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Spiegelman

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

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

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

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

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

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

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

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

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

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

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

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

§ 17-204. Execution.

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

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

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

(g) Prior to the ~~filing of time~~ a certificate of limited partnership domestication ~~with the office of the Secretary of State~~ becomes effective as provided in this chapter, the domestication shall be 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 a partnership agreement shall be approved by the same authorization required to approve the domestication; provided that, in any event, such approval shall include the approval of any person who, at the effective date or time of the domestication, shall be a general partner of the limited partnership.

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

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

(h) Prior to ~~filing the time~~ a certificate of conversion to limited partnership ~~with the office of the Secretary of State~~ becomes effective as provided in this chapter, the conversion shall be 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 other entity and the conduct of its business or by applicable law, as appropriate, and a partnership agreement shall be approved by the same authorization required to approve the conversion; provided, that in any event, such approval shall include the approval of any person who, at the effective date or time of the conversion, shall be a general partner of the limited partnership.

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

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

(b) The certificate of registered series of a registered series shall be canceled if the annual tax due under § 17-1109 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 effective on the third anniversary of such due date.

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

§ 17-1111. Revival of domestic limited partnership.

(a) A domestic limited partnership whose certificate of limited partnership has been canceled pursuant to § 17-104(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 certificate of revival of limited partnership accompanied by the payment of the fee required by § 17-1107(a)(3) of this title 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 cancellation of its certificate of limited partnership. The certificate of revival of limited partnership shall set forth:

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

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

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

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

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

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

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

belonged to the limited partnership or any protected series or registered series thereof at the time ~~its~~ the certificate of limited partnership of the limited partnership was canceled pursuant to § 17-104(d), § 17-104(i)(4) or § 17-1110(a) of this title, or which were acquired by the limited partnership or any protected series or registered series thereof following the cancellation of ~~its~~ the certificate of limited partnership of the limited partnership pursuant to § 17-104(d), § 17-104(i)(4) or § 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 vested in the limited partnership or the applicable protected series or registered series after ~~its~~ the revival of the limited 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~~ the certificate of limited partnership of the limited partnership was canceled pursuant to § 17-104(d), § 17-104(i)(4) or § 17-1110(a) of this title. After ~~its~~ revival, the revival of the limited partnership, the limited partnership and any protected series or registered series thereof and ~~its~~ the partners of the limited partnership or such series shall have the same liability for all contracts, acts, matters and things made, done or performed in the ~~limited partnership's name and on its behalf~~ name of and on behalf of the limited partnership or such series by its partners, employees and agents as the limited partnership, such series and ~~its~~ the partners of the limited partnership or such series would have had if the limited partnership's certificate of limited partnership had at all times remained in full force and effect.

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