

ANALYSIS OF 2001 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"), was amended in 2001, as it is periodically, for the purpose of keeping it current and maintaining its preeminence. The 2001 amendments to the Act were contained in Delaware State Senate Bill No. 177, and became effective August 1, 2001. Senate Bill No. 177 amended provisions of the Act concerning (among other things): definitions; the registered office and the registered agent of a partnership; certificates filed with the Delaware Secretary of State; partner liability; information rights; action by written consent; proxies; remedies; certificated partnership interests; admission of a partner; and transfer and domestication.

Definitions [§ 15-101]. Section 15-101 of the Act defines certain terms used in the Act. Senate Bill No. 177 amended Section 15-101, among other things, to confirm the broad scope of the defined term "person." See 6 *Del. C.* § 15-101(16).

Registered Office and Registered Agent [§ 15-111]. Subsections (b), (c), and (d) of Section 15-111 of the Act have been amended in their entirety. The amendments clarify procedures relating to a change in the address of the registered office, a change in the name of the registered agent, and a resignation of the registered agent of a partnership.

Filed Certificates [§§ 15-101, 15-105, and 15-902]. Sections 15-101, 15-105, and 15-902(e) of the Act have been amended to provide for the amendment or termination, prior to any effective time or date, of any certificate with a future effective time or date (including, without limitation, a certificate of merger or a certificate of consolidation) that may be filed pursuant to the Act.

Partner Liability [§ 15-306]. The 2001 amendments to Section 15-306 of the Act confirm the liability standard of a partner in a limited liability partnership.

Information Rights [§§ 15-103 and 15-403]. Senate Bill No. 177 amended Sections 15-103 and 15-403 of the Act to permit a partnership agreement to further restrict the rights of a partner to obtain information. A new subsection (f) has been added to Section 15-403, providing that "[t]he rights of a partner to obtain information as provided in [Section 15-403] may be restricted in an original partnership agreement or in any subsequent amendment approved or adopted by all of the partners and in compliance with any applicable requirements of the partnership agreement." 6 *Del. C.* § 15-403(f).

Action by Written Consent and Proxies [§ 15-407]. The 2001 amendments to Section 15-407 of the Act clarify the ability of partners to act by written consent, and provide that written consents may be delivered by electronic transmission. Such amendments also make clear that a partner's proxy may be granted by any legally permissible means, including by electronic transmission. Further, as amended, Section 15-407(d) provides that, for purposes of such subsection, "the term 'electronic transmission' means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved, and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process." 6 *Del. C.* § 15-407(d).

Remedies [§ 15-408]. The 2001 amendment to Section 15-408 of the Act clarifies the flexibility permitted in connection with providing, in a partnership agreement, for specified penalties or specified consequences to which a partner may be subject (1) if the partner fails to perform in accordance with, or to comply with the terms and conditions of, the partnership agreement, or (2) at the time, or upon the happening of events, specified in the partnership agreement. Senate Bill No. 177 added to Section 15-408 a new sentence making clear that such specified penalties or consequences may include and take the form of any penalty or consequence set forth in Section 15-207(b) of the Act.

Certificating a Partnership Interest [§ 15-503]. Section 15-503(h) of the Act has been amended to permit greater flexibility with respect to certificating a partnership interest.

Admission of a Partner [§§ 15-901, 15-902, and 15-904]. Sections 15-901, 15-902, and 15-904 of the Act address, respectively, conversion of an "other entity" to a domestic partnership, merger and consolidation, and domestication of a "non-United States entity" as a domestic partnership. Senate Bill No. 177 amended each of such Sections to confirm and clarify the flexibility available regarding the admission of a partner to a domestic partnership in connection with any such transaction involving a domestic partnership.

Transfer and Domestication [§§ 15-904 and 15-905]. Sections 15-904 and 15-905 of the Act address, respectively, (1) a "non-United States entity's" domestication as a Delaware partnership, and (2) a Delaware partnership's transfer to or domestication in a permitted jurisdiction outside Delaware. Senate Bill No. 177 amended both such sections.

Section 15-904 of the Act has been amended to confirm that, in connection with a domestication under the Act, "rights or securities of, or interests in, the non-United States entity that is to be domesticated as a domestic partnership may be exchanged for or converted into cash, property, rights or securities of, or interests in, such domestic partnership or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights or securities of, or interest in, another domestic partnership or other entity." 6 *Del. C.* § 15-904(j).

Section 15-905 of the Act has been amended to confirm that, in connection with a transfer or domestication of a domestic partnership to or in another jurisdiction pursuant to the Act, “rights or securities of, or interests in, such partnership may be exchanged for or converted into cash, property, rights or securities of, or interests in, the business form in which the partnership will exist in such other jurisdiction as a consequence of the transfer or domestication or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights or securities of, or interests in, another business form.” 6 *Del. C.* § 15-905(f).