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HOUSE OF REPRESENTATIVES
152nd GENERAL ASSEMBLY

HOUSE BILL NO. 337

AN ACT TO AMEND TITLE 6 OF THE DELAWARE CODE RELATING TO THE DELAWARE REVISED
UNIFORM LIMITED PARTNERSHIP ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend § 17-204, Title 6 of the Delaware Code by making deletions as shown by strike through and
2 insertions as shown by underline as follows:

3 § 17-204. Execution.

4 (a) Each certificate required by this chapter to be filed in the Office of the Secretary of State shall be executed in
5 the following manner:

6 (4) If a domestic limited partnership is filing a certificate of merger or consolidation or a certificate of
7 ownership and merger, the certificate of merger or consolidation or certificate of ownership and merger must be signed
8 by at least 1 general partner of the domestic limited ~~partnership, or partnership and, if the certificate of merger or~~
9 certificate of ownership and merger amends the certificate of limited partnership of the surviving limited partnership to
10 reflect the admission of 1 or more new general partners of the surviving domestic limited partnership, each new general
11 partner, or, if the certificate of merger or consolidation is being filed by another an other business entity entity, as
12 “other business entity” is (as defined in § 17-211(a) of this title), title, the certificate of merger or consolidation,
13 consolidation must be signed by a person authorized by ~~such~~ the other business entity;

14 (11) A certificate of merger or consolidation of registered series must be signed by all general partners
15 associated with the surviving or resulting registered ~~series; series and, if the certificate of merger amends the certificate~~
16 of registered series of the surviving registered series to reflect the association of one or more new general partners with
17 the surviving registered series, each new general partner;

18 Section 2. Amend § 17-211, Title 6 of the Delaware Code by making deletions as shown by strike through and
19 insertions as shown by underline as follows:

20 § 17-211. Merger and consolidation.

(c) Except in the case of a merger under subsection (I) of this section, if a domestic limited partnership is merging or consolidating under this section, the domestic limited partnership or other business entity surviving or resulting in or from the merger or consolidation shall file a certificate of merger or consolidation executed by at least 1 general partner on behalf of the domestic limited partnership when it is the surviving or resulting entity in the office of the Secretary of State. The certificate of merger or consolidation shall state:

(4) In the case of a merger in which a domestic limited partnership is the surviving entity, such amendments, if any, to the certificate of limited partnership of the surviving domestic limited partnership (and in the case of a surviving domestic limited partnership that is a limited liability limited partnership, to the statement of qualification of such surviving domestic limited partnership filed under § 15-1001 of this title) ~~to change its name, registered office or registered agent~~ as are desired to be effected by the ~~merger~~; merger (which amendments may amend and restate the certificate of limited partnership of the surviving domestic limited partnership in its entirety):

(f) A certificate of merger or consolidation or a certificate of ownership and merger shall act as a certificate of cancellation for a domestic limited partnership which is not the surviving or resulting entity in the merger or consolidation. A certificate of merger or a certificate of ownership and merger that sets forth any amendment in accordance with paragraph (c)(4) or subsection (I) of this section shall be deemed to be an amendment to the certificate of limited partnership (and if applicable to the statement of qualification) 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 or § 17-210 of this title (or if applicable its statement of qualification under § 15-105 of this title) with respect to such amendments set forth in the certificate of ~~merger~~; merger or certificate of ownership and merger. Whenever this section requires the filing of a certificate of merger or consolidation, such requirement shall be deemed satisfied by the filing of an agreement of merger or consolidation containing the information required by this section to be set forth in the certificate of merger or consolidation.

(I) In any case in which (i) at least 90% of the outstanding shares of each class of the stock of a corporation or corporations (other than a corporation which has in its certificate of incorporation the provision required by § 251(g)(7)(A) and (B) of Title 8), of which class there are outstanding shares that, absent § 267(a) of Title 8, would be entitled to vote on such merger, is owned by a domestic limited partnership, (ii) 1 or more of such corporations is a corporation of the State of Delaware, and (iii) any corporation that is not a corporation of the State of Delaware is a corporation of any other state or the District of Columbia or another jurisdiction, the laws of which do not forbid such merger, the domestic limited partnership having such stock ownership may either merge the corporation or corporations into itself and assume all of its or their obligations, or merge itself, or itself and 1 or more of such corporations, into 1 of the other corporations, pursuant to a plan of merger. If a domestic limited partnership is causing a merger under this subsection, the domestic limited

partnership shall file a certificate of ownership and merger executed by at least 1 general partner on behalf of the domestic limited partnership in the office of the Secretary of State. The certificate of ownership and merger shall certify that such merger was authorized in accordance with the domestic limited partnership's partnership agreement and this chapter, and if the domestic limited partnership shall not own all the outstanding stock of all the corporations that are parties to the merger, shall state the terms and conditions of the merger, including the securities, cash, property, or rights to be issued, paid, delivered or granted by the surviving domestic limited partnership or corporation upon surrender of each share of the corporation or corporations not owned by the domestic limited partnership, or the cancellation of some or all of such shares. The terms and conditions of the merger may not result in a holder of stock in a corporation becoming a general partner in a surviving domestic limited partnership (other than a limited liability limited partnership). In the case of a merger under this subsection in which a domestic limited partnership is the surviving entity, the certificate of ownership and merger may also state such amendments, if any, to the certificate of limited partnership of the surviving domestic limited partnership (and in the case of a surviving domestic limited partnership that is a limited liability limited partnership, to the statement of qualification of such surviving domestic limited partnership filed under § 15-1001 of this title) as are desired to be effected by the merger (which amendments may amend and restate the certificate of limited partnership of the surviving domestic limited partnership in its entirety). If a corporation surviving a merger under this subsection is not a corporation organized under the laws of the State of Delaware, then the terms and conditions of the merger shall obligate such corporation to agree that it may be served with process in the State of Delaware in any proceeding for enforcement of any obligation of the domestic limited partnership or any obligation of any constituent corporation of the State of Delaware, as well as for enforcement of any obligation of the surviving corporation, including any suit or other proceeding to enforce the right of any stockholders as determined in appraisal proceedings pursuant to § 262 of Title 8, and to irrevocably appoint the Secretary of State as its agent to accept service of process in any such suit or other proceedings, and to specify the address to which a copy of such process shall be mailed by the Secretary of State. Process may be served upon the Secretary of State under this subsection by means of electronic transmission but only as prescribed by the Secretary of State. The Secretary of State is authorized to issue such rules and regulations with respect to such service as the Secretary of State deems necessary or appropriate. In the event of such service upon the Secretary of State in accordance with this subsection, the Secretary of State shall forthwith notify such surviving corporation thereof by letter, directed to such surviving corporation at its address so specified, unless such surviving corporation shall have designated in writing to the Secretary of State a different address for such purpose, in which case it shall be mailed to the last address so designated. Such letter shall be sent by a mail or courier service that includes a record of mailing or deposit with the courier and a record of delivery evidenced by the signature of the recipient. Such letter shall enclose a copy of the process and any other papers served on

the Secretary of State pursuant to this subsection. It shall be the duty of the plaintiff in the event of such service to serve process and any other papers in duplicate, to notify the Secretary of State that service is being effected pursuant to this subsection and to pay the Secretary of State the sum of \$50 for the use of the State of Delaware, which sum shall be taxed as part of the costs in the proceeding, if the plaintiff shall prevail therein. The Secretary of State shall maintain an alphabetical record of any such service setting forth the name of the plaintiff and the defendant, the title, docket number and nature of the proceeding in which process has been served, the fact that service has been effected pursuant to this subsection, the return date thereof, and the day and hour service was made. The Secretary of State shall not be required to retain such information longer than 5 years from receipt of the service of process.

Section 3. Amend § 17-218, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 17-218. Series of limited partners, general partners, partnership interests or assets.

(d) If a partnership agreement provides the manner in which a termination of a protected series may be revoked, it may be revoked in that manner and, unless the limited partnership has dissolved and such dissolution has not been revoked or the partnership agreement prohibits revocation of termination of a protected series, then notwithstanding the occurrence of an event set forth in paragraph (b)(10)a., b., c., or d. of this section, the protected series shall not be terminated and its affairs shall not be wound up if, prior to the completion of the winding up of the protected series, the business of the protected series is continued, effective as of the occurrence of such event:

(1) In the case of termination effected by the vote or consent of the partners associated with the protected series ~~or (or other persons, persons whose approval is required for such termination pursuant to the partnership agreement),~~ pursuant to such vote or consent (and the approval of any partners associated with the protected series or other persons whose approval is required under the partnership agreement to revoke a termination contemplated by this paragraph);

(2) In the case of termination under paragraph (b)(10)a. or b. of this section (other than a termination effected by the vote or consent of the partners associated with the protected series ~~or (or other persons whose approval is required for such termination pursuant to the partnership agreement)~~ or an event of withdrawal of a general partner associated with the protected series), pursuant to such vote or consent that, pursuant to the terms of the partnership agreement, is required to amend the provision of the partnership agreement effecting such termination (and the approval of any partners associated with the protected series or other persons whose approval is required under the partnership agreement to revoke a termination contemplated by this paragraph); and

Section 4. Amend § 17-221, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 17-221. Registered series of limited partners, general partners, partnership interests or assets.

(f) If a partnership agreement provides the manner in which a dissolution of a registered series may be revoked, it may be revoked in that manner and, unless the limited partnership has dissolved and such dissolution has not been revoked or the partnership agreement prohibits revocation of dissolution of a registered series, then notwithstanding the occurrence of an event set forth in paragraph (c)(10)a., b., c., or d. of this section, the registered series shall not be dissolved and its affairs shall not be wound up if, prior to the filing of a certificate of cancellation of the certificate of registered series in the office of the Secretary of State, the business of the registered series is continued, effective as of the occurrence of such event:

(1) In the case of dissolution effected by the vote or consent of the partners associated with the registered series ~~or (or other persons,~~ persons whose approval is required for such dissolution pursuant to the partnership agreement), pursuant to such vote or consent (and the approval of any partners associated with the registered series or other persons whose approval is required under the partnership agreement to revoke a dissolution contemplated by this paragraph);

(2) In the case of dissolution under paragraph (c)(10)a. or b. of this section (other than a dissolution effected by the vote or consent of the partners associated with the registered series ~~or (or other persons~~ whose approval is required for such dissolution pursuant to the partnership agreement) or an event of withdrawal of a general partner associated with the registered series), pursuant to such vote or consent that, pursuant to the terms of the partnership agreement, is required to amend the provision of the partnership agreement effecting such dissolution (and the approval of any partners associated with the registered series or other persons whose approval is required under the partnership agreement to revoke a dissolution contemplated by this paragraph); and

Section 5. Amend § 17-224, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 17-224. Merger and consolidation of registered series.

(b) If a registered series is merging or consolidating under this section, the registered series surviving or resulting in or from the merger or consolidation shall file in the office of the Secretary of State a certificate of merger or consolidation of registered series executed in accordance with § 17-204 of this title. The certificate of merger or consolidation of registered series shall state:

(4) Such ~~amendment, amendments~~, if any, to the certificate of registered series of the surviving registered series ~~to change the name of the surviving registered series, as is as are~~ desired to be effected by the ~~merger, merger~~ (which amendments may amend and restate the certificate of registered series of the surviving registered series in its entirety);

Section 6. Amend § 17-806, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 17-806. Revocation of dissolution.

If a partnership agreement provides the manner in which a dissolution may be revoked, it may be revoked in that manner and, unless a partnership agreement prohibits revocation of dissolution, then notwithstanding the occurrence of an event set forth in § 17-801(1), (2), (3), (4) or (5) of this title, the limited partnership shall not be dissolved and its affairs shall not be wound up if, prior to the filing of a certificate of cancellation in the office of the Secretary of State, the business of the limited partnership is continued, effective as of the occurrence of such event:

(1) In the case of dissolution effected by the vote or consent of the partners ~~or (or other persons, persons~~ whose approval is required for such dissolution pursuant to the partnership agreement), pursuant to such vote or consent (and the approval of any partners or other persons whose approval is required under the partnership agreement to revoke a dissolution contemplated by this paragraph);

(2) In the case of dissolution under § 17-801(1) or (5) of this title (other than a dissolution effected by the vote or consent of the partners ~~or (or other persons, persons whose approval is required for such dissolution pursuant to the partnership agreement)~~, an event of withdrawal of a general partner or the occurrence of an event that causes the last remaining limited partner to cease to be a limited partner), pursuant to such vote or consent that, pursuant to the terms of the partnership agreement, is required to amend the provision of the partnership agreement effecting such dissolution (and the approval of any partners or other persons whose approval is required under the partnership agreement to revoke a dissolution contemplated by this paragraph); and

Section 7. This Act takes effect on August 1, 2024.

SYNOPSIS

This Act continues the practice of amending periodically the Delaware Revised Uniform Limited Partnership Act (the “LP Act”) to keep it current and to maintain its national preeminence. The following is a section-by-section review of the proposed amendments to the LP Act:

Section 1 amends § 17-204 of the LP Act. Because Section 2 contains amendments that permit a certificate of merger or a certificate of ownership and merger to amend the certificate of limited partnership of a surviving domestic limited partnership in a merger to reflect the admission of one or more new general partners of the surviving domestic limited partnership in connection with the merger, Section 1 amends § 17-204 of the LP Act to require each new general partner to sign the certificate of merger or certificate of ownership and merger. Further, because Section 5 contains amendments that permit a certificate of merger of registered series to amend the certificate of registered series of a surviving registered series in a merger to reflect the association of one or more new general partners with the surviving

registered series in connection with the merger, Section 1 amends § 17-204 of the LP Act to require each new general partner to sign the certificate of merger of registered series.

Section 2 amends § 17-211 of the LP Act to permit a certificate of merger or a certificate of ownership and merger to state any amendments to the certificate of limited partnership of a surviving domestic limited partnership in a merger (and in the case of a surviving domestic limited partnership that is a limited liability limited partnership, to the statement of qualification of such surviving domestic limited partnership filed under § 15-1001 of the Delaware Revised Uniform Partnership Act) as are desired to be effected by the merger.

Section 3 amends § 17-218(d) of the LP Act to confirm and clarify certain of the mechanisms for revoking termination of a protected series. Specifically, Section 3 amends § 17-218(d) to confirm and clarify that the references to “other persons” in § 17-218(d)(1) and (2) are references to other persons whose approval is required for such termination of the protected series pursuant to the partnership agreement.

Section 4 amends § 17-221(f) of the LP Act to confirm and clarify certain of the mechanisms for revoking dissolution of a registered series. Specifically, Section 4 amends § 17-221(f) to confirm and clarify that the references to “other persons” in § 17-221(f)(1) and (2) are references to other persons whose approval is required for such dissolution of the registered series pursuant to the partnership agreement.

Section 5 amends § 17-224 of the LP Act to permit a certificate of merger of registered series to state any amendments to the certificate of registered series of a surviving registered series in a merger as are desired to be effected by the merger.

Section 6 amends § 17-806 of the LP Act to confirm and clarify certain of the mechanisms for revoking dissolution of a limited partnership. Specifically, Section 6 amends § 17-806 to confirm and clarify that the references to “other persons” in § 17-806(1) and (2) are references to other persons whose approval is required for such dissolution of the limited partnership pursuant to the partnership agreement.

Section 7 provides that the amendments to the LP Act take effect on August 1, 2024.