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HOUSE OF REPRESENTATIVES  
146th GENERAL ASSEMBLY

HOUSE BILL NO. 339

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

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend § 15-104(b), Title 6 of the Delaware Code by making insertions as shown by underlining as follows:

2 (b) No obligation of a partner to a partnership, or to a partner of a partnership, arising under a partnership  
3 agreement or a separate agreement or writing, and no note, instruction or other writing evidencing any such obligation of a  
4 partner, shall be subject to the defense of usury, and no partner shall interpose the defense of usury with respect to any such  
5 obligation in any action. If an obligation to pay interest arises under this chapter and the rate is not specified, the rate is that  
6 specified in § 2301 of this title.

7 Section 2. Amend § 15-105(d), Title 6 of the Delaware Code by making insertions as shown by underlining and  
8 deletions as shown by strike through as follows:

9 (d)(1) A person authorized by this chapter to file a statement or certificate may amend or cancel the statement or  
10 certificate by filing an amendment or cancellation that names the partnership, identifies the statement or certificate, and  
11 states the substance of the amendment or cancellation. A person authorized by this chapter to file a statement or certificate  
12 who becomes aware that such statement or certificate was false when made, or that any matter described in the statement or  
13 certificate has changed, making the statement or certificate false in any material respect, shall promptly amend the  
14 statement or certificate. Upon the filing of a statement or a certificate amending or correcting a statement or a certificate (or  
15 judicial decree of amendment) with the Secretary of State, or upon the future effective date or time of a statement or a  
16 certificate amending or correcting a statement or a certificate (or judicial decree thereof), as provided for therein, the  
17 statement or the certificate being corrected or amended shall be corrected or amended as set forth therein. Upon the filing of  
18 a statement of cancellation of a statement of partnership existence (or judicial decree thereof), or a certificate of merger or  
19 consolidation or a certificate of ownership and merger which acts as a statement of cancellation of a statement of  
20 partnership existence, or a certificate of transfer, or a certificate of conversion to a non-Delaware entity, or upon the future

21 effective date or time of a statement of cancellation of a statement of partnership existence (or a judicial decree thereof) or  
22 of a certificate of merger or consolidation or a certificate of ownership and merger which acts as a statement of cancellation  
23 of a statement of partnership existence, or a certificate of transfer, or a certificate of conversion to a non-Delaware entity, as  
24 provided for therein, or as specified in § 15-111(d), § 15-111(i)(4) or § 15-1209(a) of this title, the statement of partnership  
25 existence is canceled. Neither the filing of a statement of cancellation to accomplish the cancellation of a statement of  
26 qualification nor the revocation of a statement of qualification pursuant to § 15-1003 of this title cancels a statement of  
27 partnership existence for such partnership. A statement of partnership existence shall be canceled upon the dissolution and  
28 the completion of winding up of the partnership, or as provided in § 15-111(d), § 15-111(i)(4) or § 15-1209(a) of this title,  
29 or upon the filing of a certificate of merger or consolidation or a certificate of ownership and merger if the domestic  
30 partnership is not the surviving or resulting entity in a merger or consolidation, or upon the filing of a certificate of transfer,  
31 or upon the filing of a certificate of conversion to a non-Delaware entity. A statement of cancellation shall be filed with the  
32 Secretary of State to accomplish the cancellation of a statement of partnership existence upon the dissolution and the  
33 completion of winding up of a domestic partnership and shall set forth:

- 34 a. The name of the partnership;
- 35 b. The date of filing of its statement of partnership existence; and
- 36 c. Any other information the person filing the statement of cancellation determines.

37 (2) The Secretary of State shall not issue a certificate of good standing with respect to a domestic  
38 partnership if its statement of partnership existence is canceled.

39 (3) Upon the filing of a statement of cancellation of a statement of qualification (or judicial decree  
40 thereof), or a certificate of merger or consolidation or a certificate of ownership and merger which acts as a statement of  
41 cancellation of a statement of qualification, or a certificate of transfer, or a certificate of conversion to a non-Delaware  
42 entity, or upon the future effective date or time of a statement of cancellation of a statement of qualification (or a judicial  
43 decree thereof) or of a certificate of merger or consolidation or a certificate of ownership and merger which acts as a  
44 statement of cancellation of a statement of qualification, or a certificate of transfer, or a certificate of conversion to a non-  
45 Delaware entity, as provided for therein, or as specified in § 15-111(d) or § 15-111(i)(4) of this title, the statement of  
46 qualification is canceled. Neither the filing of a statement of cancellation to accomplish the cancellation of a statement of  
47 partnership existence nor the cancellation of a statement of partnership existence pursuant to § 15-1209(a) of this title  
48 cancels a statement of qualification for such partnership. A statement of qualification shall be canceled upon the dissolution  
49 and the completion of winding up of the limited liability partnership, or as provided in § 15-111(d) or § 15-111(i)(4) of this  
50 title, or upon the filing of a certificate of merger or consolidation or a certificate of ownership and merger if the limited

51 liability partnership is not the surviving or resulting entity in a merger or consolidation, or upon the filing of a certificate of  
52 transfer, or upon the filing of a certificate of conversion to a non-Delaware entity. A statement of cancellation shall be filed  
53 with the Secretary of State to accomplish the cancellation of a statement of qualification upon the dissolution and the  
54 completion of winding up of a limited liability partnership and shall set forth:

- 55 a. The name of the limited liability partnership;
- 56 b. The date of filing of its statement of qualification; and
- 57 c. Any other information the person filing the statement of cancellation determines.

58 (4) If a statement of cancellation of a statement of qualification is filed, either a statement of cancellation of the  
59 partnership's statement of partnership existence (if any) or an amendment to the partnership's statement of partnership  
60 existence (if any) removing the "Limited Liability Partnership", "L.L.P." or "LLP" designation from the name of the  
61 partnership shall be filed simultaneously with the filing of such statement of cancellation of the statement of qualification.

62 ~~(4)(5)~~ Upon the filing of a certificate of partnership domestication, or upon the future effective date or time of a  
63 certificate of partnership domestication, the entity filing the certificate of partnership domestication is domesticated as a  
64 partnership with the effect provided in § 15-904 of this title. Upon the filing of a certificate of conversion to partnership, or  
65 upon the future effective date or time of a certificate of conversion to partnership, the entity filing the certificate of  
66 conversion to partnership is converted to a partnership with the effect provided in § 15-901 of this title. Upon the filing of a  
67 certificate of transfer and domestic continuance, or upon the future effective date or time of a certificate of transfer and  
68 domestic continuance, as provided for therein, the partnership filing the certificate of transfer and domestic continuance  
69 shall continue to exist as a partnership of the State of Delaware with the effect provided in § 15-905 of this title.

70 Section 3. Amend § 15-108, Title 6 of the Delaware Code by making insertions as shown by underlining as  
71 follows:

72 (a) The name of a partnership: (i) may contain the name of a partner and (ii) may contain the following words:  
73 "Company," "Association," "Club," "Foundation," "Fund," "Institute," "Society," "Union," "Syndicate," "Trust" (or  
74 abbreviations of like import).

75 (b) The name of a limited liability partnership shall contain as the last words or letters of its name the words  
76 "Limited Liability Partnership," the abbreviation "L.L.P." or the designation "LLP."

77 (c) The name of a partnership to be included in the statement of partnership existence, statement of qualification or  
78 statement of foreign qualification filed by such partnership must be such as to distinguish it upon the records in the office of  
79 the Secretary of State from the name on such records of any corporation, partnership (including a limited liability  
80 partnership), limited partnership (including a limited liability limited partnership), statutory trust or limited liability

81 company organized under the laws of the State of Delaware and reserved, registered, formed or organized with the  
82 Secretary of State or qualified to do business and registered as a foreign corporation, foreign limited liability partnership,  
83 foreign limited partnership, foreign statutory trust or foreign limited liability company in the State of Delaware; provided,  
84 however, that a domestic partnership may be registered under any name which is not such as to distinguish it upon the  
85 records of the Secretary of State from the name on such records of any domestic or foreign corporation, limited partnership  
86 (including a limited liability limited partnership), statutory trust or limited liability company or foreign limited liability  
87 partnership reserved, registered, formed or organized under the laws of the State of Delaware with the written consent of  
88 the other corporation, limited partnership (including a limited liability limited partnership), statutory trust, limited liability  
89 company, or foreign limited liability partnership which written consent shall be filed with the Secretary of State; provided  
90 further, that, if on July 31, 2011, a domestic partnership is registered (with the consent of another domestic partnership)  
91 under a name which is not such as to distinguish it upon the records in the office of the Secretary of State from the name on  
92 such records of such other domestic partnership, it shall not be necessary for any such domestic partnership to amend its  
93 statement of partnership existence or statement of qualification to comply with this subsection.

94 (d) The name of a partnership shall not contain the word "bank," or any variation thereof, except for the name of a  
95 bank reporting to and under the supervision of the State Bank Commissioner of this State or a subsidiary of a bank or  
96 savings association (as those terms are defined in the Federal Deposit Insurance Act, as amended, at 12 U.S.C. § 1813), or a  
97 partnership regulated under the Bank Holding Company Act of 1956, as amended, 12 U.S.C. § 1841 et seq., or the Home  
98 Owners' Loan Act, as amended, 12 U.S.C. § 1461 et seq.; provided, however, that this section shall not be construed to  
99 prevent the use of the word "bank," or any variation thereof, in a context clearly not purporting to refer to a banking  
100 business or otherwise likely to mislead the public about the nature of the business of the partnership or to lead to a pattern  
101 and practice of abuse that might cause harm to the interests of the public or the State as determined by the Division of  
102 Corporations in the Department of State.

103 Section 4. Amend § 15-901(c)(2), Title 6 of the Delaware Code by making insertions as shown by underlining as  
104 follows:

105 (2) The name and type of entity of the other entity immediately prior to the filing of the certificate of conversion to  
106 partnership;

107 Section 5. Amend § 15-902(c)(1), Title 6 of the Delaware Code by making insertions as shown by underlining and  
108 deletions as shown by strike through as follows:

109 (1) The name, ~~and jurisdiction of formation or organization~~ and type of entity of each of the domestic partnerships  
110 and other business entities which is to merge or consolidate;

111 Section 6. Amend § 15-904(b), Title 6 of the Delaware Code by making insertions as shown by underlining and  
112 deletions as shown by strike through as follows:

113 (b) Any non-United States entity may become domesticated as a partnership (including a limited liability  
114 partnership) in the State of Delaware by complying with subsection (g) of this section and filing with the Secretary of State  
115 in accordance with § 15-105 of this title:

116 (1) A certificate of partnership domestication that has been executed in accordance with § 15-105 of this  
117 title;~~and~~

118 (2) A statement of partnership existence that complies with § 15-303 of this title and has been executed in  
119 accordance with § 15-105 of this title; ~~and~~

120 (3) In the case of a domestication as a limited liability partnership, a statement of qualification in  
121 accordance with § 15-1001(c) of this title.

122 The certificate and the statements required by this subsection (b) shall be filed simultaneously with the Secretary of State  
123 and, if such certificate and such statements are not to become effective upon their filing as permitted by § 15-105(h) of this  
124 title, then such certificate and such statements shall provide for the same effective date or time in accordance with § 15-  
125 105(h) of this title.

126 Section 7. Amend § 15-904(c), Title 6 of the Delaware Code by making insertions as shown by underlining and  
127 deletions as shown by strike through as follows:

128 (c) The certificate of partnership domestication shall state:

129 (1) The date on which and jurisdiction where the non-United States entity was first formed, incorporated,  
130 created or otherwise came into being;

131 (2) The name of the non-United States entity immediately prior to the filing of the certificate of  
132 partnership domestication;

133 (3) The name of the partnership as set forth in the statement of partnership existence filed in accordance  
134 with subsection (b) of this section;

135 (4) The future effective date or time (which shall be a date or time certain) of the domestication as a  
136 partnership if it is not to be effective upon the filing of the certificate of partnership domestication and the statement of  
137 partnership existence;

138 (5) The jurisdiction that constituted the seat, siege social, or principal place of business or central  
139 administration of the non-United States entity, or any other equivalent thereto under applicable law, immediately prior to  
140 the filing of the certificate of partnership domestication;~~and~~

141 (6) That the domestication has been approved in the manner provided for by the document, instrument,  
142 agreement or other writing, as the case may be, governing the internal affairs of the non-United States entity and the  
143 conduct of its business or by applicable non-Delaware law, as appropriate; and

144 (7) In the case of a domestication as a limited liability partnership, that the partnership agreement of the  
145 partnership states that the partnership shall be a limited liability partnership.

146 Section 8. Amend § 15-904(d), Title 6 of the Delaware Code by making insertions as shown by underlining and  
147 deletions as shown by strike through as follows:

148 (d) Upon the filing with the Secretary of State of the certificate of partnership domestication, the statement of  
149 partnership existence and the statement of ~~partnership existence qualification (if applicable)~~ or upon the future effective  
150 date or time of the certificate of partnership domestication, the statement of partnership existence and the statement of  
151 ~~partnership existence qualification (if applicable)~~, the non-United States entity shall be domesticated as a partnership  
152 (including a limited liability partnership, if applicable) in the State of Delaware and the partnership shall thereafter be  
153 subject to all of the provisions of this chapter, provided that the existence of the partnership shall be deemed to have  
154 commenced on the date the non-United States entity commenced its existence in the jurisdiction in which the non-United  
155 States entity was first formed, incorporated, created or otherwise came into being.

156 Section 9. Amend § 15-904(e), Title 6 of the Delaware Code by making insertions as shown by underlining as  
157 follows:

158 (e) The domestication of any non-United States entity as a partnership (including a limited liability partnership) in  
159 the State of Delaware shall not be deemed to affect any obligations or liabilities of the non-United States entity incurred  
160 prior to its domestication as a partnership in the State of Delaware, or the personal liability of any person therefor.

161 Section 10. Amend § 15-905(b)(7), Title 6 of the Delaware Code by making insertions as shown by underlining as  
162 follows:

163 (7) The address (which may not be that of the partnership's registered agent without the written consent of the  
164 partnership's registered agent, such consent to be filed with the certificate of transfer) to which a copy of the process  
165 referred to in paragraph (b)(6) of this section shall be mailed to it by the Secretary of State. In the event of service  
166 hereunder upon the Secretary of State, the procedures set forth in § 15-113(b) of this title shall be applicable, except that the  
167 plaintiff in any such action, suit or proceeding shall furnish the Secretary of State with the address specified in this  
168 subsection and any other address that the plaintiff may elect to furnish, together with copies of such process as required by  
169 the Secretary of State, and the Secretary of State shall notify the partnership that has transferred or domesticated or

170 continued out of the State of Delaware at all such addresses furnished by the plaintiff in accordance with the procedures set  
171 forth in § 15-113(b) of this title; and

172 Section 11. Amend § 15-1003(a)(1), Title 6 of the Delaware Code by making insertions as shown by underlining  
173 as follows:

174 (1) the name of the limited liability partnership and the state or other jurisdiction under whose laws the foreign  
175 limited liability partnership is formed and the number of partners of the partnership as of the date of the filing of the annual  
176 report or, in the case of a delinquent annual report, the number of partners as of June 1 of the year such annual report was  
177 due; and

178 Section 12. This Act shall become effective August 1, 2012.

#### SYNOPSIS

This bill continues the practice of amending periodically the Delaware Revised Uniform 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 amends § 15-104(b) of the Act to provide that obligations between or among partners arising under a partnership agreement or other writing are not subject to the defense of usury.

Section 2 amends § 15-105(d) of the Act by clarifying that the designation "Limited Liability Partnership", "L.L.P." or "LLP" must be removed from the name of a partnership that cancels its statement of qualification and remains a domestic partnership in the State of Delaware if it has a statement of partnership existence on file.

Section 3 amends § 15-108 of the Act to confirm the practice of restricting the use of the word "bank" or any variation thereof in the name of a partnership.

Section 4 amends § 15-901(c)(2) of the Act by adding a new requirement to provide the type of business entity converting to a Delaware partnership.

Section 5 amends § 15-902(c)(1) of the Act by adding a new requirement to provide the type of business entity involved in a merger or consolidation.

Sections 6, 7, 8 and 9 amend § 15-904 of the Act to clarify filing requirements in connection with a domestication as a limited liability partnership.

Section 10 amends § 15-905(b)(7) of the Act to clarify that the address provided for service of process may not be that of the partnership's registered agent without the written consent of such registered agent.

Section 11 amends § 15-1003(a)(1) of the Act to clarify the time for determining the number of partners stated in an annual report. This amendment is not intended to require any revision to annual reports filed before the effective date of this amendment.

Section 12 provides that the proposed amendments of the Act shall become effective August 1, 2012.