

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

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The Delaware Revised Uniform Limited Partnership Act, 6 *Del. C.* § 17-101 *et seq.* (the "Act"), has been amended in 2009, as it is periodically, to keep it current and maintain its preeminence. The 2009 amendments to the Act were contained in Delaware State House Bill No. 142, 77 *Del. Laws*, c. 69, 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, §§ 14-24, 69, and became effective August 1, 2009. Among the provisions of the Act that have been amended are those concerning: jurisdiction of the Delaware Court of Chancery; amendment of the certificate of limited partnership; the doctrine of independent legal significance; and amounts payable to the Delaware Secretary of State.

**Jurisdiction of the Delaware Court of Chancery [§ 17-111].** Section 17-111 of the Act has been amended to provide 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 Court of Chancery of the State of Delaware. Such actions are in addition to other proceedings that already may be brought in the Court of Chancery pursuant to such Section. The amendment to Section 17-111, therefore, broadens the court's subject matter jurisdiction.

**Amendment of the certificate of limited partnership [§ 17-211].** Section 17-211 of the Act governs merger of a Delaware limited partnership. Section 17-211(c) has been amended to facilitate a change of the registered agent or registered office of a Delaware limited partnership that survives a merger. Whereas a separate filing previously was required to effect such a change, under revised Section 17-211(c) the certificate of merger now may implement these revisions without the need for further action. Newly amended Section 17-211(c) provides that a certificate of merger filed thereunder may set forth an amendment to the certificate of limited partnership (and to the statement of qualification in the case of a limited liability limited partnership) of a surviving Delaware limited partnership to change its registered agent or registered office.

**Doctrine of independent legal significance [§§ 17-211, 17-302, and 17-1101].** In the view of some practitioners, the Delaware Court of Chancery's 2007 decision in the *Twin Bridges Limited Partnership* case fostered doubt about the application of the doctrine of independent legal significance with respect to limited partnerships. To eliminate any such uncertainty, Sections 17-211(g) and 17-302(f) of the Act were amended, and Section 17-1101(h) was added to the Act, in 2009. New Section 17-1101(h) makes clear that the doctrine of independent legal significance, as developed in cases arising under the Delaware corporation law, applies as well in the Delaware limited partnership context. (Section 17-1101(h) is not intended to limit the development or application, with respect to Delaware limited partnerships, of the doctrine as

developed in the Delaware corporate law.) The changes to Sections 17-211(g) and 17-302(f) of the Act confirm that, in a properly approved merger, the merger agreement may effect any amendment to the partnership agreement of a Delaware limited partnership that survives the merger. In keeping with the freedom of contract policy underpinning the Act, however, this rule does not control when a provision in the partnership agreement by its terms applies to and governs such an amendment.

**Amounts payable to Delaware Secretary of State [§§ 17-1107, 17-1109, and 17-1111].**

In various places, the Act requires that certain payments must be made to the Delaware Secretary of State. Delaware State House Substitute No. 1 for House Bill No. 267 as amended by House Amendment No. 2 included revisions to some of these provisions. These amendments adjust a number of different fees payable to the Secretary of State under the Act, such as the fee for a certified copy of a filed document and the fee for the issuance of a good standing certificate. Pursuant to a new provision added to Section 17-1107(b)(1) of the Act, 30-minute expedited service is now available from the Secretary of State, for a sizeable fee. In addition, Section 17-1111 of the Act, which addresses the revival of a limited partnership that has had its certificate of limited partnership cancelled for specified reasons, has been amended to alter the calculation of penalties and interest payable upon such a revival. This modification may reduce the payment burden in some cases. The annual tax payable under the Act was unchanged in 2009.