

Delaware Corporation Law Section Approves Amendments to Delaware's Alternative Entity Acts

On April 4, 2019, the Corporation Law Section of the Delaware State Bar Association approved amendments to the Delaware Limited Liability Company Act, 6 Del. C. §§ 18-101 et seq. (the "DLLCA"), the Delaware Revised Uniform Limited Partnership Act, 6 Del. C. §§ 17-101 et seq. (the "DRULPA"), and the Delaware Revised Uniform Partnership Act, 6 Del. C. §§ 15-101 et seq. (the "DRUPA").¹ The amendments have now received final approval in the Delaware State Bar Association process and soon will be introduced and considered by the Delaware legislature. The amendments include a number of significant substantive changes to the DRULPA described below (which were generally based on similar changes to the DLLCA that were adopted last year) to, inter alia, (i) create a new type of limited partnership series known as registered series, (ii) permit registered series of the same limited partnership to merge or consolidate, (iii) permit a limited partnership statutorily to divide into two or more limited partnerships and (iv) create statutory public benefit limited partnerships. The amendments to the DLLCA, the DRULPA and the DRUPA also confirm that it is permissible under those statutes to document, sign and deliver certain types of transaction documents through "DocuSign" and similar electronic means. Finally, the amendments to the DLLCA and the DRULPA confirm that the terms "manager", "member", "general partner" and "limited partner" include a manager, member, general partner and limited partner of the limited liability company or the limited partnership generally and a manager, member, general partner and limited partner of, or associated with, a series of such entity. If approved by the legislature and signed by the Governor, the amendments will become effective on August 1, 2019.²

Registered Series and Protected Series.

[DRULPA §§ 17-101; 17-102(3); 17-103; 17-104; 17-105; 17-203; 17-204; 17-206; 17-208; 17-210; 17-212; 17-218; 17-221; 17-222; 17-223; 17-224; 17-1107; 17-1109; 17-1110; 17-1111; and 17-1112] The proposed amendments amend numerous provisions of the DRULPA to create a new type of series known as registered series, which are similar to registered series organized under Section 18-218 of the DLLCA. Registered series will be addressed in new Section 17-221 of the DRULPA. Section 17-218 of the DRULPA, which currently addresses series, will be amended to provide that series formed under Section 17-218(b) of the DRULPA (both before and after the amendments become effective) will be known as protected series. The provisions relating to registered series are similar to the provisions relating to protected series with several notable exceptions. First, in order to facilitate the use of registered series in secured financing transactions, registered series are

¹ Amendments to the Delaware General Corporation Law, 8 Del. C. §§ 101 et seq., were also approved by the Corporation Law Section. You will receive a separate newsletter addressing those amendments.

² The "series" amendments to the DLLCA, which were adopted in 2018, will also become effective on August 1, 2019.

designed to qualify as registered organizations under the Uniform Commercial Code. Thus, a certificate of registered series is required to be filed with the Delaware Secretary of State to form a registered series,³ and the name of a registered series must begin with the name of the limited partnership and be distinguishable from the names of other Delaware business entities or business entities qualified or registered to do business in Delaware. Second, one or more registered series of a limited partnership may merge or consolidate with or into one or more other registered series of the same limited partnership. Third, certificates of good standing and certificates of existence with respect to registered series will be issued by the Delaware Secretary of State. Fourth, a protected series of a limited partnership may convert to a registered series of the same limited partnership and a registered series of a limited partnership may convert to a protected series of the same limited partnership. Finally, an annual franchise tax in the amount of \$75 per registered series will be required to be paid.

Division of a Limited Partnership.

[DRULPA §§ 17-203; 17-204; 17-206; 17-212; 17-220; and 17-301] Pursuant to new Section 17-220 of the DRULPA, the proposed amendments permit a limited partnership to divide into one or more newly formed limited partnerships, with the dividing limited partnership either continuing its existence or terminating as part of the division. A division of a limited partnership is effected by (i) the adoption of a plan of division setting forth the terms and conditions of the division, including, among others, the allocation of assets, property, rights, series, debts, liabilities and duties of the dividing limited partnership among the resulting limited partnerships and, if it survives, the dividing limited partnership, and (ii) the filing with the Delaware Secretary of State of a certificate of division and a certificate of limited partnership for each newly formed limited partnership. A plan of division will be given effect to divide the assets and liabilities of a limited partnership among the resulting limited partnerships and, if it survives, the dividing limited partnership, so long as the plan of division does not constitute a fraudulent conveyance under applicable law. With respect to any limited partnership formed prior to August 1, 2019 that is party to any written contract, indenture or other agreement entered into prior to August 1, 2019 that by its terms restricts, conditions or prohibits such limited partnership from (x) consummating a merger or consolidation with or into another party or (y) transferring assets, such restriction shall be deemed to apply to a division as if it were a merger or consolidation or transfer of assets. The amendments also adopt a new subsection 17-301(b)(4) of the DRULPA to provide that a person is admitted as a partner of a division partnership pursuant to a division approved in accordance with Section 17-220 of the DRULPA as provided in the partnership agreement of such division partnership or in the plan of division and in the event of any inconsistencies, the plan of division controls. New subsection 17-301(b)(4) also provides that a person is admitted as a partner of a limited partnership pursuant to a division in which such limited partnership is not a division partnership in such division as provided in the partnership agreement of such limited partnership.

Statutory Public Benefit Limited Partnerships.

[DRULPA Subchapter XII] Under the proposed amendments, new subchapter XII of the DRULPA authorizes the creation of statutory public benefit limited partnerships, which are similar to public benefit corporations organized under subchapter XV of the Delaware General Corporation Law and public benefit limited liability companies formed under subchapter XII of the DLLCA. Subchapter XII of the DRULPA is intended to provide a simple and efficient “opt-in” procedure for forming a public benefit limited partnership. As with a

³ Article 9 of the Delaware Uniform Commercial Code was also amended effective August 1, 2019 to provide that a registered series constitutes a “registered organization”.

public benefit corporation and a public benefit limited liability company, a statutory public benefit limited partnership is intended to produce a public benefit and to operate in a responsible and sustainable manner. New subchapter XII of the DRULPA does not limit the formation or operation of a limited partnership formed or operated for a public benefit (including a limited partnership designated as a public benefit limited partnership) that is not a statutory public benefit limited partnership.

Document Form, Signature and Deliver.

[DRUPA §§ 15-101(8) and 15-124; DRULPA §§ 17-101(4) and 17-113; DLLCA §§ 18-101(5) and 18-113] The proposed amendments to the DRUPA, the DRULPA and the DLLCA enact new Sections 15-124, 17-113 and 18-113 to create a safe harbor provision that clarifies when acts and transactions contemplated by the DRUPA, the DRULPA and the DLLCA, as applicable, may be documented, signed and delivered electronically. The provisions are generally based on Delaware's Uniform Electronic Transactions Act for the electronic delivery rules, and permit various contracts including operating agreements to merger agreements to be adopted, executed and delivered via DocuSign and similar electronic processes. Certain documents are excluded from the new electronic rules, including documents filed with the Delaware Secretary of State, the Delaware Register in Chancery, or a Delaware court or other judicial or governmental body and certificates of interest.

Judicial Cancellation of Certificate of Limited Partnership.

[DRULPA § 17-112] The proposed amendments include new Section 17-112, which is similar to Section 18-112 of the DLLCA, to grant the Court of Chancery jurisdiction to cancel a certificate of limited partnership for abuse or misuse of such limited partnership's powers, privileges or existence upon a motion by the Attorney General. Upon such cancellation, the Court of Chancery has the power, by appointment of trustees, receivers or otherwise, to administer and wind up the affairs of such limited partnership.

Admission of a Member to a Limited Liability Company in Connection with a Division.

[DLLCA §§ 18-301] New subsection 18-301(b)(4) of the DLLCA provides that a person is admitted as a member of a division company pursuant to a division approved in accordance with Section 18-217 of the DLLCA as provided in the limited liability company agreement of such division company or in the plan of division and in the event of any inconsistencies, the plan of division controls. New subsection 18-301(b)(4) also provides that a person is admitted as a member of a limited liability company pursuant to a division in which such limited liability company is not a division company in such division as provided in the limited liability company agreement of such limited liability company.

Distributed Ledgers and Blockchain.

[DRUPA §§ 15-101(8) and 15-403(c)] The proposed amendments amend numerous provisions of the DRUPA to provide express statutory authority to use networks of electronic databases, including distributed ledgers and blockchain, to create or maintain records of the entity and for certain electronic transmissions. These amendments are similar to those made last year to the DLLCA and the DRULPA and confirm that this rapidly advancing technology is available to be used with respect to general partnerships.

Definitions of Manager, Member, General Partner and Limited Partner.

[DLLCA §§ 18-101(12) and 18-101(13); DRULPA § 17-101(7) and 17-101(10)] Under the proposed amendments, the definitions of manager and member in the DLLCA include a manager or member of a limited liability company generally and a manager or member of, or associated with, a series of such limited liability company, and the definitions of general partner and limited partner in the DRULPA include a general partner or limited partner of a limited partnership generally and a general partner or limited partner of, or associated with, a series of such limited partnership. These amendments make clear that references to members, managers, general partners, or limited partners in the provisions of the DLLCA and the DRULPA that do not specifically reference series include references to the members, managers, general partners or limited partners of, or associated with, the series of a limited liability company or limited partnership without having to restate that language in each provision.

Should you have any questions on any of the amendments, please feel free to contact a member of the Morris Nichols Delaware Alternative Entities Group referenced below.

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