

2006 AMENDMENTS TO THE DELAWARE REVISED UNIFORM LIMITED PARTNERSHIP ACT

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Introduction

The Delaware Revised Uniform Limited Partnership Act, 6 *Del. C.* § 17-101 *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. 415, and became effective August 1, 2006.¹ *See* 75 Del. Laws, c. 414. Among the provisions of the Act that have been amended are those concerning: the scope of the defined term “person”; the name of a limited liability limited partnership; registered agents; formation of a limited liability limited partnership; domestication, transfer and continuance, and conversion, of a limited partnership; meetings of partners (both general and limited) of a limited partnership; and revival of a limited partnership whose certificate of limited partnership has been cancelled.

Scope of defined term “person” [§ 17-101]. New language has been included in Section 17-101(14) of the Act to confirm the broad scope of the defined term “person”. That term is an integral part of many provisions of the Act, including those that deal with who may become a limited partner or general partner of a Delaware limited partnership. The language added to Section 17-101(14) confirms that, for purposes of the Act, the term “person” includes 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), and a series of a series entity (such as under Section 17-218(b) of the Act).

Name of a limited liability limited partnership [§ 17-102]. The 2006 amendments to the Act confirm that the name of a limited liability limited partnership is to contain the words, abbreviation or designation required under Section 17-214(a) of the Act (e.g., “LLLP”) rather than those required under Section 17-102(1) (e.g., “LP”).

Registered Agents [§ 17-104]. Various amendments to Section 17-104 of the Act have been enacted, among other things, to more explicitly prescribe the duties of a registered agent. New subsection (g) of Section 17-104 requires that a limited partnership must provide to its registered agent contact information for a natural person who is authorized to receive communications from the registered agent, and further requires that the registered agent must maintain that information in its records. Under new subsection (h), the Secretary of State is now expressly authorized to issue regulations governing registered agents. Further, under newly

¹ The amendments to Sections 17-104, 17-203, 17-206, 17-906, and 17-1111 of the Act, contained in House Bill No. 415, become effective as of January 1, 2007. *See* 75 Del. Laws, c. 414, §§ 3-6 and 42-45.

amended Section 17-104, the Secretary of State may seek an injunction from the Delaware Court of Chancery for cause (e.g., non-compliance with the Act) against any person or entity acting as a registered agent. Moreover, new Section 17-104(i)(4) provides that the certificate of limited partnership of a Delaware limited partnership, or the registration of a foreign limited partnership, will be cancelled if the limited partnership fails, within a prescribed period, to obtain and designate a new registered agent if the Court of Chancery enjoins its registered agent from acting as such. (Conforming changes have been made to Sections 17-203, 17-206, and 17-906.)

Formation of a limited liability limited partnership [§ 17-214]. Section 17-214 of the Act has been amended to confirm that a limited partnership may be formed from its inception as a limited liability limited partnership.

Domestication, transfer and continuance, and conversion, of a limited partnership [§§ 17-215, 17-216, 17-217, and 17-219]. The Act has been amended to make technical changes to Sections 17-215 (domestication of a non-U.S. entity as a Delaware limited partnership), 17-216 (transfer, domestication, or continuance of a Delaware limited partnership to or in a foreign jurisdiction), 17-217 (conversion of an entity to a Delaware limited partnership), and 17-219 (approval of conversion of a Delaware limited partnership). Furthermore, Section 17-217 was amended in 2006 to clarify the procedures for converting an other entity to a Delaware limited liability limited partnership.

Meetings of limited partners and general partners [§§ 17-302 and 17-405]. Sections 17-302(e) and 17-405(d) of the Act address the manner in which limited partners and general partners, respectively, may take action. The 2006 amendments to these Sections clarify that meetings of limited partners and meetings of general partners may be held by conference telephone or similar communications equipment unless otherwise provided in the partnership agreement.

Revival of a limited partnership [§ 17-1111]. Section 17-1111 of the Act permits revival of a limited partnership whose certificate of limited partnership has been cancelled in certain circumstances. Prior to the 2006 amendments, that Section permitted revival where the certificate of limited partnership was cancelled pursuant to Sections 17-104(d) (resignation of registered agent without appointment of a successor) or 17-1110(a) (failure to pay annual tax for a three-year period). Section 17-1111 has been amended to permit also the revival of a limited partnership whose certificate of limited partnership has been cancelled pursuant to new Section 17-104(i)(4) (regarding the failure to appoint a new registered agent for a limited partnership after its existing agent has been enjoined from acting as such).