

## 2017 Proposed Amendments to Delaware's LLC and Partnership Acts

June 12, 2017

Legislation proposing to amend the Delaware Limited Liability Act (LLC Act), the Delaware Revised Uniform Limited Partnership Act (LP Act) and the Delaware Revised Uniform Partnership Act (GP Act) (collectively, the LLC and Partnership Acts) has been introduced to the Delaware General Assembly. The following is a brief summary of some of the more significant proposed amendments that affect Delaware limited liability companies (Delaware LLCs), Delaware limited partnerships (Delaware LPs) and Delaware general partnerships (Delaware GPs). If enacted, all of the proposed amendments will become effective on August 1, 2017.

### **Broad Authority to Delegate Rights, Powers and Duties**

Each of the LLC and Partnership Acts contain a similar general default provision addressing the ability of members, managers and partners to *delegate managerial authority*. In *Obeid v. Hogan*, C.A. No. 11900-VCL (Del. Ch. June 10, 2016), the Delaware Court of Chancery analyzed and discussed the general default provision addressing the delegation of managerial authority contained in Section 18-407 of the LLC Act. In light of this decision, the LLC and Partnership Acts are being amended to confirm and clarify the broad power and authority of a member or manager of a Delaware LLC, a general partner of a Delaware LP and a partner of a Delaware GP to delegate any or all of such member's, manager's, general partner's or partner's rights, powers and duties, including any core governance functions, to manage and control the business and affairs of a Delaware LLC, Delaware LP or Delaware GP, as applicable.

### **Participation in Control Safe Harbors Expanded**

A key policy of the LP Act is the protection of limited partners of a Delaware LP from liability for the debts and obligations of the Delaware LP. Section 17-303 of the LP Act sets forth the statutory framework with respect to the *liability of limited partners* to third parties. Pursuant to Section 17-303(a) of the LP Act and except as otherwise provided in a partnership agreement, a limited partner of a Delaware LP is not liable for the debts and obligations of the Delaware LP unless (i) it is also a general partner of the Delaware LP, or (ii) in addition to the exercise of its rights and powers as a limited partner, it "participates in the control of the business" of the Delaware LP. If a limited partner does participate in the control of the business, it is liable only to persons who transact business with the Delaware LP reasonably believing, based upon the limited partner's conduct, that the limited partner is a general partner.

Section 17-303(b) of the LP Act creates a *fairly broad safe harbor from liability* for limited partners of a Delaware LP by providing a non-exclusive list of activities that can be undertaken by a limited partner without such limited partner being deemed to be "participating in the control of the business" of a Delaware LP. Section 17-303(b)(1) of the LP Act is being amended to confirm that limited partners of a Delaware LP may hold any type of interest in a general partner of a Delaware LP without being deemed to be participating in the control of the business of a Delaware LP within the

meaning of the LP Act by virtue of such relationship.

### **Substantial Compliance**

Delaware LLCs and Delaware LPs are entities that must be formed in accordance with the requirements of the LLC Act or the LP Act. In addition to adopting a limited liability company agreement or a partnership agreement, as the case may be, in order to properly form a Delaware LLC or Delaware LP an appropriately executed certificate of formation of a Delaware LLC or certificate of limited partnership of a Delaware LP containing the information required under the LLC Act or the LP Act must be filed in the office of the Secretary of State of the State of Delaware. The LLC Act and the LP Act provide that a Delaware LLC or Delaware LP is formed at the time the filing of the applicable certificate is effective if there has been "substantial compliance" with the requirements of Section 18-201 of the LLC Act or Section 17-201 of the LP Act, as applicable.

Section 18-201(a)(2) of the LLC Act and Section 17-201(a)(2) of the LP Act require that a certificate of formation of a Delaware LLC and a certificate of limited partnership of a Delaware LP identify (i) the address of the registered office of such Delaware LLC or Delaware LP in the State of Delaware, and (ii) the name and address of the registered agent for service of process on such Delaware LLC or Delaware LP in the State of Delaware. The LLC Act and the LP Act are being amended to confirm and clarify that a certificate of formation of a Delaware LLC and a certificate of limited partnership of a Delaware LP substantially comply with the requirements set forth in the LLC Act and the LP Act if they contain the name of the registered agent and the address of the registered office, even if the applicable certificate does not expressly designate such person as the registered agent or such address as the registered office or the address of the registered agent.

The proposed amendments reflect Delaware's continuing commitment to maintaining statutes governing Delaware LLCs, Delaware LPs and Delaware GPs that effectively serve the business needs of the national and international business communities. The proposed amendments to the LLC Act, the LP Act and the GP Act are contained in Senate Bill Nos. 72, 71 and 70, respectively.

### **Related Files**

- [Read Senate Bill No. 70](#)
- [Read Senate Bill No. 71](#)
- [Read Senate Bill No. 72](#)

### **Related Practices**

- [Limited Liability Company and Partnership Advisory](#)