

2005 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”), 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 Senate Bill No. 85 (as amended), and became effective August 1, 2005. *See* 75 *Del. Laws*, c. 50. Among the provisions of the Act that have been amended are those concerning: the binding effect of the partnership agreement; reliance on records and related protection from liability; rights of creditors of partners and transferees of economic interests; admission of partners to a partnership pursuant to a merger or consolidation; transfer of a Delaware partnership to another jurisdiction; limited liability partnerships; and foreign limited liability partnerships.

Binding effect of the partnership agreement [§ 15-101]. A new sentence has been added to Section 15-101(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 partnership and on each transferee of an economic interest. This rule applies even if the partner or transferee has not executed the partnership agreement.

Reliance on records; protection from liability [§ 15-409]. 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 partnership. New Section 15-409 provides that liquidating trustees, partners of a limited liability partnership, and partners of a partnership that is not a limited liability partnership may rely on, and a liquidating trustee and a partner of a limited liability partnership are fully protected in relying in good faith upon, records of the partnership and information, opinions, reports, or statements presented by another constituent of the partnership, or by any other person as to matters reasonably believed to be within such person’s professional or expert competence. A partner of a partnership that is not a limited liability partnership is fully protected from liability to the partnership, the other partners and other persons bound by the partnership agreement in connection with such good faith reliance. Section 15-409 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 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 transferees [§ 15-504]. Section 15-504 of the Act, dealing with rights of creditors of partners and transferees of economic interests in a Delaware partnership, 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 an economic interest in a Delaware partnership 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 economic 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 economic interest, and that other remedies such as attachment or foreclosure are not available to the judgment creditor. Further, newly added Section 15-504(f) provides that the Delaware Court of Chancery has jurisdiction to hear and determine any matter relating to such a charging order.

Admission of partners pursuant to a merger or consolidation [§ 15-902]. Section 15-902 of the Act governs the merger or consolidation of a Delaware partnership. The 2005 amendments to that Section clarify the manner in which partners are admitted to a Delaware partnership pursuant to a merger or consolidation. Under Section 15-902(k) as amended, a person admitted as a partner of a surviving or resulting 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 15-902(k) now makes clear that in the case of a person being admitted as a partner of a partnership pursuant to a merger or consolidation in which such partnership is not the surviving or resulting entity, such admission is accomplished as provided in that partnership's partnership agreement.

Transfer of a Delaware partnership to another jurisdiction [§ 15-905]. Under Section 15-905 of the Act, a Delaware 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 15-905(b) of the Act has been amended so that the default approval requirements for the transfer or domestication of a Delaware partnership now parallel those under the Act governing a conversion of the partnership. Under Section 15-905 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 partners.

Limited liability partnerships [§§ 15-901, 15-1001, and 15-1003]. Sections 15-901 and 15-1001 of the Act have been amended to clarify the manner in which an "other entity" converts to a limited liability partnership, the manner in which a limited liability partnership is formed, and the manner in which an existing partnership becomes a limited liability partnership. Amendments to Section 15-1003 clarify matters regarding revocation of a statement of qualification and eliminate the prior three-year limitation on the period within which status as a limited liability partnership may be reinstated after revocation of such statement.