

## **Delaware LLC and Partnership Law Update**

May 7, 2025

### **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 amendments that affect Delaware limited liability companies (Delaware LLCs), Delaware limited partnerships (Delaware LPs) and Delaware general partnerships (Delaware GPs), including amendments relating to (i) broadening the safe harbor procedures for the ratification of void and voidable acts and transactions, (ii) nullifying certificates or statements filed with the Delaware Secretary of State, (iii) liquidating trustees of Delaware LPs and registered series of Delaware LPs, (iv) the deemed consent to service of process by general partners and liquidating trustees of Delaware LPs, (v) required filings in connection with consolidations, (vi) virtual offices of Delaware registered agents, and (vii) foreign limited partnerships and limited liability partnerships. If enacted, the amendments will become effective on August 1, 2025.

#### **Ratification of Void or Voidable Acts and Transactions**

Effective August 1, 2021, the LLC and Partnership Acts were amended to provide a safe harbor procedure for (i) the ratification of acts or transactions taken by a Delaware LLC, Delaware LP or Delaware GP that are void or voidable when taken, and (ii) waiving failures to comply with any requirements under the limited liability company agreement or the partnership agreement, as applicable, of a Delaware LLC, Delaware LP or Delaware GP that make such acts or transactions void or voidable. These amendments were enacted to provide a rule different from that applied in each of *CompoSecure, L.L.C. v. Cardux, LLC*, 206 A.3d 807 (Del. 2018), and *Absalom Trust v. Saint Gervais LLC*, 2019 WL 2655787 (Del. Ch. June 27, 2019), in which the relevant Delaware court applied a rule that void acts or transactions generally may not be ratified.

As currently in effect, such safe harbor procedure allows the ratification of acts or transactions that are void or voidable when taken (or the waiver of the failure to comply with any requirements of the limited liability company agreement or the partnership agreement, as applicable, making such act or transaction void or voidable) by the persons whose approval would otherwise be required under such agreement at the time of such ratification or waiver (i) for such act or transaction to be validly taken or (ii) to amend such agreement in a manner to permit such act or transaction to be validly taken.

The proposed amendments are intended to expand such safe harbor procedure to (i) permit the ratification and waiver of acts and transactions taken by members, managers, partners or other persons, in addition to acts or transactions taken by a Delaware LLC, Delaware LP or Delaware GP



itself, and (ii) permit such ratification or waiver to be express or implied. The proposed amendments are intended to provide a rule different from that set forth in *Holifield v. XRI Inv. Holdings, LLC*, 304 A.3d 896 (Del. 2023), in which the Delaware Supreme Court determined that the existing formulation of such safe harbor procedure did not apply to the acts of members of a Delaware LLC in the context of a member transfer. The proposed amendments are also intended to address the court's assertion in *XRI's* Court of Chancery case later remanded by the Delaware Supreme Court case cited above, *XRI Inv. Holdings LLC v. Holifield*, 283 A.3d 581 (Del. Ch. 2022), *aff'd in part, rev'd in part and remanded*, 304 A.3d 896 (Del. 2023), that the existing formulation of such safe harbor procedure did not permit ratification or waiver by equitable means, such as waiver by conduct. The proposed amendments permit any ratification to be express or implied, including by the statements, action, inaction or acquiescence of or by members, managers, partners or other persons.

### **Nullification of Filed Certificates and Statements**

The LLC and Partnership Acts currently provide that a certificate or statement of correction may be filed correcting a previously filed certificate or statement that is an inaccurate record of the action referred to therein or was defectively or erroneously executed. The proposed amendments are intended to confirm and clarify that, in addition to correcting a previously filed certificate or statement, a certificate or statement of correction may be filed with the Delaware Secretary of State to also nullify any previously filed certificate or statement by specifying the inaccuracy or defect contained in such filed certificate or statement and providing that such filed certificate or statement is nullified.

### **Liquidating Trustees of Delaware LPs and Registered Series of Delaware LPs**

The proposed amendments to the LP Act address certain additional requirements where, following the dissolution of a Delaware LP or a registered series of a Delaware LP, such Delaware LP's or registered series' winding-up process is conducted by someone other than a general partner. In this scenario, the person or persons conducting the winding up of the Delaware LP or registered series would not be shown on a Delaware LP's certificate of limited partnership or a registered series' certificate of registered series, as applicable, that is on file with the Delaware Secretary of State. As a result, the proposed amendments to the LP Act require that any time a person who is not shown as a general partner of a Delaware LP or registered series in its certificate of limited partnership or certificate of registered series, as applicable, is conducting the winding up of such Delaware LP or registered series, the certificate of limited partnership or certificate of registered series, as applicable, must be amended to (i) add the name and the business, residence or mailing address of each liquidating trustee if the winding up is being conducted by one or more liquidating trustees, or (ii) if the limited partners of the Delaware LP or the limited partners associated with the registered series are the liquidating trustees, state the fact that the winding up is being conducted by the limited partners of such Delaware LP or the limited partners associated with such registered series, as applicable. The proposed amendments do not require that the names or addresses of the limited partners that are the liquidating trustees be listed in the certificate of limited partnership or certificate of registered series. The proposed amendments also expressly provide that the liquidating trustees will not be subject to liability as a general partner by reason of the amendment to the certificate of limited partnership or registered series.

In addition, the proposed amendments provide that (i) if one or more liquidating trustees are conducting the winding up of a Delaware LP or a registered series of a Delaware LP, all such liquidating trustees must sign any certificates of such Delaware LP or such registered series, as applicable, to be filed with the Delaware Secretary of State under the LP Act, and (ii) if the limited partners of a Delaware LP or the limited partners associated with a registered series of a Delaware LP are the liquidating trustees winding up the Delaware LP's or registered series' affairs, the limited partners who own more than 50% of the then current percentage or other interests in the profits of such Delaware LP or registered series, as applicable, must sign any certificates of such Delaware LP or registered series to be filed with the Delaware Secretary of State under the LP Act.

### **Consent by General Partners and Liquidating Trustees of Delaware LPs to Service of Process**

The proposed amendments to the LP Act streamline how general partners and liquidating trustees of Delaware LPs are deemed to consent to service of process in all civil actions or proceedings brought in the State of Delaware involving or relating to the business of a Delaware LP or a violation by a general partner or a liquidating trustee of a duty to a Delaware LP, or any partner of a Delaware LP, whether or not the general partner or liquidating trustee is a general partner or a liquidating trustee at the time a suit is commenced. The proposed amendments provide that a general partner or liquidating trustee serving in such role (i) constitutes consent to the appointment of the Delaware LP's registered agent (or, if there is none, the Delaware Secretary of State) as such person's agent for service of process, and (ii) signifies the consent of such general partner or liquidating trustee that any process when so served shall be of the same legal force and validity as if served upon such general partner or liquidating trustee within the State of Delaware.

### **Consolidation Filings**

The proposed amendments to the LLC and Partnership Acts require that, in a transaction where one or more entities are consolidated to form a new resulting entity, the certificate of consolidation that is filed with the Delaware Secretary of State for such resulting entity must attach a certificate of formation, certificate of limited partnership or statement of partnership existence, as applicable, for such resulting entity.

### **Delaware Registered Agent Virtual Office**

The proposed amendments to the LLC and Partnership Acts clarify that registered agents of Delaware LLCs, Delaware LPs and Delaware GPs (i) may not perform their duties as a registered agent solely through the use of a virtual office, the retention by the registered agent of a mail forwarding service or both, and (ii) are required to have a physical office in the State of Delaware. The proposed amendments define "virtual office" as the performance of duties or functions solely through the internet or solely through other means of remote communication.

### **Foreign LPs and LLPs**

Under the LP Act and the GP Act, foreign limited partnerships and foreign limited liability partnerships are required to register with the Delaware Secretary of State before doing business in the State of Delaware.

The proposed amendments to the LP Act provide that (i) an application for registration as a foreign limited partnership, (ii) a certificate correcting an application for registration as a foreign limited partnership, and (iii) a certificate of cancellation of registration as a foreign limited partnership filed with the Delaware Secretary of State, may each be executed by any person or entity authorized to sign such documents on behalf of such foreign limited partnership and not only a general partner of such foreign limited partnership, as is required under the current provisions of the LP Act.

The proposed amendments to the GP Act provide that in connection with registering to do business in the State of Delaware, a statement of foreign qualification filed with the Delaware Secretary of State by a foreign limited liability partnership must contain the following additional information: (i) the state, territory, possession or other jurisdiction or country where such entity was formed, (ii) the date of its formation, and (iii) a statement from a partner that, as of the date of filing, such foreign limited liability partnership validly exists as a limited liability partnership under the laws of the jurisdiction of its formation.

The 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 amendments to the LLC Act, the LP Act and the GP Act are contained in Senate Bill Nos. 98, 97 and 96, 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. 98](#) (LLC Act Amendments)
- [Read Senate Bill No. 97](#) (LP Act Amendments)
- [Read Senate Bill No. 96](#) (GP Act Amendments)