



SPONSOR: Rep. George & Sen. Blevins;
Reps. Bennett, Carson, Hudson, Jaques, Kovach, Lavelle

HOUSE OF REPRESENTATIVES
145th GENERAL ASSEMBLY

HOUSE BILL NO. 373

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:

1 Section 1 Amend § 17-101(12), Chapter 17, Title 6 of the Delaware Code by inserting the following sentence
2 after the fourth sentence of this subsection: "A partnership agreement is not subject to any statute of frauds (including
3 Section 2714 of this Title).".

4 Section 2. Amend § 17-105(b), Chapter 17, Title 6 of the Delaware Code by deleting the first two sentences
5 thereof and replacing them with the following five sentences: "In case the officer whose duty it is to serve legal process
6 cannot by due diligence serve the process in any manner provided for by subsection (a) of this section, it shall be lawful to
7 serve the process against the limited partnership upon the Secretary of State, and such service shall be as effectual for all
8 intents and purposes as if made in any of the ways provided for in subsection (a) hereof. Process may be served upon the
9 Secretary of State under this subsection by means of electronic transmission but only as prescribed by the Secretary of
10 State. The Secretary of State is authorized to issue such rules and regulations with respect to such service as the Secretary
11 of State deems necessary or appropriate. In the event that service is effected through the Secretary of State in accordance
12 with this subsection, the Secretary of State shall forthwith notify the limited partnership by letter, directed to the limited
13 partnership at the address of a general partner as it appears on the records relating to such limited partnership on file with
14 the Secretary of State or, if no such address appears, at its last registered office. Such letter shall be sent by a mail or
15 courier service that includes a record of mailing or deposit with the courier and a record of delivery evidenced by the
16 signature of the recipient.".

17 Section 3. Amend § 17-106, Chapter 17, Title 6 of the Delaware Code by inserting a new subsection (d) at the end
18 of such section to read as follows: "(d) Unless otherwise provided in a partnership agreement, a limited partnership
19 has the power and authority to grant, hold or exercise a power of attorney, including an irrevocable power of attorney.".

20 Section 4. Amend § 17-203, Chapter 17, Title 6 of the Delaware Code by inserting the words "or a certificate of
21 ownership and merger" immediately after the first occurrence of the word "consolidation" in the first sentence thereof, and

by inserting the words "or a certificate of ownership and merger" immediately after the third occurrence of the word "consolidation" in the first sentence thereof.

Section 5. Amend § 17-204(a), Chapter 17, Title 6 of the Delaware Code by inserting the words "or a certificate of ownership and merger" immediately after the first occurrence of the word "consolidation" in subparagraph 4 thereof, and by inserting the words "or certificate of ownership and merger" immediately after the second occurrence of the word "consolidation" in subparagraph 4 thereof.

Section 6. Amend § 17-204, Chapter 17, Title 6 of the Delaware Code by redesignating subsection "(c)" thereof as subsection "(d)" and inserting a new subsection (c) thereto to read as follows: "(c) For all purposes of the laws of the State of Delaware, a power of attorney with respect to matters relating to the organization, internal affairs or termination of a limited partnership or granted by a person as a partner or an assignee of a partnership interest or by a person seeking to become a partner or an assignee of a partnership interest shall be irrevocable if it states that it is irrevocable and it is coupled with an interest sufficient in law to support an irrevocable power. Such irrevocable power of attorney, unless otherwise provided therein, shall not be affected by subsequent death, disability, incapacity, dissolution, termination of existence or bankruptcy of, or any other event concerning, the principal. A power of attorney with respect to matters relating to the organization, internal affairs or termination of a limited partnership or granted by a person as a partner or an assignee of a partnership interest or by a person seeking to become a partner or an assignee of a partnership interest and, in either case, granted to the limited partnership, a general partner or limited partner thereof, or any of their respective officers, directors, managers, members, partners, trustees, employees or agents shall be deemed coupled with an interest sufficient in law to support an irrevocable power."

Section 7. Amend § 17-206(a), Chapter 17, Title 6 of the Delaware Code by inserting the words "any certificate of ownership and merger," immediately after the word "consolidation," in the first sentence thereof, and by inserting the words "the certificate of ownership and merger," immediately after the word "consolidation," in the first sentence of subparagraph (1) of the fifth sentence thereof.

Section 8. Amend § 17-206(b), Chapter 17, Title 6 of the Delaware Code by inserting the words "or a certificate of ownership and merger" immediately after each occurrence of the word "consolidation" in the second sentence thereof.

Section 9. Amend § 17-206(d), Chapter 17, Title 6 of the Delaware Code by inserting the words "a certificate of ownership and merger," immediately before the words "a restated certificate".

Section 10. Amend § 17-211(a), Chapter 17, Title 6 of the Delaware Code by inserting the following sentence at the end thereof: "As used in this section and in §§ 17-212 and 17-301 of this title, "plan of merger" means a writing

51 approved by a domestic limited partnership, in the form of resolutions or otherwise, that states the terms and conditions of a
52 merger under subsection (l) of this section."

53 Section 11. Amend § 17-211(b), Chapter 17, Title 6 of the Delaware Code by deleting the word "a" immediately
54 before the word "merger" in the second sentence thereof and substituting in lieu thereof the words "an agreement of", by
55 inserting the words "or a plan of merger" immediately after the word "consolidation" in the second sentence thereof, by
56 inserting the words "or a plan of merger" immediately after the first occurrence of the word "consolidation" in the fourth
57 sentence thereof, and by inserting the words "or plan of merger" immediately after the second occurrence of the word
58 "consolidation" in the fourth sentence thereof.

59 Section 12. Amend § 17-211(c), Chapter 17, Title 6 of the Delaware Code by deleting the word "If" at the
60 beginning of the first sentence thereof, and by substituting in lieu thereof the words "Except in the case of a merger under
61 subsection (l) of this section, if".

62 Section 13. Amend § 17-211(c)(8), Chapter 17, Title 6 of the Delaware Code by inserting two new sentences
63 immediately after the first sentence thereof worded as follows: "Process may be served upon the Secretary of State under
64 this subsection by means of electronic transmission but only as prescribed by the Secretary of State. The Secretary of State
65 is authorized to issue such rules and regulations with respect to such service as the Secretary of State deems necessary or
66 appropriate."

67 Section 14. Amend § 17-211(e), Chapter 17, Title 6 of the Delaware Code by inserting the words "or in the case
68 of a merger under subsection (l) of this section in a certificate of ownership and merger," immediately after the first
69 occurrence of the word "consolidation," and by inserting the words "or a certificate of ownership and merger" immediately
70 before the "." at the end thereof.

71 Section 15. Amend § 17-211(f), Chapter 17, Title 6 of the Delaware Code by inserting the words "or a certificate
72 of ownership and merger" immediately after the first occurrence of the word "consolidation" in the first sentence thereof.

73 Section 16. Amend § 17-211(g), Chapter 17, Title 6 of the Delaware Code by inserting the words "or a plan of
74 merger" immediately after the first occurrence of the word "consolidation" in the first sentence thereof.

75 Section 17. Amend § 17-211, Chapter 17, Title 6 of the Delaware Code by inserting a new subsection (l) at the
76 end of such section to read as follows: "(l) In any case in which (x) at least 90% of the outstanding shares of each class of
77 the stock of a corporation or corporations (other than a corporation which has in its certificate of incorporation the provision
78 required by § 251(g)(7)(i) of Title 8), of which class there are outstanding shares that, absent § 267(a) of Title 8, would be
79 entitled to vote on such merger, is owned by a domestic limited partnership, (y) 1 or more of such corporations is a
80 corporation of the State of Delaware, and (z) any corporation that is not a corporation of the State of Delaware is a

corporation of any other state or the District of Columbia or another jurisdiction, the laws of which do not forbid such merger, the domestic limited partnership having such stock ownership may either merge the corporation or corporations into itself and assume all of its or their obligations, or merge itself, or itself and 1 or more of such corporations, into 1 of the other corporations, pursuant to a plan of merger. If a domestic limited partnership is causing a merger under this subsection, the domestic limited partnership shall file a certificate of ownership and merger executed by at least 1 general partner on behalf of the domestic limited partnership in the office of the Secretary of State. The certificate of ownership and merger shall certify that such merger was authorized in accordance with the domestic limited partnership's partnership agreement and this chapter, and if the domestic limited partnership shall not own all the outstanding stock of all the corporations that are parties to the merger, shall state the terms and conditions of the merger, including the securities, cash, property, or rights to be issued, paid, delivered or granted by the surviving domestic limited partnership or corporation upon surrender of each share of the corporation or corporations not owned by the domestic limited partnership, or the cancellation of some or all of such shares. The terms and conditions of the merger may not result in a holder of stock in a corporation becoming a general partner in a surviving domestic limited partnership (other than a limited liability limited partnership). If a corporation surviving a merger under this subsection is not a corporation organized under the laws of the State of Delaware, then the terms and conditions of the merger shall obligate such corporation to agree that it may be served with process in the State of Delaware in any proceeding for enforcement of any obligation of the domestic limited partnership or any obligation of any constituent corporation of the State of Delaware, as well as for enforcement of any obligation of the surviving corporation, including any suit or other proceeding to enforce the right of any stockholders as determined in appraisal proceedings pursuant to § 262 of Title 8, and to irrevocably appoint the Secretary of State as its agent to accept service of process in any such suit or other proceedings, and to specify the address to which a copy of such process shall be mailed by the Secretary of State. Process may be served upon the Secretary of State under this subsection by means of electronic transmission but only as prescribed by the Secretary of State. The Secretary of State is authorized to issue such rules and regulations with respect to such service as the Secretary of State deems necessary or appropriate. In the event of such service upon the Secretary of State in accordance with this subsection, the Secretary of State shall forthwith notify such surviving corporation thereof by letter, directed to such surviving corporation at its address so specified, unless such surviving corporation shall have designated in writing to the Secretary of State a different address for such purpose, in which case it shall be mailed to the last address so designated. Such letter shall be sent by a mail or courier service that includes a record of mailing or deposit with the courier and a record of delivery evidenced by the signature of the recipient. Such letter shall enclose a copy of the process and any other papers served on the Secretary of State pursuant to this subsection. It shall be the duty of the plaintiff in the event of such service to serve process and any

other papers in duplicate, to notify the Secretary of State that service is being effected pursuant to this subsection and to pay the Secretary of State the sum of \$50 for the use of the State of Delaware, which sum shall be taxed as part of the costs in the proceeding, if the plaintiff shall prevail therein. The Secretary of State shall maintain an alphabetical record of any such service setting forth the name of the plaintiff and the defendant, the title, docket number and nature of the proceeding in which process has been served, the fact that service has been effected pursuant to this subsection, the return date thereof, and the day and hour service was made. The Secretary of State shall not be required to retain such information longer than 5 years from receipt of the service of process."

Section 18. Amend § 17-212, Chapter 17, Title 6 of the Delaware Code by inserting the words "or a plan of merger" immediately after the first occurrence of the word "consolidation" in the first sentence thereof.

Section 19. Amend § 17-216(b)(7), Chapter 17, Title 6 of the Delaware Code by inserting two new sentences immediately after the first sentence thereof worded as follows: "Process may be served upon the Secretary of State under paragraph (b)(6) of this section by means of electronic transmission but only as prescribed by the Secretary of State. The Secretary of State is authorized to issue such rules and regulations with respect to such service as the Secretary of State deems necessary or appropriate."

Section 20. Amend § 17-219(e)(7), Chapter 17, Title 6 of the Delaware Code by inserting two new sentences immediately after the first sentence thereof worded as follows: "Process may be served upon the Secretary of State under subdivision (e)(6) of this section by means of electronic transmission but only as prescribed by the Secretary of State. The Secretary of State is authorized to issue such rules and regulations with respect to such service as the Secretary of State deems necessary or appropriate."

Section 21. Amend § 17-301(b), Chapter 17, Title 6 of the Delaware Code by inserting the words "or plan of merger" immediately after the second and third occurrences of the word "consolidation" in the first sentence of subparagraph (3) thereof.

Section 22. Amend § 17-305(e), Chapter 17, Title 6 of the Delaware Code by deleting the reference to "(3)" after the words "subsection (a)" wherever it appears in this subsection and by inserting the following language after the words "5 business days" in the second sentence of this subsection: "(or such shorter or longer period of time as is provided for in a partnership agreement but not longer than 30 business days)".

Section 23. Amend § 17-305(f), Chapter 17, Title 6 of the Delaware Code by deleting the word "and" and substituting in lieu thereof the word "or" immediately after the words "adopted by all of the partners" in the first sentence thereof and by deleting the word "section" and substituting in lieu thereof the word "chapter" immediately before the "." in the second sentence thereof.

141 Section 24. Amend § 17-704(a), Chapter 17, Title 6 of the Delaware Code by deleting the words "if and to the
142 extent that", by deleting the word "The" immediately after the reference to "(1)" and substituting in lieu thereof the words
143 "As provided in the", by deleting the words "so provides" immediately after the words "partnership agreement", and by
144 deleting the words "All partners consent" and by substituting in lieu thereof the words "Unless otherwise provided in the
145 partnership agreement, upon the affirmative vote or written consent of all partners".

146 Section 25. Amend § 17-902, Chapter 17, Title 6 of the Delaware Code by renumbering subsection "(2)" thereof
147 as subsection "(3)" and inserting a new subsection (2) thereto to read as follows: "(2) A certificate, as of a date not
148 earlier than 6 months prior to the filing date, issued by an authorized officer of the jurisdiction of its formation evidencing
149 its existence. If such certificate is in a foreign language, a translation thereof, under oath of the translator, shall be attached
150 thereto."

151 Section 26. Amend § 17-910(b), Chapter 17, Title 6 of the Delaware Code by deleting the first two sentences
152 thereof and replacing them with the following five sentences: "In case the officer whose duty it is to serve legal process
153 cannot by due diligence serve the process in any manner provided for by subsection (a) of this section, it shall be lawful to
154 serve the process against the foreign limited partnership upon the Secretary of State, and such service shall be as effectual
155 for all intents and purposes as if made in any of the ways provided for in subsection (a) hereof. Process may be served
156 upon the Secretary of State under this subsection by means of electronic transmission but only as prescribed by the
157 Secretary of State. The Secretary of State is authorized to issue such rules and regulations with respect to such service as
158 the Secretary of State deems necessary or appropriate. In the event that service is effected through the Secretary of State in
159 accordance with this subsection, the Secretary of State shall forthwith notify the foreign limited partnership by letter,
160 directed to the foreign limited partnership at the address of a general partner as it appears on the records relating to such
161 foreign limited partnership on file with the Secretary of State or, if no such address appears, at its last registered office.
162 Such letter shall be sent by a mail or courier service that includes a record of mailing or deposit with the courier and a
163 record of delivery evidenced by the signature of the recipient."

164 Section 27. Amend § 17-911(a), Chapter 17, Title 6 of the Delaware Code by adding the following two sentences
165 at the end thereof as follows: "Process may be served upon the Secretary of State under this subsection by means of
166 electronic transmission but only as prescribed by the Secretary of State. The Secretary of State is authorized to issue such
167 rules and regulations with respect to such service as the Secretary of State deems necessary or appropriate."

168 Section 28. Amend § 17-911(c), Chapter 17, Title 6 of the Delaware Code by deleting the words "certified mail,
169 return receipt requested," in the first sentence thereof and by inserting a new sentence immediately after the first sentence

thereof worded as follows: "Such letter shall be sent by a mail or courier service that includes a record of mailing or deposit with the courier and a record of delivery evidenced by the signature of the recipient."

Section 29. Amend § 17-1101, Chapter 17, Title 6 of the Delaware Code by inserting a new subsection (i) at the end of such section to read as follows: "(i) A partnership agreement that provides for the application of Delaware law shall be governed by and construed under the laws of the State of Delaware in accordance with its terms."

Section 30. Amend § 17-1107(a), Chapter 17, Title 6 of the Delaware Code by inserting the words "or a certificate of ownership and merger" immediately after the word "consolidation" in subparagraph (3) thereof.

Section 31. This Act shall become effective August 2, 2010.

SYNOPSIS

This bill 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. This section amends § 17-101(12) of the Act to provide, in light of the decision of the Delaware Supreme Court in *Olson v. Halvorsen*, C.A. No. 1884 (Del. Supr. Dec. 15, 2009), which dealt with a limited liability company agreement, but may apply to a partnership agreement by analogy, that a partnership agreement is not subject to any statute of frauds.

Sections 2, 26, 27 and 28. Sections 2, 26, 27 and 28 amend §§ 17-105(b), 17-910(b), 17-911(a) and 17-911(c) of the Act to allow for service of process upon the Secretary of State thereunder by means of electronic transmission but only as prescribed by the Secretary of State, to authorize the Secretary of State to issue such rules and regulations with respect to such service as the Secretary of State deems necessary or appropriate, and to enable the Secretary of State, in the event that service is effected through the Secretary of State in accordance therewith, to provide notice of service by letter sent by a mail or courier service that includes a record of mailing or deposit with the courier and a record of delivery evidenced by the signature of the recipient.

Section 3. This section amends § 17-106 of the Act to confirm the broad powers of a limited partnership.

Sections 4, 5, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 21 and 30. Sections 4, 5, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 21 and 30 amend §§ 17-203, 17-204(a), 17-206(a), 17-206(b), 17-206(d), 17-211(a), 17-211(b), 17-211(c), 17-211(e), 17-211(f), 17-211(g), 17-211, 17-212, 17-301(b) and 17-1107(a) of the Act to provide a mechanism to implement a short form merger under new Section 267 of Title 8 where a domestic limited partnership is the parent Entity (as defined in new Section 267(e)(2) of Title 8).

Section 6. This section amends § 17-204 of the Act to clarify, for purposes of the laws of the State of Delaware, when a power of attorney will be irrevocable, and the effects of such irrevocability.

Sections 13, 19 and 20. Sections 13, 19 and 20 amend §§ 17-211(c)(8), 17-216(b)(7), and 17-219(e)(7) of the Act to allow for service of process upon the Secretary of State thereunder by means of electronic transmission but only as prescribed by the Secretary of State, and to authorize the Secretary of State to issue such rules and regulations with respect to such service as the Secretary of State deems necessary or appropriate.

Section 22. This section amends § 17-305(e) of the Act to clarify both the categories of information that are within its scope and that the prescribed time period for responding to an information demand may be varied by a partnership agreement.

Section 23. This section amends § 17-305(f) of the Act to make it consistent with other sections of the Act and to clarify and confirm that all amendments are valid if adopted in the manner provided for in the partnership agreement.

Section 24. This section amends § 17-704(a) of the Act to confirm the circumstances in which an assignee of a partnership interest may become a limited partner.

Section 25. This section amends § 17-902 of the Act to require that a foreign limited partnership registering with the Secretary of State must file a certificate, as of a date not earlier than 6 months prior to the filing date, issued by an authorized officer of the jurisdiction of its formation evidencing its existence, along with, if applicable, a translation thereof under oath.

Section 29. This section amends § 17-1101 of the Act to provide that a partnership agreement that provides for the application of Delaware law shall be governed by and construed under the laws of the State of Delaware in accordance with its terms. This amendment is not intended to negate the application of Delaware law to the interpretation and enforcement of a partnership agreement that does not explicitly provide for the application of Delaware law or to negate the application of the internal affairs doctrine to Delaware limited partnerships.

Section 31. This section provides that the proposed amendments of the Act shall become effective August 2, 2010.