

**ANALYSIS OF 2001 AMENDMENTS TO THE
DELAWARE REVISED UNIFORM
LIMITED PARTNERSHIP ACT**

By **Matthew J. O'Toole, Esquire** and **Robert L. Symonds, Jr., Esquire**
Stevens & Lee
Wilmington, Delaware

Introduction

The Delaware Revised Uniform Limited Partnership Act, 6 *Del. C.* § 17-101 *et seq.* (the “LP 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 LP Act were contained in Delaware State Senate Bill No. 178, as amended by Senate Amendment No. 1 (“Senate Bill No. 178”), and became effective August 1, 2001. Senate Bill No. 178 amended provisions of the LP Act concerning (among other things): definitions; the name of a limited partnership; the registered office and the registered agent of a limited partnership; certificates filed with the Delaware Secretary of State; the interplay between the LP Act and Delaware general partnership statutes; transfer and domestication; action by written consent; proxies; information rights; remedies; and certificated partnership interests.

Definitions [§ 17-101]. Section 17-101 of the LP Act defines certain terms used in the LP Act. Senate Bill No. 178 amended Section 17-101, among other things, to confirm the broad scope of the defined term “person.” See 6 *Del. C.* § 17-101(14).

Name of a Limited Partnership [§§ 17-102 and 17-214]. Section 17-102(3) of the LP Act requires that the name of a limited partnership, as set forth in its certificate of limited partnership, must be distinguishable upon the records of the Delaware Secretary of State. Senate Bill No. 178 amended Section 17-102(3) to clarify its intended meaning. Section 17-214(a)(2) of the LP Act also was amended by Senate Bill No. 178, to permit greater flexibility with respect to the name of a limited liability limited partnership.

Registered Office and Registered Agent [§ 17-104]. Subsections (b), (c), and (d) of Section 17-104 of the LP 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 limited partnership.

Filed Certificates [§§ 17-204, 17-206, 17-211, and 17-1107]. Senate Bill No. 178 amended Section 17-206 of the LP Act to refer expressly to corrected certificates, which may be filed with the Delaware Secretary of State. Sections 17-204, 17-206, 17-211(e), and 17-1107(a)(3) of the LP 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 LP Act.

Interplay between Statutes [§§ 17-214, 17-403, and 17-1105]. Senate Bill No. 178 amended Sections 17-214, 17-403, and 17-1105 of the LP Act to confirm and clarify the interplay between the LP Act and the Delaware Revised Uniform Partnership Act, 6 *Del. C.* § 15-101 *et seq.*, and the Delaware Uniform Partnership Law, 6 *Del. C.* § 1501 *et seq.*

Transfer and Domestication [§§ 17-215 and 17-216]. Sections 17-215 and 17-216 of the LP Act address, respectively, (1) a “non-United States entity’s” domestication as a Delaware limited partnership, and (2) a Delaware limited partnership’s transfer to or domestication in a permitted jurisdiction outside Delaware. Senate Bill No. 178 amended both such Sections.

Section 17-215 of the LP Act has been amended to confirm that, in connection with a domestication under the LP Act, “rights or securities of, or interests in, the non-United States entity that is to be domesticated as a domestic limited partnership may be exchanged for or converted into cash, property, rights or securities of, or interests in, such domestic limited partnership 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 domestic limited partnership or other entity.” 6 *Del. C.* § 17-215(j).

Section 17-216 of the LP Act has been amended to confirm that, in connection with a transfer or domestication of a domestic limited partnership to or in another jurisdiction pursuant to the LP Act, “rights or securities of, or interests in, such limited partnership may be exchanged for or converted into cash, property, rights or securities of, or interests in, the business form in which the limited 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.* § 17-216(f).

Action by Written Consent and Proxies [§§ 17-302 and 17-405]. The 2001 amendments to Sections 17-302 and 17-405 of the LP Act clarify the ability of limited partners and general partners, respectively, to act by written consent, and provide that written consents may be delivered by electronic transmission. Such amendments also make clear that a limited partner’s or general partner’s proxy may be granted by any legally permissible means, including by electronic transmission. Further, as amended, Sections 17-302 and 17-405 provide that, for relevant purposes, “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.* §§ 17-302(e), 17-405(d).

Information Rights [§ 17-305]. Senate Bill No. 178 amended Section 17-305 of the LP Act to permit a partnership agreement to further restrict the rights of a limited partner to obtain information. A new subsection (f) has been added to Section 17-305, providing that “[t]he rights of a limited partner to obtain information as provided in [Section 17-305] 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. The provisions of this subsection shall not be construed to limit the ability to impose restrictions

on the rights of a limited partner to obtain information by any other means permitted under” Section 17-305. 6 *Del. C.* § 17-305(f).

Remedies [§§ 17-306 and 17-406]. The 2001 amendments to Sections 17-306 and 17-406 of the LP Act clarify 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. 178 added to each of Sections 17-306 and 17-406 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 17-502(c) of the LP Act.

Certificating a Partnership Interest [§ 17-702]. Section 17-702(b) of the LP Act has been amended to permit greater flexibility with respect to certificating a partnership interest.