

CHAPTER 271
FORMERLY
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:

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

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

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

(d)(1) A person authorized by this chapter to file a statement or certificate may amend or cancel the statement or certificate by filing an amendment or cancellation that names the partnership, identifies the statement or certificate, and states the substance of the amendment or cancellation. A person authorized by this chapter to file a statement or certificate who becomes aware that such statement or certificate was false when made, or that any matter described in the statement or certificate has changed, making the statement or certificate false in any material respect, shall promptly amend the statement or certificate. Upon the filing of a statement or a certificate amending or correcting a statement or a certificate (or judicial decree of amendment) with the Secretary of State, or upon the future effective date or time of a statement or a certificate amending or correcting a statement or a certificate (or judicial decree thereof), as provided for therein, the statement or the certificate being corrected or amended shall be corrected or amended as set forth therein. Upon the filing of a statement of cancellation of a statement of partnership existence (or judicial decree thereof), or a certificate of merger or consolidation or a certificate of ownership and merger which acts as a statement of cancellation of a statement of partnership existence, or a certificate of transfer, or a certificate of conversion to a non-Delaware entity, or upon the future effective date or time of a statement of cancellation of a statement of partnership existence (or a judicial decree thereof) or of a certificate of merger or consolidation or a certificate of ownership and merger which acts as a statement of cancellation of a statement of partnership existence, or a certificate of transfer, or a certificate of conversion to a non-Delaware entity, as 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 existence is canceled. Neither the filing of a statement of cancellation to accomplish the cancellation of a statement of qualification nor the revocation of a statement of qualification pursuant to § 15-1003 of this title cancels a statement of partnership existence for such partnership. A statement of partnership existence shall be canceled upon the dissolution and 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, or upon the filing of a certificate of merger or consolidation or a certificate of ownership and merger if the domestic partnership is not the surviving or resulting entity in a merger or consolidation, or upon the filing of a certificate of transfer, or upon the filing of a certificate of conversion to a non-Delaware entity. A statement of cancellation shall be filed with the Secretary of State to accomplish the cancellation of a statement of partnership existence upon the dissolution and the completion of winding up of a domestic partnership and shall set forth:

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

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

(3) Upon the filing of a statement of cancellation of a statement of qualification (or judicial decree thereof), or a certificate of merger or consolidation or a certificate of ownership and merger which acts as a statement of cancellation of a statement of qualification, or a certificate of transfer, or a certificate of conversion to a non-Delaware entity, or upon the future effective date or time of a statement of cancellation of a statement of qualification (or a judicial decree thereof) or of a certificate of merger or consolidation or a certificate of ownership and merger which acts as a statement of cancellation of a statement of qualification, or a certificate of transfer, or a certificate of conversion to a non-Delaware entity, as provided for therein, or as specified in § 15-111(d) or § 15-111(i)(4) of this title, the statement of qualification is canceled. Neither the filing of a statement of cancellation to accomplish the cancellation of a statement of partnership existence nor the cancellation of a statement of partnership existence pursuant to § 15-1209(a) of this title cancels a statement of qualification for such partnership. A statement of qualification shall be canceled upon the dissolution 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 title, or upon the filing of a certificate of merger or consolidation or a certificate of ownership and merger if the limited liability partnership is not the surviving or resulting entity in a merger or consolidation, or upon the filing of a certificate of transfer, or upon the filing of a certificate of conversion to a non-Delaware entity. A statement of cancellation shall be filed with the Secretary of State to accomplish the cancellation of a statement of qualification upon the dissolution and the completion of winding up of a limited liability partnership and shall set forth:

- a. The name of the limited liability partnership;

b. The date of filing of its statement of qualification; and

c. Any other information the person filing the statement of cancellation determines.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) The certificate of partnership domestication shall state:

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

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

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

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

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

(6) That the domestication has been approved 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~~

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

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

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

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

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

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

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

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

(1) the name of the limited liability partnership and the state or other jurisdiction under whose laws the foreign limited liability partnership is formed and the number of partners of the partnership as of the date of the filing of the annual 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 due; and

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

Approved June 25, 2012