

## DELAWARE LP CHANGES EFFECTIVE AUGUST 1<sup>ST</sup>, 2019

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On June 19<sup>th</sup>, 2019, Delaware Governor John Carney signed Senate Bill 89, amending the Delaware Revised Uniform Limited Partnership Act (Delaware Code, Title 6, Chapter 17, Sections 17-101 to 17-1111.) The amendatory legislation goes into effect on August 1<sup>st</sup>, 2019.

Below are highlights of some of the significant changes of the legislation.

### ESTABLISHMENT OF STATUTORY PUBLIC BENEFIT LPS

Amendments in Senate Bill 89 introduce Subchapter XII to Chapter 17, Title 6 of the Delaware Code that defines and **provides for the establishment of statutory public benefit limited partnerships**. A “statutory public benefit limited partnership” is a for-profit limited partnership (LP) that is intended to produce a public benefit or public benefits and to operate in a responsible and sustainable manner. In addition to stating this status in the heading of its certificate of limited partnership, a statutory public benefit limited partnership must further delineate one or more specific public benefits it promotes in the certificate.

The new subchapter also includes procedures for establishment, amendment, merger and consolidation, management, periodic statements, third-party certifications, and related provisions. Section 17- 102(4) is amended to allow LP names to contain the words ‘public benefit’.

### LIMITED PARTNERSHIP DIVISION

Section 17-220, as added, authorizes a Delaware LP pursuant to a plan of division, to divide into two or more Delaware LPs. A Certificate of Division, along with certificates of limited partnership for each resulting partnership must be filed simultaneously with the office of the Secretary of State.

Subsections (a)(4) and (g)(3) of Section 17-220 mandate the appointment of a division contact, required to maintain a copy of the plan or division for six years from the effective date of the division and respond with division partnership contact information to written inquiries from creditors of the dividing partnership.

Section 17-1107(a) is amended to set a certificate of division filing fee of \$200, payable to the Secretary of State. There also may be a filing fee of \$200 for each certificate of limited partnership.

### DEFINITIONS

Senate Bill Number 89 adds a new provision to Section 17-218 (b) which authorizes the establishment of protected series. Section 17-101 includes definitions of “protected series”, “registered series”, and “series”. Senate Bill 89 adds references to registered and protected series throughout the Revised Uniform Limited Partnership Act. For example, it includes references to both terms in filing a certificate of conversion in Section 17-222.

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## NAME STANDARD AND RESERVATION

Section 17-102 is amended to include the name of “registered series of a limited partnership” as a name from which the name of an LP must be distinguished upon the records in the office of the Secretary of State. Senate Bill 89 amends Section 17-103(a) to include registered series of an LP in the name reservation provision. It provides that any person intending to form a registered series of an LP under this chapter (Chapter 17) and to adopt that name in accordance with Section 17-221(e) may reserve the exclusive right to that name.

## SERVICE OF PROCESS

Senate Bill 89 amends Sections 17-104 and 17-105 to include the addition of protected series and registered series in service of process provisions. Pursuant to Section 17-104, as amended, registered agents can accept service of process directed to any registered or protected series and forward annual tax statements to registered series for which they serve as registered agents. Section 17-105 includes directions for service of process on protected and registered series. Senate Bill 89 amends the resignation of registered agent provisions in Section 17-104 to include a requirement for information on the certificate of resignation relating to the communications contact for the affected LP that was provided to the registered agent.

## CANCELLATION AND GOOD STANDING

Senate Bill 89 amends Section 17-203 to provide that a certificate of cancellation of a limited partnership must set forth if the LP has formed one or more registered series whose certificate of registered series has not been canceled prior to the filing of the certificate of cancellation, the name of each such registered series. The Secretary of State will not issue a certificate of good standing with respect to an LP (or any registered series thereof) if its certificate of limited partnership is canceled.

Section 17-206(a)(5) is amended to add that the Secretary of State will not issue a certificate of good standing with respect to any LP or registered series with a certificate held in suspension pursuant to the subsection.

## FORMATION AND CONVERSION

New Section 17-221 is added which sets forth the requirement for formation of registered series.

Section 17-222 includes provisions for conversion of a protected series of a domestic LP to a registered series of the domestic LP and specifies what is needed for compliance and filing with the Secretary of State. When a protected series of an LP has converted to a registered series of the LP, for all purposes of Delaware laws, the registered series will be deemed to be the same series as the converting protected series and the conversions will constitute a continuation of the existence of the protected series in the form of such registered series.

Section 17-223 is added to provide for conversion of a registered series of a domestic LP to a protected series of the domestic LP and includes the required procedures. When a registered series of an LP has converted to a protected series of the LP, for all purposes of Delaware laws, the protected series will be deemed to be the same series as the converting registered series and the conversion will constitute a continuation of the existence of the registered series in the form of such protected series.

## MERGER AND CONSOLIDATION

Section 17-224 is added which provides that pursuant to an agreement of merger or consolidation, one or more registered series may merge or consolidate with or into one or more other registered series of the same partnership with such registered

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series as the agreement will provide being the surviving or resulting registered series. The procedure for approval by each registered series is included.

## **APPRAISAL RIGHTS-CONTRACTUAL**

Senate Bill 89 amends Section 17-212 to provide that an LP agreement or an agreement of merger or consolidation or plan of merger or a plan of division may provide for the availability of certain contractual appraisal rights with respect certain interests in connection with any amendment of an LP agreement, any merger or consolidation in which the LP or a registered series of the LP is a constituent party to the merger or consolidation, any division of the LP, any conversion of the LP to another business form, any conversion of a protected series of the LP to a registered series of such LP, any conversion of a registered series of the LP to a protected series of such LP.

## **FORM OF DOCUMENT, EXECUTION AND DELIVERY**

Section 17-113 is added relating to document form and delivery. It defines “electronic signature” as an electronic symbol or process that is attached to, or logically associated with a document and executed or adopted by a person with an intent to authenticate or adopt the document. The bill outlines the procedure for delivery of an electronic transmission.

Section 17-113(a) also provides that persons are not prohibited from conducting a transaction in accordance with Chapter 12A of Title 6 (UETA) so long as a part or parts of the transaction that are governed by the chapter are documented, signed, or delivered in accordance with applicable Delaware law. There are limitations which are set forth in Section 17-113 (b). Section 17-113 (c) also provides that in the event that any provision is considered to modify, limit, or supersede the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., the provisions of the (Delaware Chapter) will control to the fullest extent permitted by Section 7002(a)(2) of the Act.

Section 17-204 adds provisions relating to execution for: a certificate of division, a certificate of registered series and a certificate of conversion of registered series to protected series, a certificate of amendment or a certificate of correction of certificate of registered series, a certificate of conversion of protected series to registered series, a certificate of merger or consolidation of registered series, a certificate of cancellation of certificate of registered series, and a certificate of revival of registered series.

## **FEES AND ANNUAL TAX**

Section 17-1107 is amended to include certificates of registered series, restated certificates of registered series, certificates of division, and related actions to the fees set by the Secretary of State. Establishment of a fee or up to \$175 per certificate for the Secretary of State’s issuing any certificate via the Division’s online services is also included.

Section 17-1109 amends provisions relating to the annual tax of domestic and foreign LPs to include an annual tax for each registered series of a domestic LP. Sections 17-1111 and 17-1112 add registered series to domestic LP revival provisions.

### **Full text of Senate Bill 89.**

*This article is provided for informational purposes only and should not be considered, or relied upon, as legal advice.*

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