

2005 AMENDMENTS TO THE DELAWARE REVISED UNIFORM LIMITED PARTNERSHIP ACT

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Introduction

The Delaware Revised Uniform Limited Partnership Act, 6 *Del. C.* § 17-101 *et seq.* (the “Act”), has been amended in 2005, as it is periodically, for the purpose of keeping it current and maintaining its preeminence. The 2005 amendments to the Act were contained in Delaware State House Bill No. 151, and became effective August 1, 2005. *See* 75 *Del. Laws*, c. 31. Among the provisions of the Act that have been amended are those concerning: the binding effect of the partnership agreement; permitted activities of a Delaware limited partnership; transfer of a Delaware limited partnership to another jurisdiction; admission of partners; reliance on records and related protection from liability; rights of creditors of partners and assignees; revocation of dissolution; and foreign limited partnerships.

Binding effect of the partnership agreement [§ 17-101]. A new sentence has been added to Section 17-101(12) of the Act to make explicit a principle that previously was implicit. The additional language confirms that the partnership agreement is binding on each partner of a Delaware limited partnership and on each assignee of a partnership interest. This rule applies even if the partner or assignee has not executed the partnership agreement.

Permitted activities of a Delaware limited partnership [§17-106]. The amendment to Section 17-106 expands the permitted purposes of a Delaware limited partnership by removing the prohibition on a limited partnership engaging in the business of granting policies of insurance or assuming insurance risks. As amended, the Act only precludes a limited partnership from engaging in banking as defined in Section 126 of Title 8.

Transfer of a Delaware limited partnership to another jurisdiction [§ 17-216]. Under Section 17-216 of the Act, a Delaware limited partnership may transfer to or domesticate in another jurisdiction. Changes have been made to the statutory provision governing the manner in which such a transaction is to be authorized. Previously, such a transfer or domestication required the written approval of all partners unless the partnership agreement provided otherwise. This default rule was unusual, among other things, in specifically requiring that approval of the transaction had to be in writing. Section 17-216(b) of the Act has been amended so that the default approval requirements for the transfer or domestication of a Delaware limited partnership now parallel those under the Act governing a conversion of the partnership. Under Section 17-216 as amended, if the partnership agreement does not prohibit a transfer or domestication and does not specify the manner in which such a transaction is to be approved, and if it sets forth the manner for approving a merger or consolidation in which the partnership is a constituent entity, then the transfer or domestication must be authorized in the same manner, but if the partnership agreement also does not specify the manner of authorizing

such a merger or consolidation, then a transfer or domestication must be approved by all general partners and (subject as applicable to a separate vote by class or group) by limited partners who own a majority of the interest in the partnership's profits owned by limited partners.

Admission of partners [§ 17-301]. The 2005 amendments to Section 17-301 clarify the manner in which partners are admitted to a Delaware limited partnership pursuant to a merger or consolidation. Under Section 17-301(b)(3) as amended, a person admitted as a partner of a surviving or resulting limited partnership pursuant to a merger or consolidation is admitted as provided in the surviving or resulting entity's partnership agreement or in the agreement of merger or consolidation; if there is any inconsistency on this point between the agreement of merger or consolidation and the partnership agreement, the former controls. Further, Section 17-301(b)(3) now makes clear that in the case of a person being admitted as a partner of a limited partnership pursuant to a merger or consolidation in which such limited partnership is not the surviving or resulting entity, such admission is accomplished as provided in that limited partnership's partnership agreement.

Reliance on records; protection from liability [§ 17-407]. The Act has been amended to clarify the circumstances in which partners and liquidating trustees may rely on records of and other information pertaining to a limited partnership. New Section 17-407 provides that limited partners, general partners and liquidating trustees may rely on, and limited partners and liquidating trustees (and general partners of a limited liability limited partnership) are fully protected in relying in good faith upon, records of the limited partnership and information, opinions, reports, or statements presented by another constituent of the limited partnership, or by any other person as to matters reasonably believed to be within such person's professional or expert competence. A general partner of a limited partnership that is not a limited liability limited partnership is fully protected from liability to the limited partnership, the other partners and other persons bound by the partnership agreement in connection with such good faith reliance. Section 17-407 expressly permits such reliance on information, opinions, reports, or statements regarding, among other things, the value and amount of the assets, liabilities, profits or losses of the limited partnership, or any other facts pertinent to the existence and amount of assets from which distributions to partners or creditors might properly be paid.

Rights of creditors of partners and assignees [§ 17-703]. Section 17-703 of the Act, dealing with rights of creditors of partners and assignees, has been substantially amended in 2005. Among other changes, the effect of a charging order has been clarified; a judgment creditor in whose favor a charging order has been entered against a partnership interest held by its judgment debtor has only the right to receive any distribution to which the judgment debtor would have been entitled in respect of such interest. The amendments also make clear that the entry of a charging order is the exclusive remedy by which a judgment creditor may satisfy its judgment out of its judgment debtor's partnership interest, and that other remedies such as attachment or foreclosure are not available to the judgment creditor. Further, newly added Section 17-703(f) provides that the Delaware Court of Chancery has jurisdiction to hear and determine any matter relating to such a charging order.

Revocation of dissolution [§ 17-806]. Section 17-806 is another new addition to the Act. Consistent with the statute's general flexibility, this Section explicitly provides that the dissolution of a Delaware limited partnership may be revoked in certain circumstances. If a certificate of cancellation has not yet been filed, even though the limited partnership has experienced a dissolution event under Section 17-801 of the Act (other than a decree of judicial dissolution) the partnership will not be dissolved if it is continued in the manner specified in the statute (which includes the vote or consent of any person whose approval is required under the partnership agreement to revoke a dissolution pursuant to Section 17-806). A dissolution caused by a vote or written consent cannot be revoked unless each partner and each other person who approved the dissolution votes or consents in writing to continue the business of the limited partnership.

Foreign limited partnerships [§ 17-912]. New Section 17-912 of the Act identifies certain activities of a foreign limited partnership that do not constitute "doing business" in the State of Delaware. Such activities include: maintaining, defending or settling an action or proceeding; activities concerning the partnership's internal affairs; maintaining bank accounts; maintaining offices or agencies for transfers or exchanges of the partnership's own securities, or maintaining trustees or depositories with respect to those securities; selling through independent contractors; soliciting or obtaining orders that require acceptance outside Delaware before they become contracts; certain sales of machinery, plants or equipment; creating, as borrower or lender, or acquiring indebtedness; collecting debts, foreclosing mortgages or security interests, and taking specified actions regarding property so acquired; conducting an isolated transaction; doing business in interstate commerce; and doing business as an insurance company. This listing is helpful in determining when a foreign limited partnership must register under the Act.