

Delaware LLC and Partnership Law Update

June 13, 2023

Proposed Amendments to Delaware's LLC and Partnership Acts

Legislation proposing to amend the Delaware Limited Liability Company Act (LLC Act), the Delaware Revised Uniform Limited Partnership Act (LP Act) and the Delaware Revised Uniform Partnership Act (GP Act) (collectively, the LLC and Partnership Acts) has been introduced to the Delaware General Assembly. The following is a brief summary of some of the more significant proposed amendments that affect Delaware limited liability companies, Delaware limited partnerships and Delaware general partnerships, including amendments (i) providing for certificates of amendment to a certificate of division, (ii) allowing for the revocation of the termination of a protected series, (iii) allowing for the revocation of the dissolution of a registered series, and (iv) clarifying that subscriptions for interests may be irrevocable. If enacted, all of the proposed amendments will become effective on August 1, 2023.

Certificate of Amendment to a Certificate of Division

The LP Act and the LLC Act provide that when a Delaware limited partnership or a Delaware limited liability company divides into two or more Delaware limited partnerships or Delaware limited liability companies, respectively, the dividing entity must file a certificate of division containing certain information with the office of the Secretary of State. The proposed amendments permit or require the filing of a certificate of amendment to a certificate of division if the name or business address of the division contact or the business address where the plan of division is on file was false when the filing was made or such information changes. A certificate of amendment must be filed if, during the six years following the filing of the certificate of division, it is determined that such information was false at the time of the filing or the information changes. After such six-year period, the filing of such a certificate of amendment is discretionary.

Revocation of the Termination of a Protected Series

The proposed amendments add a new subsection to each of the LP Act and the LLC Act that provides for the revocation of termination of a protected series, similar to the existing provisions of the LP Act and the LLC Act allowing for the revocation of dissolution of a limited partnership or limited liability company.

Unless the revocation of termination of a protected series is prohibited in the applicable limited liability company or partnership agreement, the termination of a protected series may be revoked prior to the completion of the winding up of such protected series: (i) in the manner provided by the applicable limited liability company or partnership agreement; (ii) in the case of a termination effected by vote or consent, pursuant to such vote or consent (and any other approvals required by the limited liability company or partnership agreement to revoke such termination); (iii) in the case of a termination at the time specified in the limited liability company or partnership agreement or upon the happening of events specified in the limited liability company or partnership agreement (other

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than a vote of consent), pursuant to such vote or consent that is required under the limited liability company or partnership agreement for the amendment of the provision effecting such termination (and any other approvals required by the limited liability company or partnership agreement to revoke such termination); or (iv) for a Delaware limited partnership only, in the case of a termination effected by an event of withdrawal of a general partner associated with the protected series, pursuant to the vote or consent set forth in the proposed amendments.

Further, if a protected series is terminated by the dissolution of the limited partnership or limited liability company, the termination of a protected series will be automatically revoked upon any revocation of dissolution of the limited partnership or the limited liability company pursuant to the LP Act and the LLC Act.

The termination of a protected series may not be revoked if the partnership or limited liability company, as applicable, has dissolved and the dissolution of such entity has not been revoked.

Revocation of Dissolution of a Registered Series

The proposed amendments add a new subsection to the LP Act and the LLC Act to create a mechanism for revoking the dissolution of a registered series, similar to the existing provisions of the LP Act and the LLC Act allowing for the revocation of dissolution of a limited partnership or limited liability company.

Unless the revocation of dissolution of a registered series is prohibited in the applicable limited liability company or partnership agreement, the dissolution of a registered series may be revoked prior to the filing of a certificate of cancellation of the certificate of registered series of such registered series: (i) in the manner provided by the applicable limited liability company or partnership agreement; (ii) in the case of a dissolution effected by vote or consent, pursuant to such vote or consent (and any other approvals required by the limited liability company or partnership agreement to revoke such dissolution); (iii) in the case of a dissolution at the time specified in the limited liability company or partnership agreement or upon the happening of events specified in the limited liability company or partnership agreement (other than a vote of consent), pursuant to such vote or consent that is required under the limited liability company or partnership agreement for the amendment of the provision effecting such dissolution (and any other approvals required by the limited liability company or partnership agreement to revoke such dissolution); or (iv) for a Delaware limited partnership only, in the case of a dissolution effected by an event of withdrawal of a general partner associated with the registered series, pursuant to the vote or consent set forth in the proposed amendments.

Additionally, if a registered series is dissolved by the dissolution of the limited partnership or limited liability company, respectively, unless a certificate of cancellation of the certificate of registered series has been filed, the dissolution of a registered series will be automatically revoked upon any revocation of dissolution of the limited partnership or the limited liability company pursuant to the LP Act and the LLC Act.

The dissolution of a registered series may not be revoked if the partnership or limited liability company has dissolved and the dissolution of such entity has not been revoked.

Irrevocable Subscription Agreements

The proposed amendments add a new section to each of the LLC and Partnership Acts that allows a subscription for a limited liability company or partnership interest, whether submitted in writing, by an electronic transmission, or by other means permitted by applicable law, to be irrevocable if such subscription clearly states that it is irrevocable.

The proposed amendments reflect Delaware's continuing commitment to maintaining statutes governing Delaware LLCs, LPs and GPs that effectively serve the business needs of the national and international business communities. The proposed amendments to the LLC Act, the LP Act and the GP Act are contained in Senate Bill Nos. 113, 112 and 115, respectively.

If you have any questions about this Delaware LLC & partnership law update or other legal issues, please contact a Richards, Layton & Finger attorney.

Related Files

- [Read Senate Bill No. 113](#) (LLC Act Amendments)
- [Read Senate Bill No. 112](#) (LP Act Amendments)
- [Read Senate Bill No. 115](#) (GP Act Amendments)