

2007 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 2007, as it is periodically, for the purpose of keeping it current and maintaining its preeminence. The 2007 amendments to the Act were contained in Delaware State Senate Bill No. 95, and became effective August 1, 2007. *See* 76 *Del. Laws*, c. 104. Among the provisions of the Act that have been amended are those concerning: defined terms; the partnership agreement; cancellation of the certificate of limited partnership; good standing certificates; merger and consolidation; limited partnership power; appraisal rights; and series.

Defined terms [§ 17-101]. The 2007 amendments to Section 17-101(5) and (8) of the Act clarify the intended meanings of the terms “general partner” and “limited partner,” respectively.

Partnership agreement [§§ 17-101 and 17-201]. Senate Bill No. 95 amended the meaning of the term “partnership agreement,” set forth in Section 17-101(12), to include implied agreements. This change conforms the Act’s definition of “partnership agreement” to the definition of the same term under the Delaware Revised Uniform Partnership Act. Also, a new Section 17-201(d), regarding the existence of the partnership agreement and the timing thereof, was added to the Act, conforming to newly revised Section 18-201(d) of the Delaware Limited Liability Company Act.

Cancellation of certificate of limited partnership [§§ 17-203 and 17-206]. Section 17-203 of the Act has been amended in 2007 to clarify the time at which the certificate of limited partnership is cancelled in connection with certain mergers, consolidations, transfers, and conversions. A technical amendment to Section 17-206(b) confirms that the certificate of limited partnership is cancelled as specified in Section 17-1110(a) upon a limited partnership’s failure to pay the annual tax under the Act for three years from the due date of such payment.

Good standing certificates [§ 17-203]. Section 17-203 of the Act has been amended to confirm that the Delaware Secretary of State shall not issue a certificate of good standing with respect to a limited partnership if its certificate of limited partnership is cancelled.

Merger and consolidation [§ 17-211]. Section 17-211 of the Act governs the merger or consolidation of a limited partnership. Several amendments to this Section were enacted in 2007. Amendments to the meaning of the term “other business entity,” defined in Section 17-211(a) and used throughout the Section, confirm the flexibility that exists under Section 17-211.

The amendments to Section 17-211(c)(8) provide that a certificate of merger or consolidation need not contain a consent to jurisdiction where the surviving or resulting entity is a Delaware general partnership. Finally, a new provision added to Section 17-211(g) confirms that the merger or consolidation of a limited partnership does not constitute its dissolution, unless otherwise agreed.

Limited partnership power [§§ 17-211, 17-216, 17-219, and 17-702]. New subsections 17-211(k), 17-216(h), and 17-219(i) of the Act confirm the ability to provide in the limited partnership agreement that a limited partnership lacks the power to merge or consolidate under Section 17-211, to transfer, domesticate or continue under Section 17-216, or to convert under Section 17-219. These amendments are not intended to imply that its limited partnership agreement may not deny other powers to a limited partnership. Also, as amended in 2007, Section 17-702(b) of the Act provides that a limited partnership shall not have the power to issue a certificate of partnership interest in bearer form.

Appraisal rights [§ 17-212]. Section 17-212 of the Act has been amended to provide that contractual appraisal rights may be made available for a series of partners or partnership interests, confirming the flexibility that exists under that Section.

Series [§ 17-218]. Section 17-218 of the Act, which addresses series, has been amended in several respects in 2007. Amendments to Section 17-218(a) provide that a partnership agreement may establish a series of assets. Amendments to Section 17-218(b) not only clarify the statute's requirements regarding the manner in which assets must be accounted for pursuant to such subsection, but also confirm the flexibility that exists under this subsection with respect to both the holding of series assets and series recordkeeping. A new subsection (c) added to Section 17-218 confirms the broad purposes and powers that a series established under subsection (b) is permitted to have.