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DELAWARE STATE SENATE
151st GENERAL ASSEMBLY

SENATE BILL NO. 274

AN ACT TO AMEND CHAPTER 17, 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:

1 Section 1. Amend § 17-101, Title 6 of the Delaware Code by making deletions as shown by strike through and
2 insertions as shown by underline as follows:

3 § 17-101. Definitions.

4 As used in this chapter unless the context otherwise requires:

5 (14) "Partnership agreement" means any agreement, written, oral or implied, of the partners as to the affairs of
6 a limited partnership and the conduct of its business. A partner of a limited partnership or an assignee of a partnership
7 interest is bound by the partnership agreement whether or not the partner or assignee executes the partnership
8 agreement. A limited partnership (including any protected series or registered series thereof) is not required to execute
9 its partnership agreement. A limited partnership (including any protected series or registered series thereof) is bound by
10 its partnership agreement whether or not the limited partnership (or any protected series or registered series thereof)
11 executes the partnership agreement. A partnership agreement is not subject to any statute of frauds (including § 2714
12 of this title). A partnership agreement may provide rights to any person, including a person who is not a party to the
13 partnership agreement, to the extent set forth therein. A written partnership agreement or another written agreement or
14 writing:

15 a. May provide that a person shall be admitted as a limited partner of a limited partnership, or shall
16 become an assignee of a partnership interest or other rights or powers of a limited partner to the extent assigned (i)
17 if such person (or a representative authorized by such person orally, in writing or by other action such as payment
18 for a partnership interest) executes the partnership agreement or any other writing evidencing the intent of such
19 person to become a limited partner or assignee, or (ii) without such execution, if such person (or a representative
20 authorized by such person orally, in writing or by other action such as payment for a partnership interest) complies

21 with the conditions for becoming a limited partner or assignee as set forth in the partnership agreement or any
22 other writing; ~~and~~

23 b. Shall not be unenforceable by reason of its not having been signed by a person being admitted as a
24 limited partner or becoming an assignee as provided in paragraph (14)a. of this section, or by reason of its having
25 been signed by a representative as provided in this ~~title~~ title; and

26 c. May consist of 1 or more agreements, instruments or other writings and may include or incorporate one
27 or more schedules, supplements or other writings containing provisions as to the conduct of the business and
28 affairs of the limited partnership or any series thereof.

29 Section 2. Amend § 17-113, Title 6 of the Delaware Code by making deletions as shown by strike through and
30 insertions as shown by underline as follows:

31 § 17-113. Document form, signature and delivery.

32 (b) Subsection (a) of this section shall not apply to:

33 (1) A document filed with or submitted to the Secretary of State, the Register in Chancery, or a court or other
34 judicial or governmental body of this State;

35 (2) A certificate of partnership interest, except that a signature on a certificate of partnership interest may be a
36 manual, facsimile, or electronic signature; and

37 (3) An act or transaction effected pursuant to § 17-104, § 17-105, or § 17-109 of this title or subchapter IX or
38 X of this chapter.

39 The foregoing shall not create any presumption about the lawful means to document a matter addressed by this
40 subsection, or the lawful means to sign or deliver a document addressed by this subsection. A provision of the partnership
41 agreement shall not limit the application of subsection (a) of this section unless the provision expressly restricts 1 or more
42 of the means of documenting an act or transaction, or of signing or delivering a document, permitted by subsection (a) of
43 this section.

44 Section 3. Amend § 17-204, Title 6 of the Delaware Code by making deletions as shown by strike through and
45 insertions as shown by underline as follows:

46 § 17-204. Execution.

47 (d) The execution of a certificate by a person who is authorized by this chapter to execute such certificate
48 constitutes an oath or affirmation, under the penalties of perjury in the third degree, that, to the best of such person's
49 knowledge and belief, the facts stated therein ~~are true~~ shall be at the time such certificate becomes effective as provided in
50 this chapter.

51 Section 4. Amend § 17-215, Title 6 of the Delaware Code by making deletions as shown by strike through and
52 insertions as shown by underline as follows:

53 § 17-215. Domestication of non-United States entities.

54 (g) Prior to the ~~filing of time~~ a certificate of limited partnership domestication ~~with the office of the Secretary of~~
55 State becomes effective as provided in this chapter, the domestication shall be approved in the manner provided for by the
56 document, instrument, agreement or other writing, as the case may be, governing the internal affairs of the non-United
57 States entity and the conduct of its business or by applicable non-Delaware law, as appropriate, and a partnership agreement
58 shall be approved by the same authorization required to approve the domestication; provided that, in any event, such
59 approval shall include the approval of any person who, at the effective date or time of the domestication, shall be a general
60 partner of the limited partnership.

61 Section 5. Amend § 17-217, Title 6 of the Delaware Code by making deletions as shown by strike through and
62 insertions as shown by underline as follows:

63 § 17-217. Conversion of certain entities to a limited partnership.

64 (h) Prior to ~~filing the time~~ a certificate of conversion to limited partnership ~~with the office of the Secretary of State~~
65 becomes effective as provided in this chapter, the conversion shall be approved in the manner provided for by the
66 document, instrument, agreement or other writing, as the case may be, governing the internal affairs of the other entity and
67 the conduct of its business or by applicable law, as appropriate, and a partnership agreement shall be approved by the same
68 authorization required to approve the conversion; provided, that in any event, such approval shall include the approval of
69 any person who, at the effective date or time of the conversion, shall be a general partner of the limited partnership.

70 Section 6. Amend § 17-1110, Title 6 of the Delaware Code by making deletions as shown by strike through and
71 insertions as shown by underline as follows:

72 § 17-1110. Cancellation of certificate of limited partnership or certificate of registered series for failure to pay
73 annual tax.

74 (b) The certificate of registered series of a registered series shall be canceled if the annual tax due under § 17-1109
75 of this title for the registered series is not paid for a period of 3 years from the date it is due, such cancellation to be
76 effective on the third anniversary of such due date.

77 Section 7. Amend § 17-1111, Title 6 of the Delaware Code by making deletions as shown by strike through and
78 insertions as shown by underline as follows:

79 § 17-1111. Revival of domestic limited partnership.

80 (a) A domestic limited partnership whose certificate of limited partnership has been canceled pursuant to § 17-
81 104(d) ~~or § 17-104(i)(4) or § 17-1110(a)~~ of this title may be revived by filing in the office of the Secretary of State a
82 certificate of revival of limited partnership accompanied by the payment of the fee required by § 17-1107(a)(3) of this title
83 and payment of the annual tax due under § 17-1109 of this title and all penalties and interest thereon due at the time of the
84 cancellation of its certificate of limited partnership. The certificate of revival of limited partnership shall set forth:

85 (1) The name of the limited partnership at the time its certificate of limited partnership was canceled and, if
86 such name is not available at the time of revival, the name under which the limited partnership is to be revived;

87 (2) The date of filing of the original certificate of limited partnership of the limited partnership;

88 (3) The address of the limited partnership's registered office in the State of Delaware and the name and
89 address of the limited partnership's registered agent in the State of Delaware;

90 (4) A statement that the certificate of revival of limited partnership is filed by 1 or more general partners of
91 the limited partnership authorized to execute and file ~~the~~ such certificate of revival to revive the limited partnership;
92 and

93 (5) Any other matters the general partner or general partners executing the certificate of revival of limited
94 partnership determine to include therein.

95 (b) The certificate of revival of limited partnership shall be deemed to be an amendment to the certificate of
96 limited partnership of the limited partnership, and the limited partnership shall not be required to take any further action to
97 amend its certificate of limited partnership under § 17-202 of this title with respect to the matters set forth in ~~the~~ such
98 certificate of revival.

99 (c) Upon the filing of a certificate of revival of limited partnership, a limited partnership ~~and all, each~~ registered
100 series thereof ~~that have been formed and~~ whose certificate of registered series has ~~not~~ been cancelled ~~prior to~~ as result of the
101 cancellation of the certificate of limited partnership of the limited partnership pursuant to § 17-104(d), § 17-104(i)(4) or §
102 17-1110(a) of this title, and each protected series thereof that has not been terminated and wound up, shall be revived with
103 the same force and effect as if ~~its~~ the certificate of limited partnership of the limited partnership had not been canceled
104 pursuant to § 17-104(d), § 17-104(i)(4) or § 17-1110(a) of this title. Such revival shall validate all contracts, acts, matters
105 and things made, done and performed by the limited partnership, ~~its, any~~ protected series or registered series thereof, or by
106 the partners, employees and agents of the limited partnership or such series during the time when ~~its~~ the certificate of
107 limited partnership of the limited partnership was canceled pursuant to § 17-104(d), § 17-104(i)(4) or § 17-1110(a) of this
108 title, with the same force and effect and to all intents and purposes as if the certificate of limited partnership of the limited
109 partnership had remained in full force and effect. All real and personal property, and all rights and interests, which

110 belonged to the limited partnership or any protected series or registered series thereof at the time ~~its~~ the certificate of
111 limited partnership of the limited partnership was canceled pursuant to § 17-104(d), § 17-104(i)(4) or § 17-1110(a) of this
112 title, or which were acquired by the limited partnership or any protected series or registered series thereof following the
113 cancellation of ~~its~~ the certificate of limited partnership of the limited partnership pursuant to § 17-104(d), § 17-104(i)(4) or
114 § 17-1110(a) of this title, and which were not disposed of prior to the time of ~~its~~ the limited partnership's revival, shall be
115 vested in the limited partnership or the applicable protected series or registered series after ~~its~~ the revival of the limited
116 partnership as fully as they were held by the limited partnership or such series at, and after, as the case may be, the time ~~its~~
117 the certificate of limited partnership of the limited partnership was canceled pursuant to § 17-104(d), § 17-104(i)(4) or § 17-
118 1110(a) of this title. After ~~its~~ revival, the revival of the limited partnership, the limited partnership and any protected series
119 or registered series thereof and ~~its~~ the partners of the limited partnership or such series shall have the same liability for all
120 contracts, acts, matters and things made, done or performed in the ~~limited partnership's name and on its behalf~~ name of and
121 on behalf of the limited partnership or such series by its partners, employees and agents as the limited partnership, such
122 series and ~~its~~ the partners of the limited partnership or such series would have had if the limited partnership's certificate of
123 limited partnership had at all times remained in full force and effect.

124 Section 8. This Act shall become effective August 1, 2022.

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 Section 17-101(14) of the Act to confirm that any registered series or protected series of a limited partnership is bound by the partnership agreement of such limited partnership regardless of whether the series executed the partnership agreement. This amendment is not intended to imply that other references to "limited partnership" in the Act do not include protected series or registered series thereof (to the extent required by the context). This section also amends Section 17-101(14) of the Act to insert a new clause c. to confirm that a partnership agreement may include or incorporate multiple documents that may govern the business or affairs of the limited partnership or any of its series.

Section 2. This section amends Section 17-113(b) to confirm that a signature on a certificate of partnership interest may be a manual, facsimile, or electronic signature.

Section 3. This section amends Section 17-204(d) of the Act to clarify that the execution of a certificate by a person who is authorized by the Act to execute such certificate constitutes an oath or affirmation that, to the best of such person's knowledge and belief, the facts stated therein shall be true at the time such certificate becomes effective, not at the time such certificate is executed.

Section 4. This section amends Section 17-215(g) of the Act to provide that the approval of a limited partnership domestication in the manner provided for by the document, instrument, agreement or other writing, as the case may be, governing the internal affairs of the non-United States entity and the conduct of its business or by applicable non-Delaware law, as appropriate, and the approval of the partnership agreement by the same authorization required to approve the domestication, are required to occur prior to the time a certificate of limited partnership domestication becomes effective.

Section 5. This section amends Section 17-217(h) of the Act to provide that the approval of a conversion to a limited partnership in the manner provided for by the document, instrument, agreement or other writing, as the case may be,

governing the internal affairs of the other entity and the conduct of its business or by applicable law, as appropriate, and the approval of the partnership agreement by the same authorization required to approve the conversion, are required to occur prior to the time a certificate of conversion to limited partnership becomes effective.

Section 6. This section amends Section 17-1110(b) of the Act to make conforming changes.

Section 7. This section amends Section 17-1111 of the Act to (i) clarify the effect of the filing of a certificate of revival of limited partnership on any protected series of such limited partnership that are not, at the time of such filing, otherwise terminated and wound up and any registered series of such limited partnership whose certificates of registered series are not, at the time of such filing, otherwise cancelled, and (ii) make other conforming changes.

Section 8. This section provides that the proposed amendments to the Act shall become effective August 1, 2022.

Author: Senator Gay