HOUSE OF REPRESENTATIVES

143rd GENERAL ASSEMBLY

HOUSE BILL NO. 151

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 (Three-fifths of all members elected to each house thereof concurring therein):

Section 1. Amend § 17-101(12), Chapter 17, Title 6 of the Delaware Code by deleting the phrase “, and shall become bound by the partnership agreement” from the fifth sentence thereof and by inserting the following sentence immediately following the first sentence thereof: “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.”.

Section 2. Amend § 17-106(a), Chapter 17, Title 6 of the Delaware Code by deleting in its entirety the phrase “granting policies of insurance, or assuming insurance risks or”.

Section 3. Amend § 17-211(g), Chapter 17, Title 6 of the Delaware Code by deleting from the first sentence thereof the phrase “Notwithstanding anything to the contrary contained in a partnership agreement, a partnership agreement containing a specific reference to this subsection may provide that an”, by substituting in lieu thereof the word “An”, and by inserting at the end of said subsection the following:

“Unless otherwise provided in a partnership agreement, a limited partnership whose original certificate of limited partnership was filed with the Secretary of State and effective on or prior to July 31, 2005, shall continue to be governed by this subsection as in effect on July 31, 2005.”.

Section 4. Amend § 17-215(i), Chapter 17, Title 6 of the Delaware Code by deleting from the second sentence thereof the phrase “or as required under applicable non-Delaware law” and by substituting in lieu thereof “for all purposes of the laws of the State of Delaware”, by deleting the word “and” as it appears therein immediately before “the domestication” in the second sentence thereof, by inserting a comma (“,“) immediately after the phrase “dissolution of such non-United States entity” in the second sentence thereof, and by inserting the words “the domestication” immediately prior to the phrase “shall constitute a continuation” in the second sentence thereof.
Section 5. Amend § 17-216(b), Chapter 17, Title 6 of the Delaware Code by deleting the first sentence thereof in its entirety, by deleting the phrase “If all of the partners of the limited partnership or such other vote as may be stated in a partnership agreement shall approve the transfer or domestication described in subsection (a) of this section,” from the second sentence thereof, and by substituting in lieu thereof the following:

“If the partnership agreement specifies the manner of authorizing a transfer or domestication described in subsection (a) of this section, the transfer or domestication shall be authorized as specified in the partnership agreement. If the partnership agreement does not specify the manner of authorizing a transfer or domestication described in subsection (a) of this section and does not prohibit such a transfer or domestication, the transfer or domestication shall be authorized in the same manner as is specified in the partnership agreement for authorizing a merger or consolidation that involves the limited partnership as a constituent party to the merger or consolidation. If the partnership agreement does not specify the manner of authorizing a transfer or domestication described in subsection (a) of this section or a merger or consolidation that involves the limited partnership as a constituent party and does not prohibit such a transfer or domestication, the transfer or domestication shall be authorized by the approval by (1) all general partners and (2) the limited partners or, if there is more than 1 class or group of limited partners, then by each class or group of limited partners, in either case, by limited partners who own more than 50 percent of the then current percentage or other interest in the profits of the domestic limited partnership owned by all of the limited partners or by the limited partners in each class or group, as appropriate. If a transfer or domestication described in subsection (a) of this section shall be authorized as provided in this subsection (b),”.

Section 6. Amend § 17-217(g), Chapter 17, Title 6 of the Delaware Code by deleting from the first sentence thereof the phrase “or as required under applicable non-Delaware law”, by substituting in lieu thereof the phrase “for all purposes of the laws of the State of Delaware”, by deleting the word “and” as it appears immediately before the words “the conversion” in the first sentence thereof, by inserting a comma (“,”) immediately after the phrase “dissolution of such other entity” in the first sentence thereof, and by inserting the words “the conversion” immediately prior to the phrase “shall constitute a continuation” in the first sentence thereof.

Section 7. Amend § 17-301(b)(3), Chapter 17, Title 6 of the Delaware Code by deleting said paragraph in its entirety and substituting in lieu thereof the following:

“(3) In the case of a person being admitted as a partner of a surviving or resulting limited partnership pursuant to a merger or consolidation approved in accordance with § 17-211(b) of this title, as provided in § 17-301(b)(3).”
provided in the partnership agreement of the surviving or resulting limited partnership or in the agreement of merger or consolidation, and in the event of any inconsistency, the terms of the agreement of merger or consolidation shall control; and in the case of a person being admitted as a partner of a limited partnership pursuant to a merger or consolidation in which such limited partnership is not the surviving or resulting limited partnership in the merger or consolidation, as provided in the partnership agreement of such limited partnership.”.

Section 8. Amend § 17-301(c), Chapter 17, Title 6 of the Delaware Code by deleting the phrase “at the time provided in and upon compliance with the partnership agreement” and by substituting in lieu thereof the phrase “as provided in the partnership agreement”.

Section 9. Amend Subchapter IV of Chapter 17, Title 6 of the Delaware Code by adding thereto, immediately following § 17-406, a new § 17-407 to read as follows:

“§ 17-407. Reliance on reports and information by limited partners, liquidating trustees, and general partners.

(a) A limited partner or liquidating trustee of a limited partnership shall be fully protected in relying in good faith upon the records of the limited partnership and upon information, opinions, reports or statements presented by a general partner of the limited partnership, an officer or employee of a general partner of the limited partnership, another liquidating trustee, or committees of the limited partnership, limited partners or partners, or by any other person as to matters the limited partner or liquidating trustee reasonably believes are within such other person’s professional or expert competence, including information, opinions, reports or statements as to the value and amount of the assets, liabilities, profits or losses of the limited partnership, or the value and amount of assets or reserves or contracts, agreements or other undertakings that would be sufficient to pay claims and obligations of the limited partnership or to make reasonable provision to pay such claims and obligations, or any other facts pertinent to the existence and amount of assets from which distributions to partners or creditors might properly be paid.

(b) A general partner of a limited liability limited partnership shall be fully protected in relying in good faith upon the records of the limited partnership and upon information, opinions, reports or statements presented by another general partner of the limited partnership, an officer or employee of the limited partnership, a liquidating trustee, or committees of the limited partnership.
partnership, limited partners or partners, or by any other person as to matters the general partner
reasonably believes are within such other person’s professional or expert competence, including
information, opinions, reports or statements as to the value and amount of the assets, liabilities,
profits or losses of the limited partnership, or the value and amount of assets or reserves or
contracts, agreements or other undertakings that would be sufficient to pay claims and
obligations of the limited partnership or to make reasonable provision to pay such claims and
obligations, or any other facts pertinent to the existence and amount of assets from which
distributions to partners or creditors might properly be paid.

(c) A general partner of a limited partnership that is not a limited liability limited partnership shall
be fully protected from liability to the limited partnership, its partners or other persons party to
or otherwise bound by the partnership agreement in relying in good faith upon the records of the
limited partnership and upon information, opinions, reports or statements presented by another
gereral partner of the limited partnership, an officer or employee of the limited partnership, a
liquidating trustee, or committees of the limited partnership, limited partners or partners, or by
any other person as to matters the general partner reasonably believes are within such other
person’s professional or expert competence, including information, opinions, reports or
statements as to the value and amount of the assets, liabilities, profits or losses of the limited
partnership, or the value and amount of assets or reserves or contracts, agreements or other
undertakings that would be sufficient to pay claims and obligations of the limited partnership or
to make reasonable provision to pay such claims and obligations, or any other facts pertinent to
the existence and amount of assets from which distributions to partners or creditors might
properly be paid.”.

Section 10. Amend § 17-703(a), Chapter 17, Title 6 of the Delaware Code by deleting the second sentence thereof and
substituting in lieu thereof the following: “To the extent so charged, the judgment creditor has only the right to receive any
distribution or distributions to which the judgment debtor would otherwise have been entitled in respect of such partnership
interest.”.

Section 11. Amend § 17-703(b), Chapter 17, Title 6 of the Delaware Code by deleting the second and third sentences
thereof in their entirety.

Section 12. Amend § 17-703(c), Chapter 17, Title 6 of the Delaware Code by deleting said subsection in its entirety.
Section 13. Amend § 17-703(d), Chapter 17, Title 6 of the Delaware Code by re-designating said subsection as subsection (c), by inserting the words “or partner’s assignee” immediately prior to the phrase “of a right”, and by deleting the word “partner’s” and substituting in lieu thereof the words “judgment debtor’s”.

Section 14. Amend § 17-703(e), Chapter 17, Title 6 of the Delaware Code by re-designating said subsection as subsection (d), by deleting the phrase “This section provides” and by inserting in lieu thereof the phrase “The entry of a charging order is”, and by inserting the words “of a” immediately prior to the words “partner’s assignee”.

Section 15. Amend § 17-703(f), Chapter 17, Title 6 of the Delaware Code by re-designating said subsection as subsection (e) and by inserting the words “or of a partner’s assignee” immediately following the phrase “No creditor of a partner”.

Section 16. Amend § 17-703, Chapter 17, Title 6 of the Delaware Code by inserting therein a new subsection (f) to read as follows:

“(f) The Court of Chancery shall have jurisdiction to hear and determine any matter relating to any such charging order.”.

Section 17. Amend Subchapter VIII of Chapter 17, Title 6 of the Delaware Code by adding thereto, immediately following § 17-805, a new § 17-806 to read as follows:

“§ 17-806. Revocation of Dissolution.

Notwithstanding the occurrence of an event set forth in Section 17-801(1), (2), (3), (4) or (5) of this chapter, 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, pursuant to the affirmative vote or written consent of (i) all remaining general partners and all remaining limited partners of the limited partnership, (ii) all remaining general partners and the personal representative of the last remaining limited partner of the limited partnership if there is no remaining limited partner, (iii) all remaining limited partners if there is no remaining general partner or (iv) the personal representative of the last remaining limited partner if there is no remaining limited partner and no remaining general partner (and, in each instance, any other person whose approval is required under the partnership agreement to revoke a dissolution pursuant to this section), provided, however, if the dissolution was caused by a vote or written consent, the dissolution shall not be revoked unless each general partner and limited partner and other person (or their respective personal representatives) who voted in favor of, or consented to, the dissolution has voted or consented in writing to continue the business of the limited partnership. If there
is no remaining general partner of the limited partnership and all remaining limited partners or, if there is no remaining limited partner, the personal representative of the last remaining limited partner, vote in favor of or consent to the continuation of the business of the limited partnership, such limited partners or personal representative, as applicable, shall be required to agree in writing to appoint 1 or more general partners effective as of the date of withdrawal of the last general partner, and if there is no remaining limited partner of the limited partnership and the personal representative of the last remaining limited partner votes in favor of or consents to the continuation of the business of the limited partnership, such personal representative shall be required to agree in writing to the admission of the personal representative of such limited partner or its nominee or designee to the limited partnership as a limited partner, effective as of the occurrence of the event that caused the last remaining limited partner to cease to be a limited partner.”

Section 18. Amend § 17-902, Chapter 17, Title 6 of the Delaware Code by deleting Subsection (b) thereof in its entirety and by deleting the designation “(a)” as it appears immediately prior to the first sentence thereof.

Section 19. Amend Subchapter IX of Chapter 17, Title 6 of the Delaware Code by adding thereto, immediately following § 17-911, a new § 17-912 to read as follows:

“§ 17-912. Activities not constituting doing business.

(a) Activities of a foreign limited partnership in the State of Delaware that do not constitute doing business for the purpose of this subchapter include:

(1) maintaining, defending or settling an action or proceeding;

(2) holding meetings of its partners or carrying on any other activity concerning its internal affairs;

(3) maintaining bank accounts;

(4) maintaining offices or agencies for the transfer, exchange or registration of the limited partnership’s own securities or maintaining trustees or depositories with respect to those securities;

(5) selling through independent contractors;

(6) soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside the State of Delaware before they become contracts;
(7) selling, by contract consummated outside the State of Delaware, and agreeing, by the contract, to deliver into the State of Delaware, machinery, plants or equipment, the construction, erection or installation of which within the State of Delaware requires the supervision of technical engineers or skilled employees performing services not generally available, and as part of the contract of sale agreeing to furnish such services, and such services only, to the vendee at the time of construction, erection or installation;

(8) creating, as borrower or lender, or acquiring indebtedness with or without a mortgage or other security interest in property;

(9) collecting debts or foreclosing mortgages or other security interests in property securing the debts, and holding, protecting and maintaining property so acquired;

(10) conducting an isolated transaction that is not one in the course of similar transactions;

(11) doing business in interstate commerce; and

(12) doing business in the State of Delaware as an insurance company.

(b) A person shall not be deemed to be doing business in the State of Delaware solely by reason of being a partner of a domestic limited partnership or a foreign limited partnership.

(c) This section does not apply in determining whether a foreign limited partnership is subject to service of process, taxation or regulation under any other law of the State of Delaware.”

Section 20. This Act shall become effective August 1, 2005.

SYNOPSIS

This Act 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 amends § 17-101(12) of the Act to confirm that a partner of a limited partnership and an assignee of an interest in a limited partnership are bound by the partnership agreement.

Section 2 amends § 17-106(a) of the Act to expand the permitted purposes of a limited partnership.

Section 3 amends § 17-211(g) of the Act to increase the flexibility permitted in the Act regarding amendments to partnership agreements and the adoption of new partnership agreements in connection with mergers and consolidations.

Sections 4 and 6 amend § 17-215(i) and § 17-217(g) of the Act to confirm that these sections of the Act address the effect of domestication and conversion, respectively, as a matter of Delaware law.

Section 5 amends § 17-216(b) to conform the approval requirements for the transfer of a domestic limited
partnership to the requirements for the conversion of a domestic limited partnership.

Section 7 amends § 17-301(b)(3) of the Act to clarify the way in which a person is admitted as a partner of a limited partnership pursuant to a merger or consolidation.

Section 8 amends § 17-301(c) of the Act to confirm that a person is admitted as a partner of a limited partnership in connection with a domestication or a conversion as provided in the partnership agreement.

Section 9 amends the Act to add a new § 17-407 to clarify the circumstances under which limited partners, general partners and liquidating trustees of a limited partnership may rely on the records of, or information relating to, the limited partnership.

Sections 10, 11, 12, 13, 14, 15 and 16 amend § 17-703 to clarify the nature of a charging order and provide that a charging order is the sole method by which a judgment creditor may satisfy a judgment out of the partnership interest of a partner or partner’s assignee. Attachment, garnishment, foreclosure or like remedies are not available to the judgment creditor and a judgment creditor does not have any right to become or to exercise any rights or powers of a partner (other than the right to receive the distribution or distributions to which the partner would otherwise have been entitled, to the extent charged).

Section 17 amends the Act to add a new § 17-806 to provide, under certain circumstances, for the revocation of the dissolution of a limited partnership.

Sections 18 and 19 amend the Act to add a new § 17-912 to identify the activities of a foreign limited partnership in the State of Delaware that will not constitute doing business for purposes of Subchapter IX of the Act and move former subsection (b) of § 17-902 of the Act to new § 17-912.

Section 20 provides that the proposed amendments of the Act shall become effective on August 1, 2005.

This Act was submitted for sponsorship and consideration by the General Assembly by the Delaware Bar Association.