

2006 AMENDMENTS TO THE DELAWARE REVISED UNIFORM PARTNERSHIP ACT

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Introduction

The Delaware Revised Uniform Partnership Act, 6 *Del. C.* § 15-101 *et seq.* (the “Act”), has been amended in 2006, as it is periodically, for the purpose of keeping it current and maintaining its preeminence. The 2006 amendments to the Act were contained in Delaware State House Bill No. 424, and became effective August 1, 2006.¹ *See* 75 Del. Laws, c. 416. Among the provisions of the Act that have been amended are those concerning: the scope of the defined term “person”; registered agents; meetings of partners; domestication, transfer and continuance, and conversion, of a partnership; reinstatement of a statement of qualification; and revival of a statement of partnership existence.

Scope of defined term “person” [§ 15-101]. New language has been included in Section 15-101(16) of the Act to confirm the broad scope of the defined term “person”. That term is fundamental to many provisions of the Act, including those dealing with who may become a partner of a Delaware partnership. The language added to Section 15-101(16) confirms that an association (including any group, organization, co-tenancy, plan, board, council or committee), a government (including a country, state, county or any other governmental subdivision, agency or instrumentality), or a series of a series entity (such as a series limited liability company under Section 18-215(b) of the Delaware Limited Liability Company Act), is a “person” for purposes of the Act.

Registered Agents [§ 15-111]. Several sections of House Bill No. 424 amended Section 15-111 of the Act, regarding registered agents. One such provision added to Section 15-111 a more explicit prescription of the duties of a registered agent. A new subsection (g) added to Section 15-111 requires that a partnership maintaining a registered agent under that Section must provide to its registered agent contact information for a natural person who is authorized to receive communications from the registered agent, and also requires that the registered agent must maintain that information in its records. Section 15-111 has been further amended to authorize the Secretary of State to issue regulations regarding registered agents and (for cause such as statutory non-compliance) to bring a lawsuit in the Delaware Court of Chancery for an injunction against any person or entity acting as a registered agent. Moreover, new Section 15-111(i)(4) provides that the statement of partnership existence and statement of qualification of a Delaware partnership, or the statement of foreign qualification of a foreign partnership, will be cancelled if the partnership fails, within a prescribed period, to obtain and designate a new

¹ Amendments to Sections 15-105, 15-111, 15-1004, 15-1102, and 15-1210 of the Act, contained in House Bill No. 424, become effective as of January 1, 2007. *See* 75 Del. Laws, c. 416, §§ 2, 3, 5, and 33-37.

registered agent if the Court of Chancery enjoins that partnership's registered agent from acting as such. Similarly, amendments to Section 15-111(d) clarify that a partnership's statement of partnership existence and statement of qualification (in each case as applicable) will be cancelled if the partnership fails to obtain and designate a new registered agent within 30 days after its registered agent files a certificate of resignation. (Changes have been made to Sections 15-105 and 15-1102 of the Act, conforming to these 2006 amendments to Section 18-111(d) and (i)(4).)

Meetings of partners [§ 15-407]. Section 15-407(d) of the Act addresses the manner in which partners may take action. The 2006 amendments to that Section clarify that meetings of partners may be held by conference telephone or similar communications equipment unless otherwise provided in the partnership agreement.

Domestication, transfer and continuance, and conversion, of a partnership [§§ 15-901, 15-903, 15-904 and 15-905]. The Act has been amended to make technical changes to Sections 15-901 (conversion of an entity to a Delaware partnership), 15-903 (approval of conversion of a Delaware partnership), 15-904 (domestication of a non-U.S. entity as a Delaware partnership), and 15-905 (transfer, domestication or continuance of a Delaware partnership to or in a foreign jurisdiction).

Reinstatement of statement of qualification or statement of foreign qualification [§ 15-1004]. House Bill No. 424 added a new Section 15-1004 to the Act. This new Section permits the reinstatement of the statement of qualification of a Delaware limited liability partnership, or the statement of foreign qualification of a foreign limited liability partnership, that has been cancelled pursuant to Section 15-111(d) or new Section 15-111(i)(4).

Revival of statement of partnership existence [§ 15-1210]. Section 15-1210 of the Act, which permits revival of a statement of partnership existence that has been cancelled pursuant to Section 15-111(d) (resignation of registered agent without appointment of a successor) or 15-1209(a) (failure to pay annual tax for a three-year period), has been amended to conform to the 2006 amendment adding new Section 15-111(i)(4) to the Act. Section 15-1210 now permits the revival of a partnership's statement of partnership existence following cancellation pursuant to new Section 15-111(i)(4) (regarding the failure to appoint a substitute registered agent in a timely manner following the entry of an injunction prohibiting the partnership's existing registered agent from acting as such).