

ANALYSIS OF 2000 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 2000, as it is periodically, for the purpose of keeping it current and maintaining its preeminence. The 2000 amendments to the LP Act were contained in Delaware State Senate Bill No. 364, and became effective August 1, 2000. Senate Bill No. 364 amended provisions of the LP Act concerning (among other things): the right to maintain certain proceedings in Delaware state courts; transfer and domestication; conversion; limitations on distributions; limited partner action by written consent; general partner action by written consent; rights of judgment creditors of partners and assignees; and duties and liabilities of partners and other persons.

Right to Maintain Certain Proceedings in Delaware State Courts [§ 17-109].

Section 17-109(d) of the LP Act was amended by Senate Bill No. 364 to provide that, except by agreeing to arbitrate any arbitrable matter in a specified jurisdiction or in the State of Delaware, a limited partner of a Delaware limited partnership may not waive its right to maintain a legal action or proceeding in the courts of the State of Delaware with respect to matters relating to the organization or internal affairs of the limited partnership.

Filing of a Certificate of Cancellation [§ 17-203]. Section 17-203 of the LP Act has been amended to delete the requirement that a certificate of cancellation must be filed upon the conversion of a Delaware limited partnership.

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. 364 amended both such Sections.

Subsection (h) of Section 17-215 of the LP Act has been amended to confirm that, for purposes of Delaware law, the properties and liabilities of a non-United States entity shall not be deemed, as a consequence of the domestication, to have been transferred to the Delaware limited partnership to which such non-United States entity has domesticated.

Subsection (d) of Section 17-216 of the LP Act has been amended to confirm that, unless otherwise agreed, the transfer or domestication of a limited partnership out of the State of Delaware does not require such Delaware limited partnership to wind up its affairs under Section 17-803 of the LP Act or pay its liabilities and distribute its assets under Section 17-804 of the LP Act.

Conversion [§§ 17-217 and 17-219]. Section 17-217 of the LP Act governs the conversion of an “other entity” to a Delaware limited partnership. Senate Bill No. 364 amended

subsection (f) of Section 17-217 to confirm that, for purposes of Delaware law, the properties and liabilities of an “other entity” shall not be deemed, as a consequence of its conversion, to have been transferred to the Delaware limited partnership to which such other entity has converted.

Section 17-217 has been further amended by the addition of a new subsection (i). This amendment confirms the flexibility permitted by the LP Act in connection with an other entity’s conversion to a Delaware limited partnership. New subsection (i) provides that, in connection with a conversion, “rights or securities of, or interests in, the other entity which is to be converted to 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.* § 17-217(i).

Section 17-219 of the LP Act governs a Delaware limited partnership’s conversion to another Delaware business form. This Section has been amended to confirm that such a conversion does not require the limited partnership to wind up its affairs under Section 17-803 of the LP Act or pay its liabilities and distribute its assets under Section 17-804 of the LP Act. In addition, the 2000 amendments to Section 17-219 make clear that the LP Act permits flexibility as to the exchange or conversion of rights or securities of, or interests in, a Delaware limited partnership that is to be converted. As amended, Section 17-219 provides that, in connection with the conversion of a Delaware limited partnership, such rights, securities, or interests “may be exchanged for or converted into cash, property, rights or securities of, or interests in, the business form into which the domestic limited partnership is being converted 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.* § 17-219.

Limitations on Distributions [§§ 17-218, 17-607, and 17-804]. Subsection (i) of Section 17-218 of the LP Act limits the distributions that may be made with respect to a series. Section 17-607 of the LP Act establishes limitations on distributions by Delaware limited partnerships, generally. Section 17-804 addresses distributions that may be made by a Delaware limited partnership upon its winding up.

Senate Bill No. 364 amended Section 17-218 to clarify the limitations on distributions with respect to a series and Sections 17-607 and 17-804 to clarify the limitations on distributions by Delaware limited partnerships. A new sentence has been added to each of such Sections to make clear that, for the applicable purposes, the term “distribution” does not include amounts constituting reasonable compensation for present or past services or reasonable payments made in the ordinary course of business pursuant to a bona fide retirement plan or other benefits program.

Series of Limited Partners, General Partners, and Partnership Interests [§ 17-218]. Section 17-218 of the LP Act concerns series of limited partners, general partners, and partnership interests. Senate Bill No. 364 effected several amendments to Section 17-218, which: confirm that the LP Act provides flexibility regarding the way in which assets associated with a series may be held (they may be held “directly or indirectly, through a nominee or otherwise,” 6 *Del. C.* § 17-218(b)); confirm that termination of a series may be approved by a

vote of partners as well as by written consent, 6 *Del. C.* § 17-218(j)(3); eliminate an inconsistency in the statute relating to the termination of a series, 6 *Del. C.* § 17-218(j); clarify existing provisions of the LP Act as to the winding up and distribution of the assets of a series, 6 *Del. C.* § 17-218(k); and, as mentioned above, clarify the limitations on distributions with respect to a series, 6 *Del. C.* § 17-218(i).

Limited Partner Action by Written Consent [§ 17-302]. The 2000 amendment to Section 17-302 of the LP Act deals with a “quorum requirement” of sorts. The amendment provides that, unless otherwise provided in the partnership agreement, limited partner action by written consent in lieu of a meeting requires the signed consent in writing of limited partners “having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all limited partners entitled to vote thereon were present and voted.” 6 *Del. C.* § 17-302(e) (emphasis added).

General Partner Action by Written Consent [§ 17-405]. Section 17-405 of the LP Act also has been amended to deal with a “quorum requirement.” The amendment provides that, unless otherwise provided in the partnership agreement, general partner action by written consent in lieu of a meeting requires the signed consent in writing of general partners “having not less than the minimum number of votes that would be necessary to authorize or take such action *at a meeting at which all general partners entitled to vote thereon were present and voted.*” 6 *Del. C.* § 17-405(d) (emphasis added).

Rights of Judgment Creditors [§ 17-703]. Senate Bill No. 364 amended Section 17-703 of the LP Act in its entirety. The statute now addresses more comprehensively the rights of a judgment creditor of a partner or a partner’s assignee with respect to the judgment debtor’s partnership interest.

Under amended Section 17-703, “[Or application by a judgment creditor of a partner or of a partner’s assignee, a court having jurisdiction may charge the partnership interest of the judgment debtor to satisfy the judgment.” 6 *Del. C.* § 17-703(a). Such a charging order “constitutes a lien on the judgment debtor’s partnership interest.” 6 *Del. C.* § 17-703(b).

Section 17-703 as amended provides that the court may appoint a receiver of the share of the distributions due or to become due to the judgment debtor in respect of the limited partnership, 6 *Del. C.* § 17-703(a), may make all other orders, directions, accounts and inquiries that the judgment debtor might have made or the circumstances of the case may require, 6 *Del. C.* § 17-703(a), and at any time may order a foreclosure of the partnership interest subject to the charging order, 6 *Del. C.* § 17-703(b). Any such receiver, and any purchaser at such a foreclosure sale, has only the rights of an assignee. 6 *Del. C.* § 17-703(a),(b).

New subsection (c) of Section 17-703 provides that, subject to the partnership agreement, a charged partnership interest may be redeemed, at any time before foreclosure, by: (1) the judgment debtor; (2) one or more of the other partners, with property other than partnership property; or (3) the limited partnership, with the consent of all of the partners whose interests are not so charged.

New subsection (d) of Section 17-703 continues to make clear that the LP Act does not deprive a partner of a right under exemption laws with respect to the partner's partnership interest.

Under new subsection (e) of Section 17-703, Section 17-703 provides the exclusive remedy by which a judgment creditor of a partner or partner's assignee may satisfy a judgment out of the judgment debtor's partnership interest.

Finally, the 2000 amendments to Section 17-703 clarify that "[n]o creditor of a partner shall have any right to obtain possession of, or otherwise exercise legal or equitable remedies with respect to, the property of the limited partnership." *6 Del. C. § 17-703(f)*.

Dissolution I§ 17-8011. Senate Bill No. 364 amended Section 17-801 of the LP Act to clarify its intended meaning concerning the ability of a Delaware limited partnership to have a perpetual existence.

Duties and Liabilities of Partners and Other Persons [§ 17-1101]. The 2000 amendments to Section 17-1101(d) of the LP Act confirm the enforceability of provisions in a partnership agreement relating not only to duties and liabilities to partners, but also to other persons party to, or otherwise bound by, the partnership agreement.