

**ANALYSIS OF THE 1999 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

Amendments to the Delaware Revised Uniform Limited Partnership Act (6 *Del. C.* § 17-101 *et seq.* (the "LP Act")), were contained in Delaware State Senate Bills Nos. 136 and 177. The amendments to the LP Act effected by Senate Bill No. 177 became effective August 1, 1999. The amendments to the LP Act effected by Senate Bill No. 136 became effective January 1, 2000. The bills continued the practice of periodically amending the LP Act to keep it current and maintain its preeminence, and amended provisions of the LP Act concerning (among other things): limited partnership powers; consent to service of process; transfer and domestication; conversion; limited partner action by written consent; withdrawal of a general partner that is a limited liability company; partners' rights to distributions upon withdrawal; dissolution; the effect of amendments to the LP Act; restoration; and limited liability limited partnerships.

Limited Partnership Powers [§ 17-106]. Senate Bill No. 177 amended Section 17-106(b) of the LP Act, which sets forth the powers and privileges of a Delaware limited partnership, to clarify the intended meaning of such Section.

Consent to Service of Process [§ 17-109]. Section 17-109 of the LP Act, which addresses service of process on general partners and liquidating trustees of Delaware limited partnerships, was also amended by Senate Bill No. 177. Section 17-109 previously provided, among other things, that the filing with the Delaware Secretary of State of a certificate of limited partnership executed, and the execution thereof, by a person which names such person as a general partner or a liquidating trustee of a Delaware limited partnership constitutes such person's consent: (1) to the irrevocable appointment of the registered agent of the Delaware limited partnership (or the Delaware Secretary of State if there is no such registered agent) as such person's agent upon whom service of process may be made; and (2) that any process served in accordance with Section 17-109 shall have the same legal force and validity as if served upon such person within the State of Delaware. 6 *Del. C.* § 17-109(a). The 1999 amendment provides further that the acceptance, after August 1, 1999, by a general partner or a liquidating trustee of election or appointment as a general partner or a liquidating trustee of a Delaware limited partnership, or the service, after August 1, 1999, in such capacity of a general partner or a liquidating trustee of a Delaware limited partnership, constitutes the same such consent.

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. 177 amended both Sections 17-215 and 17-216.

A new subsection “(i)” has been added to Section 17-215. Such new subsection provides that: (1) for all purposes of Delaware law, upon the domestication of a non- United States entity as a Delaware limited partnership, such Delaware limited partnership is deemed to be the same entity as the domesticating non-United States entity; (2) unless otherwise agreed or required under applicable non-Delaware law, the domestication of a non-United States entity as a Delaware limited partnership (a) shall not require such domesticating entity to wind up its affairs, pay its liabilities, or distribute its assets, (b) shall not constitute a dissolution of such non-United States entity, and (c) shall constitute a continuation of the existence of the domesticating entity in the form of a Delaware limited partnership; and (3) if a non-United States entity has domesticated as a Delaware limited partnership and, following such domestication, has continued its existence in the foreign jurisdiction in which it was existing immediately prior to the domestication, then, for all purposes of Delaware law, the Delaware limited partnership and such non-United States entity constitute a single entity formed and existing under the laws of the State of Delaware and the laws of such foreign jurisdiction.

The 1999 amendment to Section 17-216 confirms that, for all purposes of Delaware law, so long as a Delaware limited partnership continues as a Delaware limited partnership following the filing of a certificate of transfer and continuance with the Delaware Secretary of State, such Delaware limited partnership and the foreign entity resulting from the Delaware limited partnership’s transfer or domestication constitute a single entity formed and existing under the laws of the State of Delaware and the laws of the foreign jurisdiction.

Conversion [§§ 17-217 and 17-219]. Section 17-217 of the LP Act has been amended to include corporations among the “other entities” that may convert into Delaware limited partnerships. Such Section also has been amended to confirm that when an “other entity” has been converted into a Delaware limited partnership, the Delaware limited partnership, for all purposes of Delaware law, is deemed to be the same entity as the converting other entity.

Section 17-219 of the LP Act, which governs the conversion of a Delaware limited partnership, has been amended to include corporations among the entities into which Delaware limited partnerships may convert.

Limited Partner Action by Written Consent [§ 17-302]. The 1999 amendment to Section 17-302 of the LP Act deals with a “quorum requirement” of sorts. The amendment clarifies that, unless otherwise provided in the partnership agreement of a Delaware limited partnership (the “LP Agreement”), limited partner action by written consent 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 interests in the limited partnership entitled to vote thereon were present and voted.*” 6 Del. C. § 17-302(e) (emphasis added).

Withdrawal of a General Partner that is a Limited Liability Company [§ 17-402].

Section 17-402 of the LP Act sets forth events upon the occurrence of which a person ceases to be a general partner of a Delaware limited partnership. Senate Bill No. 177 amended Section 17-402 to clarify certain issues as to the timing of the withdrawal of a general partner that is a limited liability company. As so amended, Section 17-402 provides that a general partner that is a limited liability company ceases to be a general partner of a Delaware limited partnership upon “the dissolution and commencement of winding up of the limited liability company.” 6 *Del. C.* § 17-402(a)(11).

Partners’ Rights to Receive Distributions Upon Withdrawal [§ 17-604]. Senate Bill No. 177 also amended Section 17-604 of the LP Act, concerning distributions to partners upon withdrawal. As amended, Section 17-604 provides that, except as otherwise provided in the LP Act, upon withdrawal, a withdrawing partner is entitled to receive any distribution to which such partner is entitled under the LP agreement and, unless otherwise provided in the LP agreement, is also entitled to receive, within a reasonable time after withdrawal, the fair value (as of the date of withdrawal, based upon the partner’s right to share in distributions from the limited partnership) of such partner’s partnership interest in the Delaware limited partnership.

Dissolution [§ 17-801]. Senate Bill No. 177 amended various provisions (specifically, subsections (1), (2), and (4)) of Section 17-801 of the LP Act, which deals with dissolution.

The amendment to Section 17-801(1) of the LP Act provides that if the LP agreement does not specify a time at which, or one or more events upon the happening of which, the Delaware limited partnership is dissolved and its affairs are to be wound up, then the limited partnership has perpetual existence.

The amendment to Section 17-801(2) of the LP Act confirms that, unless otherwise provided in the LP agreement, dissolution may be approved either by written consent of partners or by a vote of partners.

The amendment to Section 17-801(4) adds flexibility that can be used in connection with continuing a Delaware limited partnership without dissolution when there are no limited partners. Section 17-801(4) as amended expressly states that the LP agreement of a Delaware limited partnership may set forth the obligation of the general partners or the personal representative of the last remaining limited partner to agree in writing to the continuation of the limited partnership’s business and to the admission (effective as of the occurrence of the event that caused the last limited partner to cease to be a limited partner) of such personal representative (or its nominee or designee) as a limited partner to the limited partnership. The amendment also provides that a Delaware limited partnership is not dissolved and is not required to be wound up if a limited partner is admitted to the limited partnership, in the manner provided for in the LP agreement, effective as of the occurrence of the event that caused the last remaining limited partner to cease to be a limited partner, within 90 days (or such other period as is provided in the LP agreement) after the occurrence of such event, pursuant to a provision of the LP agreement that specifically provides for the admission of a limited partner to the limited partnership after there is no longer a remaining limited partner.

Retroactive Effect of Amendments [§ 17-1108]. Section 17-1108 of the LP Act reserves to the State of Delaware the power to alter or repeal the LP Act, and subjects all rights of partners to such reservation. Senate Bill No. 177 added a new sentence to such Section. The new provision states that, “[u]nless expressly stated to the contrary in [the LP Act], all amendments of [the LP Act] shall apply to limited partnerships and partners whether or not existing as such at the time of the enactment of any such amendment.” 6 *Del. C.* § 17-1108.

Restoration [§ 17-1109]. Section 17-1109(h) of the LP Act has been amended so that a Delaware limited partnership that has ceased to be in good standing no longer needs to file a certificate of restoration with the Delaware Secretary of State to be restored to such status. Now, the payment of all amounts owing to the Secretary of State alone suffices to restore the Delaware limited partnership to good standing. Likewise, the requirement of filing a certificate of restoration has been eliminated for a foreign limited partnership seeking to restore its registration in Delaware.

Limited Liability Limited Partnerships [§§ 17-101 and 17-214]. Senate Bill No. 136 was a companion to Delaware State Senate Bill No. 176, which enacted the Delaware Revised Uniform Partnership Act, 6 *Del. C.* § 15-101 *et seq.* (“DRUPA”). Senate Bill No. 136 amended the LP Act, effective January 1, 2000 (the same date that DRUPA became effective), to coordinate with DRUPA provisions of the LP Act that deal with limited liability limited partnerships.