

2010 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 2010, as it is periodically, to keep it current and maintain its preeminence. The 2010 amendments to the Act were contained in Delaware State House Bill No. 373, 77 *Del. Laws*, c. 288, and became effective August 2, 2010. Among the provisions of the Act that have been amended are those concerning: inapplicability of the statute of frauds to partnership agreements; power of a limited partnership to grant, hold or exercise a power of attorney, and the irrevocability of certain powers of attorney relating to the organization, internal affairs or termination of a limited partnership; creation of a mechanism to implement a “short form” merger under new Section 267 of Delaware’s General Corporation Law where a Delaware limited partnership is the parent entity; scope of information rights of limited partners, contractual variation of the time period for responding to information demands by limited partners, and validity of amendments to a partnership agreement that are adopted in accordance with such agreement; issuance of rules and regulations by the Delaware Secretary of State allowing for electronic service of process upon the Secretary of State; confirmation of circumstances in which an assignee of a partnership interest may become a limited partner; and enforceability of the contractual choice of Delaware law in a partnership agreement.

Statute of frauds and partnership agreements [§ 17-101]. For many years the Act has permitted oral partnership agreements, and it explicitly recognizes that partners and assignees of partnership interests may be bound by a partnership agreement whether or not they execute it. In 2009, however, the Delaware Supreme Court in *Olson v. Halvorsen*, C.A. No. 1884 (Del. Supr. Dec. 15, 2009), affirmed that a limited liability company agreement is subject to the statute of frauds, which requires an agreement that cannot be performed within one year to be in writing. While the *Olson* decision dealt with a limited liability company agreement, it may apply to a partnership agreement by analogy. In light of the *Olson* decision Section 17-101(12) of the Act has been amended to provide specifically that partnership agreements are not subject to the statute of frauds.

Powers of attorney [§§ 17-106 and 17-204]. Section 17-106 of the Act has been amended to add a new subsection (d) confirming that, unless otherwise provided in a partnership agreement, a Delaware limited partnership has the power and authority to grant, hold or exercise a power of attorney, including an irrevocable power of attorney. In addition, a new subsection has been added to Section 17-204 to provide guidance as to when a power of attorney will be irrevocable. Under new Section 17-204(c) of the Act, for all purposes of the laws of the State of Delaware, a power of attorney with respect to matters relating to the organization, internal affairs or termination of a limited partnership is irrevocable if it states that it is irrevocable and if it is coupled with an interest sufficient in law to support an irrevocable power. New Section 17-

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204(c) also clarifies the circumstances in which such a power of attorney will be deemed coupled with an interest sufficient in law to support an irrevocable power.

“Short form” mergers under new DGCL Section 267 [§§ 17-203, 17-204, 17-206, 17-211, 17-212, 17-301 and 17-1107]. The General Corporation Law of the State of Delaware (DGCL) was amended to add a new Section 267 that permits a non-corporate parent entity, including a limited partnership, to effect a “short form” merger with its subsidiary corporation or corporations. Numerous provisions of the Act have been amended to provide a mechanism for implementing a short form merger under new DGCL Section 267 where a Delaware limited partnership is the parent entity seeking to accomplish such merger.

Information demands by limited partners; amendments restricting information rights [§ 17-305]. Section 17-305(e) of the Act has been amended to clarify the categories of information that are within its scope and to clarify that the statutorily prescribed time period for responding to an information demand by a limited partner may be varied by a partnership agreement, but not for a period longer than 30 business days. An amendment to Section 17-305(f) clarifies and confirms that all amendments to a partnership agreement, including those that restrict the rights of a limited partner to obtain information, are valid if adopted in the manner provided for in such agreement.

Electronic service of process on Delaware Secretary of State [§§ 17-105, 17-211, 17-216, 17-219, 17-910 and 17-911]. In certain circumstances the Act permits service of process on a Delaware limited partnership or on a foreign limited partnership registered or doing business in the State of Delaware to be effected by service of such process upon the Delaware Secretary of State. Amendments to Sections 17-105(b), 17-211(c)(8), 17-216(b)(7), 17-219(e)(7), 17-910(b), 17-911(a) and 17-911(c) allow for service of process upon the Secretary of State by means of electronic transmission but only as prescribed by the Secretary of State. These amendments also authorize the Secretary of State to issue such rules and regulations with respect to such service as the Secretary of State deems necessary or appropriate.

Assignee rights [§ 17-704]. An amendment to Section 17-704(a) confirms the circumstances in which an assignee of a partnership interest may become a limited partner.

Law governing partnership agreement [§ 17-1101]. Section 17-1101 of the Act has been amended to provide that a partnership agreement that provides for the application of Delaware law shall be governed by and construed under the laws of the State of Delaware in accordance with its terms. This amendment, which is embodied in a new subsection (i), is not intended to negate the application of Delaware law to the interpretation and enforcement of a partnership agreement that does not explicitly provide for the application of Delaware law, or to negate the application of the internal affairs doctrine to Delaware limited partnerships.