and defendant, the title, docket number and nature of the proceeding in which process has been served upon the Secretary of State, the fact that service has been effected pursuant to this subsection, the return date thereof and the day and hour when the service was made. The Secretary of State shall not be required to retain such information for a period longer than 5 years from receipt of the service of process.

*71 Del. Laws, c. 335, § 11; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 329, § 1.;*

#### **§ 3861. Service of process on unregistered foreign statutory trusts.**

(a) Any foreign statutory trust which shall do business in the State without having registered under § 3852 of this title shall be deemed to have thereby appointed and constituted the Secretary of State of the State its agent for the acceptance of legal process in any civil action, suit or proceeding against it in any state or federal court in the State arising or growing out of any business done by it within the State. The doing of business in the State by such foreign statutory trust shall be a signification of the agreement of such foreign statutory trust that any such process when so served shall be of the same legal force and validity as if served upon an authorized manager or agent personally within the State.

(b) Whenever the words "doing business," "the doing of business" or "business done in this State" by any such foreign statutory trust are used in this section, they shall mean the course or practice of carrying on any business activities in the State, including, without limiting the generality of the foregoing, the solicitation of business or orders in the State; provided, however such words shall be deemed to have the same meaning as similar words of like import in § 371 of Title 8, but the requirement of such foreign statutory trust to register under § 3852 of this title shall be subject to the same exceptions as are set forth in § 373 of Title 8.

(c) In the event of service upon the Secretary of State in accordance with subsection (a) of this section, the Secretary of State shall forthwith notify the foreign statutory trust thereof by letter, certified mail, return receipt requested, directed to the foreign statutory trust at the address furnished to the Secretary of State by the

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plaintiff in such action, suit or proceeding. Such letter shall enclose a copy of the process and any other papers served upon the Secretary of State. It shall be the duty of the plaintiff in the event of such service to serve process and any other papers in duplicate, to notify the Secretary of State that service is being made pursuant to this subsection, and to pay to the Secretary of State the sum of \$50 for the use of the State, which sum shall be taxed as part of the costs in the proceeding, if the plaintiff shall prevail therein. The Secretary of State shall maintain an alphabetical record of any such process setting forth the name of the plaintiff and defendant, the title, docket number and nature of the proceeding in which process has been served upon the Secretary of State, the return date thereof, and the day and hour when the service was made. The Secretary of State shall not be required to retain such information for a period longer than 5 years from receipt of the service of process.

*71 Del. Laws, c. 335, § 11; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 329, § 1.;*

### **§ 3862. Fees.**

No document required to be filed under this subchapter shall be effective until the applicable fee required by this section is paid. The following fees shall be paid to and collected by the Secretary of State for the use of the State:

(1) Upon receipt for filing of an application for registration as a foreign statutory trust under § 3852 of this title, a certificate under § 3855 of this title or a certificate of cancellation under § 3856 of this title, a fee in amount of up to \$300 together with such fees for services as may be authorized pursuant to § 3813(b) of this title.

(2) Upon the receipt for filing of a certificate under § 3854(c) of this title, a fee in the amount of \$50, upon the receipt for filing of a certificate under § 3854(d) of this title, a fee in the amount of \$50 and a further fee of \$2 for each foreign statutory trust affected by such certificate, and upon the receipt for filing of a certificate under § 3854(e) of this title, a fee in the amount of \$2.50.

*71 Del. Laws, c. 335, § 11; 73 Del. Laws, c. 329, § 1; 74 Del. Laws, c. 52, § 38; 75 Del. Laws, c. 218, § 3.;*

### **§ 3863. Activities not constituting doing business.**

(a) Activities of a foreign statutory trust in the State of Delaware that do not constitute doing business for the purpose of this chapter include:

(1) Maintaining, defending or settling an action or proceeding;

(2) Holding meetings of its beneficial owners or trustees or carrying on any other activity concerning its internal affairs;

(3) Maintaining bank accounts;

(4) Maintaining offices or agencies for the transfer, exchange or registration of the statutory trust's own securities or maintaining trustees or depositories with respect to those securities;

(5) Selling through independent contractors;

(6) Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside the State of Delaware before they become contracts;

(7) Selling, by contract consummated outside the State of Delaware, and agreeing, by the contract, to deliver into the State of Delaware, machinery, plants or equipment, the construction, erection or installation of which within the State of Delaware requires the supervision of technical engineers or skilled employees performing services not generally available, and as part of the contract of sale agreeing to furnish such services, and such services only, to the vendee at the time of construction, erection or installation;

(8) Creating, as borrower or lender, or acquiring indebtedness with or without a mortgage or other security interest in property;

(9) Collecting debts or foreclosing mortgages or other security interests in property securing the debts, and holding, protecting and maintaining property so acquired;

(10) Conducting an isolated transaction that is not one in the course of similar transactions;

(11) Doing business in interstate commerce; and

(12) Doing business in the State of Delaware as an insurance company.

(b) A person shall not be deemed to be doing business in the State of Delaware solely by reason of being a beneficial owner or trustee of a domestic statutory trust or a foreign statutory trust.

(c) This section does not apply in determining whether a foreign statutory trust is subject to service or process, taxation or regulation under any other law of the State of Delaware.

*75 Del. Laws, c. 418, § 20.;*

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