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Delaware Enacts Uniform Assignment for the Benefit of Creditors Act with Minor Modifications

Delaware recently became the sixth state to enact the Uniform Law Commission's Uniform Act, with minor modifications (the Delaware Act). This two-part article describes the innovations, certainty and paradigm provided by the Uniform Act and Delaware's revisions to the Uniform Act. Part One includes background regarding assignments for the benefit of creditors, including historical shortcomings that the Uniform Act is intended to address.

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Part One of a Two-Part Article

Delaware recently became the sixth state to enact the Uniform Law Commission's (ULC) Uniform Assignment for the Benefit of Creditors Act (Uniform Act), with minor modifications (the Delaware Act). This two-part article describes the innovations, certainty and paradigm provided by the Uniform Act and Delaware's revisions to the Uniform Act. Part One includes background regarding assignments for the benefit of creditors, including historical shortcomings that the Uniform Act is intended to address. Part Two will discuss the Uniform and Delaware Acts in more detail, including the uniformity, clarity, flexibility, and efficiency provided by the Uniform Act, and the specific refinements incorporated into the Delaware Act. Given that the majority of business entities are formed under Delaware Law, Delaware's enactment will be welcome news to practitioners. Specifically, because the Uniform Act allows entities to commence an ABC in their state of incorporation, it will provide all Delaware entities the ability to access the Uniform Act's paradigm.

Delaware recently became the sixth state to enact the Uniform Law Commission's (ULC) Uniform Assignment for the Benefit of Creditors Act (Uniform Act), with minor modifications (the Delaware Act). (The first five states to adopt the Uniform Act were Nebraska, Alabama, Utah, Arizona, and Iowa). Because the Uniform Act permits the making of an assignment for the benefit of creditors (ABC) in a company's state of organization, and Delaware is the state of organization of such a large number of entities, the adoption of the Delaware Act means that a significant number of companies now can utilize the Uniform Act.

The ULC's decision to adopt a Uniform Act was a welcome development because few areas of law have more state-to-state differences than ABCs. Some states have a robust statute, while others leave ABCs to common law, still others have a statute lacking in meaningful detail, and others simply do not recognize ABCs at all. *See,* Uniform Assignment for Benefit of Creditors Act, Prefatory Note (Unif. L. Comm'n 2025) [hereinafter Uniform Act]. Of the states that have a statute, many are very old. The existing Delaware statute, for example, was enacted in 1875 — an era with quite different corporate finance and entity structures from the modern world. The Uniform Act brings ABCs into the modern age and balances the twin goals of having clear rules while maintaining the flexibility, speed and cost-effectiveness that make an ABC a useful tool in the right situation.

Traditionally, the amount of court involvement in ABCs has varied significantly from state to state; in some states an ABC proceeds entirely out of court unless a dispute arises, while in other states an ABC is a fulsome court proceeding, requiring court approval for many actions, and yet other states are somewhere in between, requiring court approval only for a limited set of issues. Heretofore, Delaware has been in the last category; indeed, while assignees sometimes asked the court to approve asset sales, distributions and other actions, the Court of Chancery in recent years has questioned whether it had authority to consider such issues because the statute does not mention them. *See, In re Vernon Hills Service Co. to VHSC ABC LLC*, C.A. No. 2021-0783-PAF, 2024 WL 889963, at *3 (Del. Ch. Feb. 29, 2024) (observing that "Delaware's assignment statute [does not] provide for court approval of a sale of assets during the assignment proceeding."); *In re Aceragen, Inc. to ACG (ABC), LLC*, C.A. No. 2023-0838-PAF, 2024 WL 2705703, at *2 (Del. Ch. May 24, 2024) ("Although the federal bankruptcy code permits debtors in Chapter 11 proceedings to seek court approval to sell assets free and clear of all claims and encumbrances, the ABC statute does not have a comparable provision."); *In re DDP DMO Holdings, LLC*, C.A. No. 2023-0989-PAF (Del. Ch. Nov. 20, 2024) ("The ABC Statute does not contemplate court approval of interim distributions … Should the Assignee choose to make an interim distribution, he should provide ample notice to interested parties with instructions for lodging any objection.") (citing *In re MacuLogix, Inc.,* C.A. 2022-0442-PAF (Del. Ch. Apr. 18, 2024)).

The ULC crafted the Uniform Act with the goal of providing the opportunity for an assignee or a creditor to seek a judicial determination but leaves it to each state to decide (1) if a court must be involved even if no one seeks court intervention, and (2) when and how a court's jurisdiction will be invoked. If a state enacts the Uniform Act without alteration, no court proceeding will be opened, and a court will not be involved unless and until an assignee or creditor seeks relief. The minor revisions to the Delaware Act build on this structure. They add a requirement, not present in the Uniform Act, that within 14 days of entering into an assignment agreement, the assignee must file a petition with the Delaware Court of Chancery. This requirement assures the opening of a court case so that if and when the assignee or a creditor needs relief from the court, its jurisdiction already will have been invoked and a Vice Chancellor or Magistrate already will have been assigned. However, the Delaware Act, like the Uniform Act, does not require court approval of any particular action nor extensive judicial oversight; it is up to the assignee or creditors to seek court intervention if and when they believe it will be helpful.

The Delaware Act also expands the Uniform Act's non-exhaustive list of actions that an assignee may ask the Court of Chancery to hear and determine. For example, it gives the court authority to approve bidding procedures for selling an asset – much like a bankruptcy court often does -not just to approve the final sale. It also allows the court to estimate the amount of proofs of claim, not just to disallow them. Taken together, these provisions of the Delaware Act give the Court of Chancery broad authority to hear and determine issues, but only if a party requests that it do so; court approval will not be required unless a party asks, and likely in most cases the assignee may prefer not to involve the court because proceedings on a motion typically decrease speed and increase costs. The flexibility to choose whether court approval makes sense under the facts and circumstances then present is a significant benefit to the ABC process.

It is also noteworthy that the Delaware Act repeals the 1875 Delaware ABC act. The 1875 act required that the assignee post a bond in the amount of the appraised value of the estate's assets; the new act does not. This is a significant cost savings to the estate. Similarly, the requirement of the 1875 act to obtain two separate appraisals of the assets of the estate has been repealed and not replaced, since the only purpose of the appraisals was to set the amount of the now-abrogated bond. This, too, is a cost savings and makes the proceeding faster, which benefits the estate and its creditors.

ABC Background

ABCs Generally

"An ABC is a liquidation procedure in which an 'assignor' in financial distress, usually a company, voluntarily assigns all of its assets to an 'assignee,' a fiduciary, which liquidates the assets and distributes the proceeds to the assignor's creditors" (Uniform Act, *supra*, at 1 (Prefatory Note)). ABC's have been described as "the functional *of* equivalent of a liquidation under Chapter 7 of the U.S. Bankruptcy Code." *See*, Geoffrey L. Berman, *General Assignments for the Benefit of Creditors: the ABCs of ABCs* at 1 (The American Bankruptcy Institute, 5th ed. 2021). There are, however, certain key differences between an ABC and a Chapter 7.

When compared to Chapter 7, the primary benefit to an ABC is cost and efficiency. Court involvement in ABCs, if required at all, is generally far less than in a Chapter 7 case. This typically makes ABCs quicker, more efficient, and more cost-effective. *See,* Berman, *supra*, at 17. In addition, in an ABC, the assignor chooses the assignee, typically selecting someone who specializes in winding down a troubled company. The chosen assignee frequently will start working on the project before the assignment occurs under a consulting agreement, which means that the assignee will hit the ground running by the time the assignment occurs; this is unlike a Chapter 7 bankruptcy, where the trustee is appointed after the company files for bankruptcy and usually requires time to get up to speed. The assignee's expertise and ability to work on the project pre-assignment increases efficiency and can be especially important if the assignor's assets either are a "melting ice cube," which will lose value if not quickly sold in an efficient process, or are specialized, such as intellectual property, which requires expertise to sell.

But an ABC is not the best tool in every case. For example, there is no automatic stay in an ABC, nor an ability to reject contracts. If either of those issues is paramount, bankruptcy likely will be better suited to the situation.

As noted above, ABCs have significantly varied from state to state, both in the detail (if any) of the statute and level (if any) of court involvement. As the ULC observed, the differences among state ABC laws have "contributed to complications," especially in states with underdeveloped ABC laws and when an assignor's assets are located across several states. Uniform Act, *supra*, at 1 (Prefatory Note). The lack of uniformity also has impeded businesses' and creditors' understanding of ABCs because the various approaches make it difficult to generalize what assignment law and practice looks like. *Id.* This inconsistency causes uncertainty among assignors, lenders, trade creditors, asset purchasers, and other key parties, which results in some companies being reluctant to use ABCs instead of other alternatives such as Chapter 7 bankruptcy. The Uniform Act is intended to address these concerns and to "encourage further use of assignments by improving the clarity and integrity of the law." *Id.*

Delaware's Previous ABC Statute

Before the Uniform Act, Delaware's statute governing ABCs required Court oversight, but only over a handful of specific issues. The statute was enacted in 1875, predating by decades the existence of modern business entities, structures and finance. As a result, it was archaic, included arguably unnecessary procedural hurdles that increased costs, and lacked the clarity businesses and practitioners expect of modern insolvency proceedings.

Under the old statute and the practice that developed around it, Delaware ABCs proceeded as follows:

1. The Assignor assigned its assets to the assignee pursuant to a contract, typically referred to as a "general assignment." *See,* Berman, *supra* at 4. The general assignment typically required the consent of the assignor's secured lender, which had to agree not only to the transfer of the assignor's assets to the assignee, but also to the assignee's use of the lender's collateral, typically pursuant to an agreed budget. *Id.* at 23.

2. Shortly after executing the general assignment, the assignee filed a petition with the Court of Chancery. While not part of the statute, in more recent cases, the Court of Chancery ordered the petition (or an affidavit accompanying it) to include detailed information regarding the assignor, including information regarding its business, its capital structure, and the events leading to the general assignment. *See, In re FOM EbLens Holdings, LLC, et al to EbLens ABC, LLC*, C.A. No. 2026-0603-PAF (Del. Ch. Jun. 14, 2023) [Docket No. 5]; *In re Corsicana Acquisition, LLC to CSC (ABC), LLC*, C.A. No. 2025-1364-CDW (Del. Ch. Dec. 15, 2025) [Docket No. 4]. This information was important to the Court so that it had the context to properly consider the issues for which court approval was required (as described below).

3. The assignee filed an inventory of the assignment estate's assets. 10 Del. C. § 7381.

4. Next, the assignee was required to move for the appointment of two independent appraisers who would assess the value of the assigned assets. *See,* 10 Del. C. §7382.

5. After the appraisals were submitted, the Court of Chancery would use them (as modified, if the Court deemed appropriate) to establish the amount of the bond the assignee was required to post in favor of the assignor's creditors. *See,* 10 Del. C. §7383.

6. After the bond was posted, the required filings were fairly minimal. The assignee merely was required to file an annual accounting and status report during the pendency of the assignment and a final accounting and motion to close the case upon the completion of the assignment. *See,* 10 Del. C. §7385. In certain circumstances, the court also required the filing of notices if the assignee proposed to take certain actions. If an assignee wanted court approval of other types of matters, such as a sale or financing, it was unclear whether the court would entertain such requests.

In essence, the statute centered on bonding as the method to protect creditors from a rogue assignee by requiring the assignee to post a bond for their benefit. Simply put, rogue assignees are typically not the problem in today's world, so designing a system with that as its centerpiece is suboptimal. Moreover, the costs of such protection were not insignificant. Appraisers charged fees, and posting and maintaining the bond could be expensive depending on its amount. Every court filing also generated legal fees and expenses, including the detailed petition designed to give the court context for reviewing the appraisals and setting the bond. In addition, the inventory requirement likely made sense for small businesses of the late 1800s but is far less relevant in today's world, where the real value of many entities is intellectual property.

Perhaps the largest shortcoming of the previous statute, however, was what it lacked.

As an initial matter, the 1875 statute provided no clarity as to what entities were permitted to commence an ABC in Delaware. Specifically, while it was generally understood that entities incorporated in Delaware or with assets in the state could commence a Delaware ABC, it was less clear whether their non-Delaware affiliates could join them. *See, In re Vernon Hills Service Co.*, 2024 WL 889963 at *5-7 (observing that while the ABC statute is "facially limited to debtors with assets in Delaware . . . it is generally accepted that the assignment statute also applies to assignors that are incorporated in Delaware"; ruling that an entity incorporated in another state with no assets or substantial contacts in Delaware may not pursue an ABC proceeding in Delaware; and surveying joint cases involving some Delaware and some non-Delaware entities that were part of the same corporate family but noting that jurisdiction was not challenged in any of those cases).

This issue was an important one because in the modern world, many groups of companies are comprised of both Delaware and non-Delaware entities, and forcing such companies to commence ABC proceedings in multiple jurisdictions would be inefficient and, in many cases, cost prohibitive.

In addition, the previous ABC statute provided no mechanism for a Court to approve bidding procedures or asset sales. *See, Id.* at *3 (observing that "Delaware's assignment statute [does not] provide for court approval of a sale of assets during the assignment proceeding."); *In re Aceragen, Inc.*, 2024 WL 2705703, at *2 ("Although the federal bankruptcy code permits debtors in Chapter 11 proceedings to seek court approval to sell assets free and clear of all claims and encumbrances, the ABC statute does not have a comparable provision."). Similarly, while the Court of Chancery does not appear to have weighed in on post-assignment financing, the old statute also did not have a mechanism for court approval for borrowing during an ABC case. *See,* 10 *Del. C.* § 7381, *et seq*. As noted above, there are advantages and disadvantages of seeking court approval of sales, and while in most cases an assignee likely would choose to save time and money by foregoing court involvement, other cases need the certainty of a court order. Thus, the lack of even having the choice of seeking court approval could be problematic. However, because the court was, in some manner, overseeing the case, it required sometimes lengthy notice periods to creditors before a sale or order could be effectuated in certain circumstances. *See, e.g., In re Indigen Armor, Inc.*, C.A. No. 9626-CB (Del. Ch. Dec. 8, 2014) (order setting objection deadline for sale motion 45 days after notice sent to all known creditors); *In re Bluefly Holdings, Inc.*, C.A. No. 2017-0041-AGB (Del. Ch. Feb. 24, 2017) (order establishing sale motion objection deadline over a month after sale motion was filed and requiring notice to all known creditors). In certain cases, a sale must close immediately, and lengthy notice periods could be highly value destructive. This, too, was problematic in some cases.

In sum, while the 1875 Delaware ABC statute provided a more efficient and cost-effective alternative to Chapter 7 bankruptcy, it had significant drawbacks. Such drawbacks included (1) a lack of uniformity with the law of other states, causing uncertainty that sometimes made assignors and creditors uncomfortable, (2) certain statutory procedural requirements that were archaic, expensive, and unnecessary, (3) a potential incompatibility with corporate families that included non-Delaware entities, and (4) an inability to obtain court approval of sales, bidding procedures, and post-assignment financing, but sometimes nevertheless requiring a waiting period to close such transactions while a notice period was underway.

The Uniform Act and the Delaware Act

The Uniform Act is "intended to provide greater clarity, consistency and uniformity to the assignment process across the fifty states, in the hope that assignment will, where appropriate, become a robust tool for debtors throughout the country." Uniform Act, *supra*, at 2 (Prefatory Note).

The Uniform Act is a significant improvement over the previous ABC landscape. The act increases uniformity, promotes clarity, maintains and increases flexibility, and makes the ABC process more efficient. The Delaware Act adds additional elements which further improve the ABC process in what is regarded as a key state for all aspects of business law, including insolvency.

In Part Two, next issue, more on uniformity, clarity, flexibility, efficiency and significance of the Uniform Act and on the innovations provided by the Delaware Act.

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