

## ANALYSIS OF 2009 AMENDMENTS TO THE DELAWARE REVISED UNIFORM PARTNERSHIP ACT

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The Delaware Revised Uniform Partnership Act, 6 *Del. C.* § 15-101 *et seq.* (the “Act”), has been amended in 2009, as it is periodically, for the purpose of keeping it current and maintaining its preeminence. The 2009 amendments to the Act were contained in Delaware State Senate Bill No. 83, 77 *Del. Laws*, c. 59, and in Delaware State House Substitute No. 1 for House Bill No. 267 as amended by House Amendment No. 2, 77 *Del. Laws*, c. 78, §§ 3-13, 69, and became effective August 1, 2009. Among the provisions of the Act that have been amended are those concerning: defined terms; default rules; execution of certificates filed with the Delaware Secretary of State; governing law; subject matter jurisdiction of the Court of Chancery of the State of Delaware; the doctrine of independent legal significance; amendment of a statement of partnership existence and a statement of qualification; content of a statement of qualification; and amounts payable to the Delaware Secretary of State.

**Defined terms [§ 15-101].** Section 15-101 of the Act provides definitions for certain terms that are used in the statute. Section 15-101(16) defines “person,” and has been amended to confirm the intended broad scope of the word “trust” as used in the that definition; for such purposes, “trust” includes a common law trust, business trust, statutory trust, voting trust, and any other form of trust.

**Default rules [§§ 15-103, 15-201, 15-203, and 15-501].** Sections 15-201(a), 15-203, and 15-501 of the Act set forth certain default rules. Section 15-103(c) specifies the exclusive manner in which those rules may be varied. Senate Bill No. 83 amended each of these provisions to permit a limited liability partnership to opt out of such default rules by means of its statement of qualification rather than a statement of partnership existence.

**Execution of certificates filed with the Delaware Secretary of State [§§ 15-105, 15-901, 15-902, and 15-904].** Section 15-105 of the Act addresses the execution of documents filed with the Secretary of State of the State of Delaware. The 2009 amendments to Section 15-105(c) make clear that a certificate of conversion to partnership or a certificate of partnership domestication may be executed by a partner, by one or more authorized persons, or by any person authorized to execute such certificate on behalf of the “other entity” or “non-United States entity,” as the case may be, filing such certificate, and that a certificate of merger or consolidation filed by a surviving or resulting “other business entity” must be executed by a person authorized to execute the certificate on behalf of that other business entity. Conforming amendments were made to the provision in Section 15-105(c) dealing with the effect of such execution as well as to Sections 15-901, 15-902, and 15-904, which deal with conversion of an “other entity,” merger, and domestication of a “non-United States entity,” respectively.

**Governing law [§ 15-106].** Section 15-106(c) of the Act sets forth circumstances in which Delaware law will govern the partnership agreement. Section 15-106(c) has been amended to provide that a limited liability partnership need not file a statement of partnership existence to receive the benefits of such Section.

**Chancery Court jurisdiction [§ 15-122].** A modification to Section 15-122 of the Act provides that any action to interpret, apply or enforce any provision of the Act, or of any instrument, document, agreement or certificate contemplated by the Act, may be brought in the Delaware Court of Chancery. Such actions are in addition to other proceedings that already may be brought in the Court of Chancery pursuant to such Section. Accordingly, the amendment to Section 15-122 would seem to broaden the court's subject matter jurisdiction.

**Doctrine of independent legal significance [§§ 15-407, 15-902, and 15-1201].** Amendments to Sections 15-407(e), 15-902(g), and 15-1201 of the Act were enacted in 2009 against the backdrop of the Delaware Court of Chancery's 2007 opinion in the *Twin Bridges Limited Partnership* case. These statutory revisions were designed to eliminate any uncertainty engendered by that judicial decision about the application of the doctrine of independent legal significance in the partnership context. A new sentence in Section 15-1201 of the Act clarifies that the doctrine, as developed in the corporate law, applies as well in the Delaware partnership setting, but this additional language is not intended to limit the development or application, with respect to Delaware partnerships, of the doctrine of independent legal significance as developed in cases arising under Delaware corporation law. Related changes to Sections 15-407(e) and 15-902(g) of the Act confirm in particular that, in a properly approved merger, the merger agreement may effect any amendment to the partnership agreement of a Delaware partnership that is the surviving entity in the merger; consistent with the Act's freedom of contract principle, however, this rule does not govern when a provision in the partnership agreement by its terms applies to and controls such an amendment.

**Amendment of a statement of partnership existence and a statement of qualification [§ 15-902].** Section 15-902(c) of the Act has been amended to facilitate a change of the registered agent or registered office of a Delaware partnership that is the surviving entity in a merger. A separate document previously was required to effect such a change, but now the certificate of merger may implement these revisions without the need for a further filing. Newly amended Section 15-902(c) provides that a certificate of merger filed thereunder may set forth an amendment to the statement of partnership existence, and to the statement of qualification in the case of a limited liability partnership, of a surviving Delaware partnership to change its registered agent or registered office.

**Content of a statement of qualification of a limited liability partnership [§ 15-1001].** Section 15-1001(c) of the Act sets forth the required contents of the statement of qualification of a limited liability partnership. Section 15-1001(c)(3) was amended in 2009 to clarify its intended meaning: the necessary statement of fact regarding the number of partners of the partnership refers to the number at the time the statement of qualification becomes effective.

**Amounts payable to Delaware Secretary of State [§§ 15-1207, 15-1208, and 15-1210].**

Sections 15-1207, 15-1208, and 15-1210 of the Act require the payment of various amounts to the Delaware Secretary of State. Amendments to these provisions were set forth in Delaware State House Substitute No. 1 for House Bill No. 267 as amended by House Amendment No. 2. These revisions adjust a number of different fees payable to the Secretary of State, such as the fee for a certified copy of a filed document and the fee for the issuance of a good standing certificate. In addition, pursuant to a new provision added to Section 15-1207(b)(1) of the Act, 30-minute expedited service is now available from the Secretary of State, for a considerable fee. The amendments also have modified the calculation of penalties and interest payable in connection with revival of a Delaware partnership. This change may provide relief in some cases. The annual tax payable under the Act was unchanged in 2009.