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## ANALYSIS OF 2000 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 enacted in 1999 and became effective January 1, 2000. The first amendments to the Act became effective August 1, 2000, and were contained in Delaware State Senate Bill No. 371. Among the changes are amendments to provisions of the Act concerning (among other things): the effect of the partnership agreement; application of Delaware law; admission of partners; limitations on distributions; partner action by written consent; rights of creditors of partners; dissociation of a partner; purchase of a dissociated partner's partnership interest; dissolution; conversion; and transfer and domestication. The 2000 amendments to the Act were intended to keep the Act current and are expected to maintain its preeminence.

**Effect of Partnership Agreement [§§ 15-103, 15-201, 15-203, and 15-501].** Senate Bill No. 371 amended Sections 15-103, 15-201, 15-203, and 15-501 of the Act to clarify that the "default rules" set forth in Sections 15-201 (stating that a partnership is a separate legal entity), 15-203 (dealing with partnership property), and 15-501 (addressing a partner's interest in specific partnership property) may be modified only to the extent provided in a statement of partnership existence and in a partnership agreement. Subsection (b) of Section 15-103 also was amended to confirm that a partnership agreement will govern relations among the partners and between the partners and the partnership. Further, subsection (e) (formerly subsection (d)) of Section 15-103 was amended to clarify its intended meaning; it now provides that "[a] partner or another person shall not be liable to the partnership or the other partners or another person that is a party to or is otherwise bound by a partnership agreement for the partner's or other person's good faith reliance on the provisions of the partnership agreement." 6 Del. C. § 15-103(e) (emphasis added).

**Filing of a Certificate of Cancellation [§ 15-105].** Section 15-105(d) of the Act has been amended to eliminate the requirement that a certificate of cancellation must be filed upon the conversion of a Delaware partnership.

**Governing Law [§ 15-106].** A new subsection (c) has been added to Section 15-106 of the Act to provide a conclusive means to assure application of Delaware law to a partnership agreement. Such new subsection provides that "[i]f (i) a partnership agreement provides for the application of the laws of the State of Delaware, and (ii) the partnership files with the Secretary of State a statement of partnership existence, then the partnership agreement shall be governed by and construed under the laws of the State of Delaware." 6 Del. C. § 15-106(c).

**Admission of Partners [§ 15-205].** Section 15-205 of the Act has been amended to confirm that the provisions of that Section (dealing with admission as a partner without making a contribution to or acquiring an economic interest in the partnership) apply to each person

admitted to a partnership and to all partnerships (whether formed for profit under Section 15-202(a)(i) of the Act or not for profit under Section 15-202(a)(ii) of the Act).

**Limitations on Distributions [§§ 15-309 and 15-807].** Senate Bill No. 371 amended Sections 15-309 and 15-807 to clarify the limitations on distributions by limited liability 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.

**Partner Action by Written Consent [§ 15-407].** Section 15-407 of the Act has been amended to deal with a “quorum requirement.” The amendment provides that partner action by written consent in lieu of a meeting requires the signed consent in writing of 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 partners entitled to vote thereon were present and voted.” 6 Del. C. § 15-407(d) (emphasis added).

**Rights of Judgment Creditors [§ 15-504].** The 2000 amendments to the Act included a provision that clarifies certain limits on the rights of creditors of a partner. Senate Bill No. 371 added a new subsection (f) to Section 15-504 of the Act. Such new subsection provides 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 partnership.” 6 Del. C. § 15-504(f).

**Dissociation of a Partner [§ 15-601].** Senate Bill No. 371 amended subsection (6) of Section 15-601 of the Act to clarify the bankruptcy events causing a partner’s dissociation.

**Purchase of a Dissociated Partner’s Partnership Interest [§ 15-701].** Section 15-701(b) of the Act has been amended to clarify the buyout price of a dissociated partner’s partnership interest. Such subsection now provides that such price “is an amount equal to the fair value of such partner’s economic interest as of the date of dissociation based upon such partner’s right to share in distributions from the partnership.” 6 Del. C. § 15-701(b) (emphasis added).

**Decree of Dissolution by Court of Chancery [§ 15-801].** Section 15-801 of the Act was amended in 2000 to clarify the ability of the Delaware Court of Chancery to enter a decree of dissolution of a Delaware partnership.

**Conversion [§§ 15-901 and 15-903].** Section 15-901 of the Act deals with the conversion of an “other entity” to a Delaware partnership. Section 15-903 of the Act governs the conversion of a Delaware partnership to another Delaware business form. Both Section 15-901 and Section 15-903 were amended in 2000.

Senate Bill No. 371 amended Section 15-901(f) to confirm that, for purposes of Delaware law, the properties and liabilities of an “other entity” that has converted to a Delaware partnership shall not be deemed, as a consequence of the conversion, to have been transferred to such Delaware partnership. Section 15-901(g) of the Act was amended too, to confirm that, for purposes of Delaware law, a Delaware partnership to which another entity has converted is the

same entity as such converted other entity. The 2000 amendments to Section 15-901 also included the addition of a new subsection (i). This amendment confirms the flexibility permitted by the Act as to the treatment of rights or securities of, or interests in, an other entity in connection with such other entity's conversion to a Delaware 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 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 interests in, another domestic partnership or other entity." 6 Del. C. § 15 901(i).

A new sentence has been added to Section 15-903 of the Act to confirm that, unless otherwise agreed, the conversion of a Delaware partnership to another Delaware business form does not require the partnership to wind up its affairs or pay its liabilities and distribute its assets under Subchapter VIII of the Act. Another new sentence added to Section 15-903 makes explicit the flexibility permitted in connection with the conversion of a Delaware partnership. This new provision states that, in connection with a conversion of a Delaware partnership to another business form, "rights or securities of, or interests in, the domestic partnership which is to be converted may be exchanged for or converted into cash, property, rights or securities of, or interests in, the business form into which the domestic 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. § 15-903.

**Transfer and Domestication [ §§ 15-904 and 15-905].** Sections 15-904 and 15905 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. 371 amended both such Sections.

Section 15-904 of the Act has been amended to confirm that, for purposes of Delaware law: (1) 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 partnership to which such non-United States entity has domesticated, 6 Del. C. § 15- 904(h); and (2) a domesticated Delaware partnership is the same entity as the domesticating non-United States entity, 6 Del. C. § 15-904(i). Further amendments to Section 15-904 provide that, unless otherwise agreed or as required under applicable non- Delaware law, the domesticating non-United States entity need not wind up its affairs or pay its liabilities and distribute its assets, and the domestication does not constitute a dissolution of such non-United States entity and constitutes a continuation of the existence of such domesticating entity in the form of a Delaware partnership. 6 Del. C. § 15-904(i).

Section 15-905 of the Act has been amended to confirm that: (1) unless otherwise agreed, the transfer or domestication of a partnership out of the State of Delaware does not require such partnership to wind up its affairs or pay its liabilities and distribute its assets under Subchapter VIII of the Act 6 Del. C. § 15-905(d); and (2) a Delaware partnership that continues following a transfer or domestication out of the State of Delaware, and the entity that came into being as a consequence of such transfer or domestication, constitute a single entity existing under the laws of the State of Delaware and the laws of the applicable foreign jurisdiction, 6 Del. C. § 15-905(e).