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DELAWARE STATE SENATE  
150th GENERAL ASSEMBLY

SENATE BILL NO. 90

AN ACT TO AMEND CHAPTER 15, 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 (Three-fifths of all members elected to each house thereof concurring therein):

Section 1. Amend § 15-101, Chapter 15, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

§ 15-101 Definitions

(5) “Document” means (i) any tangible medium on which information is inscribed, and includes handwritten, typed, printed or similar instruments, and copies of such instruments and (ii) an electronic transmission.

(8) “Electronic transmission” means any form of communication not directly involving the physical transmission of paper, including the use of, or participation in, 1 or more electronic networks or databases (including 1 or more distributed electronic networks or databases), that creates a record that may be retained, retrieved and reviewed by a recipient thereof and that may be directly reproduced in paper form by such a recipient through an automated process.

Section 2. Amend § 15-108, Chapter 15, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 15-108 Name of partnership

(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, limited liability company, ~~or registered series of a limited liability company~~ or registered series of a limited partnership 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

22 such records of any domestic or foreign corporation, limited partnership (including a limited liability limited partnership),  
23 statutory trust, limited liability company, registered series of a limited liability company, registered series of a limited  
24 partnership or foreign limited liability partnership reserved, registered, formed or organized under the laws of the State of  
25 Delaware with the written consent of the other corporation, limited partnership (including a limited liability limited  
26 partnership), statutory trust, limited liability company, registered series of a limited liability company, registered series of a  
27 limited partnership or foreign limited liability partnership which written consent shall be filed with the Secretary of State;  
28 provided further, that, if on July 31, 2011, a domestic partnership is registered (with the consent of another domestic  
29 partnership) under a name which is not such as to distinguish it upon the records in the office of the Secretary of State from  
30 the name on such records of such other domestic partnership, it shall not be necessary for any such domestic partnership to  
31 amend its statement of partnership existence or statement of qualification to comply with this subsection.

32 Section 3. Amend § 15-111, Chapter 15, Title 6 of the Delaware Code by making deletions as shown by strike  
33 through and insertions as shown by underline as follows:

34 § 15-111 Registered office; registered agent.

35 (d) The registered agent of ~~4 or more partnerships~~ a partnership, including a partnership whose statement of  
36 partnership existence has been cancelled pursuant to § 15-1209 of this title or whose statement of qualification has been  
37 revoked pursuant to § 15-1003 of this title, may resign without appointing a successor registered agent by paying a fee as  
38 set forth in § 15-1207 of this title and filing a certificate of resignation with the Secretary of State, but such resignation shall  
39 not become effective until 30 days after the certificate is filed. The certificate shall include such information last provided  
40 to the registered agent pursuant to Section 15-111(g) of this title for a communications contact for the partnership. Such  
41 information regarding the communications contact shall not be deemed public. A certificate filed pursuant to this Section  
42 15-111(d) must be on the form prescribed by the Secretary of State. The certificate shall contain a statement that written  
43 notice of resignation was given to ~~each affected~~ the partnership at least 30 days prior to the filing of the certificate by  
44 mailing or delivering such notice to the partnership at its address last known to the registered agent and shall set forth the  
45 date of such notice. After receipt of the notice of the resignation of its registered agent, the partnership for which such  
46 registered agent was acting shall obtain and designate a new registered agent to take the place of the registered agent so  
47 resigning. If such partnership fails to obtain and designate a new registered agent as aforesaid prior to the expiration of the  
48 period of 30 days after the filing by the registered agent of the certificate of resignation, the statement of partnership  
49 existence and statement of qualification (in each case as applicable) or statement of foreign qualification of such partnership  
50 shall be canceled. After the resignation of the registered agent shall have become effective as provided in this section and if  
51 no new registered agent shall have been obtained and designated in the time and manner aforesaid, service of legal process

52 against ~~each~~ the partnership for which the resigned registered agent had been acting shall thereafter be upon the Secretary  
53 of State in accordance with § 15-113 of this title.

54 Section 4. Amend Chapter 15, Title 6 of the Delaware Code to add a new § 15-124 as shown by underline as  
55 follows:

56 § 15-124. Document form, signature and delivery.

57 (a) Except as provided in subsection (b) of this section, without limiting the manner in which any act or transaction  
58 may be documented, or the manner in which a document may be signed or delivered:

59 (1) Any act or transaction contemplated or governed by this chapter or the partnership agreement may be provided  
60 for in a document, and an electronic transmission is the equivalent of a written document.

61 (2) Whenever this chapter or the partnership agreement requires or permits a signature, the signature may be a  
62 manual, facsimile, conformed or electronic signature. "Electronic signature" means an electronic symbol or process that is  
63 attached to, or logically associated with, a document and executed or adopted by a person with an intent to authenticate or  
64 adopt the document.

65 (3) Unless otherwise provided in the partnership agreement or agreed between the sender and recipient, an  
66 electronic transmission is delivered to a person for purposes of this chapter and the partnership agreement when it enters an  
67 information processing system that the person has designated for the purpose of receiving electronic transmissions of the  
68 type delivered, so long as the electronic transmission is in a form capable of being processed by that system and such  
69 person is able to retrieve the electronic transmission. Whether a person has so designated an information processing system  
70 is determined by the partnership agreement or from the context and surrounding circumstances, including the parties'  
71 conduct. An electronic transmission is delivered under this section even if no person is aware of its receipt. Receipt of an  
72 electronic acknowledgement from an information processing system establishes that an electronic transmission was  
73 received but, by itself, does not establish that the content sent corresponds to the content received.

74 This chapter shall not prohibit one or more persons from conducting a transaction in accordance with chapter 12A  
75 of this title so long as the part or parts of the transaction that are governed by this chapter are documented, signed and  
76 delivered in accordance with this subsection (a) or otherwise in accordance with this chapter. This subsection (a) shall apply  
77 solely for purposes of determining whether an act or transaction has been documented, and the document has been signed  
78 and delivered, in accordance with this chapter and the partnership agreement.

79 (b) Subsection (a) of this section shall not apply to: (1) a document filed with or submitted to the Secretary of State,  
80 the Register in Chancery, or a court or other judicial or governmental body of this State, (2) a certificate of partnership  
81 interest, and (3) an act or transaction effected pursuant to Section 15-111, 15-112, 15-113 or 15-114 or subchapter XI of

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

87 (c) In the event that any provision of this chapter is deemed to modify, limit or supersede the Electronic Signatures  
88 in Global and National Commerce Act, 15 U.S.C. § 7001 et. seq., the provisions of this chapter shall control to the fullest  
89 extent permitted by section 7002(a)(2) of such act.

90 Section 5. Amend § 15-403, Chapter 15, Title 6 of the Delaware Code by making deletions as shown by strike  
91 through and insertions as shown by underline as follows:

92 § 15-403 Partner's rights and duties with respect to information.

93 (c) A partnership and its partners may maintain the books and records and other information concerning the  
94 partnership in other than a written form, including on, by means of, or in the form of any information storage device,  
95 method, or 1 or more electronic networks or databases (including 1 or more distributed electronic networks or databases), if  
96 such form is capable of conversion into written form within a reasonable time.

97 Section 6. Amend § 15-407, Chapter 15, Title 6 of the Delaware Code by making deletions as shown by strike  
98 through and insertions as shown by underline as follows:

99 § 15-407 Classes and voting.

100 (d) Meetings of partners may be held by means of conference telephone or other communications equipment by  
101 means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this  
102 subsection shall constitute presence

103 in person at the meeting. On any matter that is to be voted on, consented to or approved by partners, the partners  
104 may take such action without a meeting, without prior notice and without a vote if consented to or approved, in writing, by  
105 electronic transmission or by any other means permitted by law, by partners having not less than the minimum number of  
106 votes that would be necessary to authorize or take such action at a meeting at which all partners entitled to vote thereon  
107 were present and voted. If a person (whether or not then a partner) consenting as a partner to any matter provides that such  
108 consent will be effective at a future time (including a time determined upon the happening of an event), then such person  
109 shall be deemed to have consented as a partner at such future time so long as such person is then a partner. On any matter  
110 that is to be voted on by partners, the partners may vote in person or by proxy, and such proxy may be granted in writing,  
111 by means of electronic transmission or as otherwise permitted by applicable law. A consent transmitted by electronic

transmission by a partner or by a person or persons authorized to act for a partner shall be deemed to be written and signed for purposes of this subsection (d). ~~For purposes of this subsection (d), the term "electronic transmission" means any form of communication not directly involving the physical transmission of paper that creates a record that may be retained, retrieved and reviewed by a recipient thereof and that may be directly reproduced in paper form by such a recipient through an automated process.~~

Section 7. Amend § 15-1207(a), Chapter 15, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 15-1207 Fees.

(a) No document required to be filed under this chapter shall be effective until the applicable fee required by this section is paid. The following fees shall be paid to and collected by the Secretary of State for the use of the State of Delaware:

(4) For certifying copies of any paper on file as provided for by this chapter, a fee in the amount of \$50 for each copy certified. In addition, a fee of \$2.00 per page shall be paid in each instance where the Secretary of State provides the copies of the document to be certified.

(5) The Secretary of State may issue photocopies or electronic image copies of instruments on file, as well as instruments, documents and other papers not on file, and for all such photocopies or electronic image copies, ~~whether certified or not, which are not certified by the Secretary of State,~~ a fee of \$10 shall be paid for the first page and \$2.00 for each additional page. Notwithstanding Delaware's Freedom of Information Act (Chapter 100 of Title 29) or other provision of law granting access to public records, the Secretary of State upon request shall issue only photocopies or electronic image copies of public records in exchange for the fees described in this section, and in no case shall the Secretary of State be required to provide copies (or access to copies) of such public records (including without limitation bulk data, digital copies of instruments, documents and other papers, databases or other information) in an electronic medium or in any form other than photocopies or electronic image copies of such public records in exchange for the fees, as applicable, described in this section or § 2318 of Title 29 for each such record associated with a file number.

(8) For preparing and providing a written report of a record search, a fee ~~in the amount of up to \$50~~ \$100.

(9) For issuing any certificate of the Secretary of State, including but not limited to a certificate of good standing, other than a certification of a copy under paragraph (a)(2) of this section, a fee in the amount of \$50, except that for issuing any certificate of the Secretary of State that recites all of a partnership's filings with the Secretary of State, a fee of \$175 shall be paid for each such certificate. For issuing any certificate via the Secretary of State's online services, a fee of up to \$175 shall be paid for each certificate.

### SYNOPSIS

This bill continues the practice of amending periodically the Delaware Revised Uniform 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 15-101 of the Act to include definitions for “document” and “electronic transmission.” These terms appear in new Section 15-124 among other places in the Act. “Electronic transmission” previously was defined in Section 15-407(d) of the Act, and the new definition provides specific statutory authority for Delaware partnerships to use networks of electronic databases (examples of which are described currently as “distributed ledgers” or a “blockchain”) for “electronic transmissions.”

Section 2. This section amends Section 15-108(c) of the Act to provide that the name of a partnership must be such as to distinguish it from the name of any registered series of a limited partnership formed under the laws of the State of Delaware.

Section 3. This section amends Section 15-111(d) of the Act to provide that if a partnership’s statement of partnership existence has been cancelled pursuant to Section 15-1209 of the Act or statement of qualification has been revoked pursuant to Section 15-1003 of the Act, its registered agent may resign without appointing a successor registered agent. The amendment also adds requirements regarding the content and form of the certificate of resignation filed with the Delaware Secretary of State when the registered agent resigns without appointing a successor, and provides that such information regarding the communications contact that must be included in such a certificate shall not be deemed public.

Section 4. This section adds new Section 15-124 of the Act, which establishes non-exclusive, safe harbor methods to reduce certain acts or transactions to a written or electronic document and to sign and deliver a document manually or electronically. The terminology in Section 15-124(a) is based on analogous provisions in existing Section 15-407(d) of the Act, the Delaware Uniform Electronic Transactions Act (“UETA”), and the Model Business Corporation Act, with modifications. Section 15-124(a) permits partnership transactions (such as entering into agreements of merger not filed with the Secretary of State) to be documented, signed and delivered through “DocuSign” and similar electronic means.

The Section 15-124(a) safe harbor provisions apply solely for purposes of determining whether an act or transaction has been documented, and whether a document has been signed and delivered, in accordance with the Act and the partnership agreement. Section 15-124(a) does not preempt any statute of frauds or other law that might require actions be documented, or that documents be signed and delivered, in a specified manner.

Section 15-124(a) clarifies how its provisions operate in connection with a transaction conducted pursuant to UETA. To the extent UETA does not apply to a transaction (under Section 12A-103 of UETA) because the transaction is governed by the Act, the parties to the transaction can satisfy the Act by complying with Section 15-124(a).

Section 15-124(b) addresses certain actions and documents that are not governed by Section 15-124(a). There is no presumption that these excluded items are prohibited from being effected by electronic or other means, but Section 15-124 may not be relied on as a basis for documenting an act or transaction, or signing or delivering a document, if the exclusions set forth in Section 15-124(b) apply. Certain of these excluded items are governed by separate provisions that facilitate the use of electronic media, including documents filed with the Secretary of State (governed by Section 15-105(c)).

Section 15-124(b) permits partnership agreement provisions that restrict the use of Section 15-124(a), but those restrictions must be expressly stated. A provision merely specifying that an act or transaction will be documented in writing, or that a document will be signed or delivered manually, will not prohibit the application of Section 15-124(a).

Section 15-124(c) addresses the interaction between the provisions of the Act and the Electronic Signatures in Global and National Commerce Act (the “E-Sign Act”). Section 15-124(c) evidences an intent to allow the Act to govern the documentation of actions, and the signature and delivery of documents, to the fullest extent the Act is not preempted by the E-Sign Act.

Section 5. This section amends Sections 15-403(c) of the Act to provide specific statutory authority for Delaware partnerships to use networks of electronic databases (examples of which are described currently as “distributed ledgers” or a “blockchain”) for the creation and maintenance of partnership records.

Section 6. This section amends Section 15-407(d) of the Act to conform with the addition of the defined term “electronic transmission” in Section 15-101.

Section 7. This section amends Section 15-1207(a)(4) of the Act to provide for the fee payable where the Secretary of State provides the copies of the document to be certified, Section 15-1207(a)(5) to clarify that the fee payable thereunder is for copies that are not certified by the Secretary of State, Section 15-1207(a)(8) to provide for the fee payable for a written report of a record search, and Section 15-1207(a)(9) to provide for the fee payable for any certificate issued via the Secretary of State’s online services.

Section 8. This section provides that the proposed amendments to the Act shall become effective August 1, 2019.

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