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Sens. McDowell, Amick, Simpson, Reps. Stone, Hudson, Lavelle, Wagner, Johnson, Mitchell

DELAWARE STATE SENATE
144th GENERAL ASSEMBLY

SENATE BILL NO. **95 MAY 3 2007**

AN ACT TO AMEND TITLE 6 OF THE DELAWARE CODE RELATING TO THE CREATION, REGULATION, OPERATION AND DISSOLUTION OF DOMESTIC LIMITED PARTNERSHIPS AND THE REGISTRATION AND REGULATION OF FOREIGN LIMITED PARTNERSHIPS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Three-fifths of all members elected to each house thereof concurring therein):

1 Section 1. Amend § 17-101(5), Chapter 17, Title 6 of the Delaware Code by deleting the words “has
2 been admitted to a limited partnership as a general partner in accordance with the partnership agreement and so” and
3 substituting in lieu thereof the word “is”, by inserting the words “as a general partner” immediately after the word “named”,
4 by deleting the word “the” immediately after the word “which” and substituting in lieu thereof the word “a”, by deleting the
5 word “organized” and substituting in lieu thereof the word “formed”, and by inserting the words “and who is admitted to
6 the limited partnership as a general partner in accordance with the partnership agreement or this chapter” immediately
7 before the “.” at the end thereof.

8 Section 2. Amend § 17-101(8), Chapter 17, Title 6 of the Delaware Code by deleting the words “has
9 been” and substituting in lieu thereof the word “is” and by deleting the word “organized” and substituting in lieu thereof the
10 word “formed”.

11 Section 3. Amend § 17-101(12), Chapter 17, Title 6 of the Delaware Code by deleting the word “or”
12 immediately prior to the word “oral” in the first sentence thereof and substituting in lieu thereof a “,” and by inserting the
13 words “or implied” immediately after the word “oral”.

14 Section 4. Amend § 17-104(a)(2), Chapter 17, Title 6 of the Delaware Code by inserting the words
15 “having a business office identical with such registered office,” immediately before the words “which agent”.

16 Section 5. Amend § 17-104(d), Chapter 17, Title 6 of the Delaware Code by deleting the words “deemed
17 to be” in the fourth sentence thereof.

18 Section 6. Amend § 17-104(e)(3), Chapter 17, Title 6 of the Delaware Code by inserting the words “and
19 foreign limited partnerships” immediately before the words “for which it serves” and by inserting the words “or foreign
20 limited partnership” immediately before the words “to which the service”.

21 Section 7. Amend § 17-104(e)(4), Chapter 17, Title 6 of the Delaware Code by inserting the words "and
22 foreign limited partnerships" immediately before the words "for which it serves".

23 Section 8. Amend § 17-104(g), Chapter 17, Title 6 of the Delaware Code by inserting the words "and
24 each foreign limited partnership" immediately before the words "for which he, she, or it serves as registered agent" in the
25 third sentence thereof.

26 Section 9. Amend § 17-104(i)(4), Chapter 17, Title 6 of the Delaware Code by deleting each of the two
27 appearances of the words "deemed to be" therein.

28 Section 10. Amend § 17-201, Chapter 17, Title 6 of the Delaware Code by inserting a new subsection (d)
29 at the end thereof reading as follows:

30 "(d) A partnership agreement shall be entered into or otherwise existing either before, after or at the time
31 of the filing of a certificate of limited partnership and, whether entered into or otherwise existing before, after or at the time
32 of such filing, may be made effective as of the formation of the limited partnership or at such other time or date as provided
33 in or reflected by the partnership agreement."

34 Section 11. Amend § 17-203, Chapter 17, Title 6 of the Delaware Code by inserting the word "limited"
35 immediately after the words "winding up of the" in the first sentence thereof, by inserting the words "or upon the future
36 effective date or time of a certificate of merger or consolidation if the limited partnership is not the surviving or resulting
37 entity in a merger or consolidation," immediately before the words "or upon the filing of a certificate of transfer" in the first
38 sentence thereof, by inserting the words "or upon the future effective date or time of a certificate of transfer" immediately
39 after "or upon the filing of a certificate of transfer" in the first sentence thereof, by deleting the word "a" immediately
40 before the words "non-Delaware entity" in the first sentence thereof, by inserting the words "or upon the future effective
41 date or time of a certificate of conversion to non-Delaware entity" immediately before the "." at the end of the first sentence
42 thereof, and by inserting the following as a new paragraph at the end of such section: "The Secretary of State shall not issue
43 a certificate of good standing with respect to a limited partnership if its certificate of limited partnership is cancelled."

44 Section 12. Amend § 17-204(a)(1), Chapter 17, Title 6 of the Delaware Code by inserting the word
45 "domestic" immediately before the word "continuance".

46 Section 13. Amend § 17-206(a), Chapter 17, Title 6 of the Delaware Code by inserting the word
47 "domestic" immediately before the word "continuance" in the first sentence thereof.

48 Section 14. Amend § 17-206(a)(1), Chapter 17, Title 6 of the Delaware Code by inserting the word
49 "domestic" immediately before the word "continuance" in the first sentence thereof.

50 Section 15. Amend § 17-206(b), Chapter 17, Title 6 of the Delaware Code by deleting the word "or"

51 immediately after the words “as specified in § 17-104(d)” in the second sentence thereof and substituting in lieu thereof a
52 “,” by inserting the words “or § 17-1110(a)” immediately before the words “of this title,” in the second sentence thereof,
53 and by inserting the word "domestic" immediately before all three appearances of the word "continuance" in the sixth
54 sentence thereof.

55 Section 16. Amend § 17-206(d), Chapter 17, Title 6 of the Delaware Code by inserting the word
56 "domestic" immediately before the word "continuance".

57 Section 17. Amend § 17-207(a), Chapter 17, Title 6 of the Delaware Code by inserting the word
58 "domestic" immediately before the word "continuance".

59 Section 18. Amend § 17-211(a), Chapter 17, Title 6 of the Delaware Code by deleting the word “or”
60 immediately after the words “business trust” and substituting in lieu thereof the word “, an”, and by inserting the words “or
61 entity” immediately after the words “unincorporated business”.

62 Section 19. Amend § 17-211(c)(8), Chapter 17, Title 6 of the Delaware Code by inserting the words
63 “(including a limited liability limited partnership),” immediately after the first appearance of the words “domestic limited
64 partnership” in the first sentence thereof, by inserting the word “a” immediately before the first appearance of the word
65 “corporation” in the first sentence thereof, by deleting the word “or” immediately before the first appearance of the words
66 “limited liability company” in the first sentence thereof and substituting in lieu thereof a “,” by inserting the words “,
67 partnership (including a limited liability partnership) or statutory trust” immediately before the words “organized under the
68 laws” in the first sentence thereof, and by deleting the words “or a statutory trust organized under Chapter 38 of Title 12” in
69 the first sentence thereof.

70 Section 20. Amend § 17-211(h), Chapter 17, Title 6 of the Delaware Code by inserting the words “, and
71 the merger or consolidation shall not constitute a dissolution of such limited partnership” immediately before the “.” at the
72 end of the second sentence thereof.

73 Section 21. Amend § 17-211, Chapter 17, Title 6 of the Delaware Code by inserting a new subsection (k)
74 at the end of such Section reading as follows: “(k) A partnership agreement may provide that a domestic limited partnership
75 shall not have the power to merge or consolidate as set forth in this section.”.

76 Section 22. Amend § 17-212, Chapter 17, Title 6 of the Delaware Code by inserting the words “or
77 series” immediately after the words “any class or group” in the first sentence thereof and by inserting the words “or
78 continuance” immediately after the words “transfer to or domestication” in the first sentence thereof.

79 Section 23. Amend § 17-216(g), Chapter 17, Title 6 of the Delaware Code by deleting the word
80 “continuation” immediately after the words “domestication or” in the third sentence thereof and substituting in lieu thereof
81 the word “continuance”.

82 Section 24. Amend § 17-216, Chapter 17, Title 6 of the Delaware Code by inserting a new subsection (h)
83 at the end of such section reading as follows: “(h) A partnership agreement may provide that a domestic limited partnership
84 shall not have the power to transfer, domesticate or continue as set forth in this section.”.

85 Section 25. Amend § 17-218, Chapter 17, Title 6 of the Delaware Code by deleting the word “or”
86 immediately after the words “general partners” in the heading of the section and substituting in lieu thereof a “,” and by
87 inserting the words “or assets” immediately after the words “partnership interests” in the heading of the section.

88 Section 26. Amend § 17-218(a), Chapter 17, Title 6 of the Delaware Code by deleting the word “or”
89 immediately after the words “general partners” and substituting in lieu thereof a “,” and by deleting the word “having”
90 immediately after the words “partnership interests” and substituting in lieu thereof the words “or assets. Any such series
91 may have”.

92 Section 27. Amend § 17-218(b), Chapter 17, Title 6 of the Delaware Code by deleting the first reference
93 to the words “separate and distinct” in the first sentence thereof and substituting in lieu thereof the word “the”, by deleting
94 the word “are” immediately before the word “maintained” in the first sentence thereof, by deleting the word “and”
95 immediately after the third appearance of the word “series” in the first sentence thereof and substituting in lieu thereof the
96 words “account for”, by deleting the words “any such series are held in such separate and distinct records (directly or
97 indirectly, including through a nominee or otherwise) and accounted for in such separate and distinct records” in the first
98 sentence thereof and substituting in lieu thereof the words “such series”, and by inserting the following two sentences at the
99 end thereof: “Assets associated with a series may be held directly or indirectly, including in the name of such series, in the
100 name of the limited partnership, through a nominee or otherwise. Records maintained for a series that reasonably identify
101 its assets, including by specific listing, category, type, quantity, computational or allocational formula or procedure
102 (including a percentage or share of any asset or assets) or by any other method where the identity of such assets is
103 objectively determinable, will be deemed to account for the assets associated with such series separately from the other
104 assets of the limited partnership, or any other series thereof.”.

105 Section 28. Amend § 17-218, Chapter 17, Title 6 of the Delaware Code by redesignating subsections
106 “(c)” through “(m)” thereof as “(d)” through “(n)” and inserting a new subsection “(c)” thereof reading as follows: “(c) A
107 series established in accordance with subsection (b) of this section may carry on any lawful business, purpose or activity,

108 whether or not for profit, with the exception of the business of banking as defined in §126 of Title 8. Unless otherwise
109 provided in a partnership agreement, a series established in accordance with subsection (b) of this section shall have the
110 power and capacity to, in its own name, contract, hold title to assets (including real, personal and intangible property), grant
111 liens and security interests, and sue and be sued.”.

112 Section 29. Amend newly designated § 17-218(i), Chapter 17, Title 6 of the Delaware Code by deleting
113 the words "(i) and (k)" in the first sentence thereof and substituting in lieu thereof the words "(j) and (l)".

114 Section 30. Amend newly designated § 17-218(k)(5), Chapter 17, Title 6 of the Delaware Code by
115 deleting the word "(l)" and substituting in lieu thereof the word "(m)".

116 Section 31. Amend newly designated § 17-218(n), Chapter 17, Title 6 of the Delaware Code by deleting
117 the word "or" immediately after the first appearance of the words "general partners" in the first sentence thereof and
118 substituting in lieu thereof a ",", by inserting the words "or assets" immediately before the words "having separate rights"
119 in the first sentence thereof and by deleting the words " , unless otherwise provided in the partnership agreement, none"
120 immediately after the words "associated with such series, and" in the second sentence thereof and substituting in lieu
121 thereof the words "whether any".

122 Section 32. Amend § 17-219(h), Chapter 17, Title 6 of the Delaware Code by deleting the first sentence
123 thereof.

124 Section 33. Amend § 17-219, Chapter 17, Title 6 of the Delaware Code by inserting a new subsection (i)
125 at the end of such section reading as follows: "(i) A partnership agreement may provide that a domestic limited partnership
126 shall not have the power to convert as set forth in this section.”.

127 Section 34. Amend § 17-702(b), Chapter 17, Title 6 of the Delaware Code by inserting a new sentence
128 at the end thereof reading as follows: "A limited partnership shall not have the power to issue a certificate of partnership
129 interest in bearer form.”.

130 Section 35. Amend § 17-904(b)(2), Chapter 17, Title 6 of the Delaware Code by inserting the words
131 "having a business office identical with such registered office," immediately after the first " , " therein, by deleting the words
132 "either an individual resident of the State of Delaware whose business office is identical with the limited partnership's
133 registered office, or a domestic corporation, or a domestic limited partnership, or a domestic limited liability company, or a
134 domestic statutory trust, or a foreign corporation, or a foreign limited partnership, or a foreign limited liability company
135 authorized to do business in the State of Delaware having a business office identical with such registered office, which is
136 generally open during normal business hours to accept service of process and otherwise perform the functions of a

137 registered agent.” immediately after the words “which agent may be” and substituting in lieu thereof the words “any of:”,
138 and by inserting immediately thereafter new paragraphs a. through c. reading as follows:

- 139 “a. An individual resident in the State of Delaware,
140 b. A domestic limited liability company, a domestic corporation, a domestic partnership (whether general
141 (including a limited liability partnership) or limited (including a limited liability limited partnership)), or a domestic
142 statutory trust, or
143 c. A foreign corporation, a foreign partnership (whether general (including a limited liability partnership)
144 or limited (including a limited liability limited partnership)) (other than the foreign limited partnership itself), a foreign
145 limited liability company or a foreign statutory trust.”.

146 Section 36. Amend § 17-904(c), Chapter 17, Title 6 of the Delaware Code by deleting the words “his or
147 her” immediately after the words “copy of the certificate under” in the fourth sentence thereof and substituting in lieu
148 thereof the words “the Secretary of State’s own”.

149 Section 37. Amend § 17-904(e), Chapter 17, Title 6 of the Delaware Code by deleting the words
150 “deemed to be” immediately before the word “cancelled” in the fourth sentence thereof.

151 Section 38. Amend § 17-906, Chapter 17, Title 6 of the Delaware Code by deleting the word “and”
152 immediately after the words “as provided in § 17-104(i)(4)” in the second sentence thereof and substituting in lieu thereof a
153 “,” and by inserting the words “and § 17-1109(g)” immediately before the words “of this title” in the second sentence
154 thereof.

155 Section 39. Amend § 17-1107(a)(3), Chapter 17, Title 6 of the Delaware Code by inserting the word
156 “domestic” immediately before the word “continuance”.

157 Section 40. Amend § 17-1110(a), Chapter 17, Title 6 of the Delaware Code by deleting the words
158 “deemed to be”.

159 Section 41. This Act shall become effective August 1, 2007.

SYNOPSIS

This bill continues the practice of amending periodically the Delaware Revised Uniform Limited Partnership Act (the “Act”) to keep it current and to maintain its national preeminence. The following is a section-by-section review of the proposed amendments of the Act.

Section 1. This section amends § 17-101(5) of the Act to clarify the intended meaning of such subsection.

Section 2. This section amends § 17-101(8) of the Act to clarify the intended meaning of such subsection.

Section 3. This section amends § 17-101(12) of the Act to conform the definition of partnership agreement to the definition of partnership agreement under the Delaware Revised Uniform Partnership Act to include implied agreements.

Section 4. This section amends § 17-104(a)(2) of the Act to confirm that the business office of a limited partnership’s registered agent shall be identical to the registered office of the limited partnership in the State of Delaware.

Section 5. This section amends § 17-104(d) of the Act to make a technical change.

Section 6. This section amends § 17-104(e)(3) of the Act to confirm that such subsection also applies to a foreign limited partnership.

Section 7. This section amends § 17-104(e)(4) of the Act to confirm that such subsection also applies to a foreign limited partnership.

Section 8. This section amends § 17-104(g) of the Act to confirm that such subsection also applies to a foreign limited partnership.

Section 9. This section amends § 17-104(i)(4) of the Act to make technical changes.

Section 10. This section amends § 17-201 of the Act to add a new subsection (d) conforming to revised § 18-201(d) of the Delaware Limited Liability Company Act.

Section 11. This section amends § 17-203 of the Act to make technical changes and to confirm that a certificate of good standing shall not be issued for a limited partnership if its certificate of limited partnership is cancelled.

Sections 12, 13, 14, 15, 16, 17, and 39. Sections 12, 13, 14, 15, 16, 17, and 39 amend §§17-204, 17-206, 17-207 and 17-1107 of the Act to make technical changes.

Section 18. This section amends § 17-211(a) of the Act to confirm the flexibility that exists under § 17-211.

Section 19. This section amends § 17-211(c)(8) of the Act to provide that a certificate of merger need not contain a consent to jurisdiction where the surviving or resulting entity is a Delaware general partnership, and to simplify the wording of such subsection.

Section 20. This section amends § 17-211(h) of the Act to confirm that a merger or consolidation of a domestic limited partnership does not constitute a dissolution of such limited partnership unless otherwise agreed.

Sections 21, 24, and 33. Sections 21, 24, and 33 amend §§ 17-211, 17-216 and 17-219 of the Act by adding new subsections that confirm the ability to provide in the partnership agreement that a limited partnership does not have power to merge or consolidate under § 17-211 of the Act, transfer, domesticate or continue under § 17-216 of the Act, or convert under § 17-219 of the Act. These amendments are not intended to imply that the partnership agreement may not deny other powers to the limited partnership.

Section 22. This section amends § 17-212 of the Act to make technical changes and to confirm the flexibility that exists under § 17-212.

Section 23. This section amends § 17-216(g) of the Act to make a technical change.

Sections 25 and 26. These sections amend § 17-218 of the Act to provide that a partnership agreement may establish a series of assets.

Section 27. This section amends § 17-218(b) of the Act to clarify the requirements regarding the manner in which assets must be accounted for pursuant to such subsection and to confirm the flexibility that exists thereunder.

Section 28. This section redesignates existing subsections and adds a new subsection (c) to § 17-218 of the Act to confirm the broad purposes and powers permitted of a series established under subsection 17-218(b) of the Act.

Section 29. This section amends newly designated § 17-218(i) of the Act to make conforming changes.

Section 30. This section amends newly designated § 17-218(k)(5) of the Act to make a conforming change.

Section 31. This section amends newly designated § 17-218(n) of the Act to make conforming changes and to make technical changes.

Section 32. This section amends § 17-219(h) of the Act to make a technical change.

Section 34. This section amends § 17-702(b) of the Act to provide that a limited partnership shall not have the power to issue a certificate of partnership interest in bearer form.

Section 35. This section amends § 17-904(b)(2) of the Act to conform such section to § 17-104

regarding the types of entities that may serve as registered agents and confirm that the business office of a foreign limited partnership's registered agent shall be identical to the registered office of the foreign limited partnership in the State of Delaware.

Section 36. This section amends § 17-904(c) of the Act to use gender neutral language in referring to the Delaware Secretary of State.

Section 37. This section amends § 17-904(e) of the Act to make a technical change.

Section 38. This section amends § 17-906 of the Act to make a technical change.

Section 40. This section amends § 17-1110(a) of the Act to make a technical change.

Section 41. This section provides that the proposed amendments of the Act shall become effective August 1, 2007.

Author: Senator Adams