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& Rep. Lynn & Rep. Bush & Rep. Griffith
Sens. Ennis, Lopez, Pettyjohn, Walsh; Reps. Matthews, Spiegelman

DELAWARE STATE SENATE
151st GENERAL ASSEMBLY

SENATE BILL NO. 274
AS AMENDED BY
HOUSE AMENDMENT NO. 1

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:

Section 1. Amend § 17-101, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 17-101. Definitions.

As used in this chapter unless the context otherwise requires:

(14) "Partnership agreement" means any agreement, written, oral or implied, of the partners as to the affairs of a limited partnership and the conduct of its business. A partner of a limited partnership or an assignee of a partnership interest is bound by the partnership agreement whether or not the partner or assignee executes the partnership agreement. A limited partnership (including any protected series or registered series thereof) is not required to execute its partnership agreement. A limited partnership (including any protected series or registered series thereof) is bound by its partnership agreement whether or not the limited partnership (or any protected series or registered series thereof) executes the partnership agreement. A partnership agreement is not subject to any statute of frauds (including § 2714 of this title). A partnership agreement may provide rights to any person, including a person who is not a party to the partnership agreement, to the extent set forth therein. A written partnership agreement or another written agreement or writing:

a. May provide that a person shall be admitted as a limited partner of a limited partnership, or shall become an assignee of a partnership interest or other rights or powers of a limited partner to the extent assigned (i) if such person (or a representative authorized by such person orally, in writing or by other action such as payment for a partnership interest) executes the partnership agreement or any other writing evidencing the intent of such person to become a limited partner or assignee, or (ii) without such execution, if such person (or a representative authorized by such person orally, in writing or by other action such as payment for a partnership interest) complies

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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 true 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 a 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.