



SPONSOR: Sen. Sharp  
Sens. Vaughn, Amick & Winslow;  
Reps. Spence, Valihura, Wagner &  
DiLiberto

DELAWARE STATE SENATE

140th GENERAL ASSEMBLY

SENATE BILL NO.

AN ACT TO AMEND TITLE 6 OF THE DELAWARE CODE RELATING TO COMMERCE AND TRADE AND  
THE ADOPTION OF THE DELAWARE REVISED UNIFORM PARTNERSHIP ACT.

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 Title 6 of the Delaware Code by adding new Sections 15-101  
through 15-1210 as follows:

“Chapter 15. DELAWARE REVISED UNIFORM PARTNERSHIP ACT

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Section 15-102. Knowledge and Notice.

Section 15-103. Effect of Partnership Agreement; Nonwaivable Provisions.

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Section 15-106. Governing Law.

Section 15-107. Reserved Power of State of Delaware to Alter or Repeal Chapter.

Section 15-108. Name of Partnership.

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146 SECTION 15-101. DEFINITIONS.

147 As used in this chapter unless the context otherwise requires:

148 (1) 'Business' includes every trade, occupation and profession, the holding or ownership of  
149 property and any other activity for profit.

150 (2) 'Certificate' means a certificate of conversion to partnership under Section 15-901, a  
151 certificate of merger or consolidation under Sections 15-902, a certificate of partnership domestication  
152 under Section 15-904, a certificate of transfer and a certificate of transfer and continuance under Section  
153 15-905, and a certificate of correction and a corrected certificate under Sections 15-122.

154 (3) 'Debtor in bankruptcy' means a person who is the subject of:

155 (i) an order for relief under Title 11 of the United States Code or a comparable order under a  
156 successor statute of general application; or

157 (ii) a comparable order under State of Delaware federal, state or foreign law governing  
158 insolvency.

159 (4) 'Distribution' means a transfer of money or other property from a partnership to a partner in  
160 the partner's capacity as a partner or to a transferee of all or a part of a partner's economic interest.

161 (5) 'Domestic Partnership' means an association of two or more persons formed under Section  
162 15-202 or predecessor law to carry on any lawful business, purpose or activity.

163 (6) 'Economic interest' means a partner's share of the profits and losses of a partnership and the  
164 partner's right to receive distributions.

165 (7) 'Foreign limited liability partnership' means a partnership that:

166 (i) is formed under laws other than the laws of the State of Delaware; and

167 (ii) has the status of a limited liability partnership under those laws.

(8) 'Limited liability partnership' means a partnership that has filed a statement of qualification under Section 15-1001 and does not have a similar statement in effect in any other jurisdiction.

(9) 'Liquidating Trustee' means a person, other than a partner, carrying out the winding up of a partnership.

(10) 'Partner' means a person who has been admitted to a partnership as a partner of the partnership.

(11) 'Partnership' means an association of two or more persons formed under Section 15-202, predecessor law or comparable law of another jurisdiction to carry on any business, purpose or activity.

(12) 'Partnership agreement' means the agreement, whether written, oral or implied, among the partners concerning the partnership, including amendments to the partnership agreement.

(13) 'Partnership at will' means a partnership that is not a partnership for a definite term or particular undertaking.

(14) 'Partnership for a definite term or particular undertaking' means a partnership in which the partners have agreed to remain partners until the expiration of a definite term or the completion of a particular undertaking.

(15) 'Partnership interest' or 'partner's interest in the partnership' means all of a partner's interests in the partnership, including the partner's economic interest and all management and other rights.

(16) 'Person' means a natural person, partnership, limited partnership, trust, estate, limited liability company, association, corporation, custodian, nominee or any other individual or entity in its own or any representative capacity.

(17) 'Property' means all property, real, personal or mixed, tangible or intangible, or any interest therein.

(18) 'State' means the District of Columbia or the Commonwealth of Puerto Rico or any state, territory, possession or other jurisdiction of the United States other than the State of Delaware.

(19) 'Statement' means a statement of partnership existence under Section 15-303, a statement of denial under Section 15-304, a statement of dissociation under Section 15-704, a statement of dissolution under Section 15-805, a statement of qualification under Section 15-1001, a statement of foreign



195 qualification under Section 15-1102, and an amendment or cancellation of any of the foregoing under  
196 Section 15-105 and a statement of correction and a corrected statement under Section 15-118.

197 (20) 'Transfer' includes an assignment, conveyance, lease, mortgage, deed, and encumbrance.

198 SECTION 15-102. KNOWLEDGE AND NOTICE.

199 (a) A person knows a fact if the person has actual knowledge of it.

200 (b) A person has notice of a fact:

201 (1) if the person knows of it;

202 (2) if the person has received a notification of it;

203 (3) if the person has reason to know it exists from all of the facts known to the person at the  
204 time in question; or

205 (4) by reason of a filing or recording of a statement or certificate to the extent provided by  
206 and subject to the limitations set forth in this chapter.

207 (c) A person notifies or gives a notification to another by taking steps reasonably required to  
208 inform the other person in the ordinary course, whether or not the other person obtains knowledge of it.

209 (d) A person receives a notification when the notification:

210 (1) comes to the person's attention; or

211 (2) is received at the person's place of business or at any other place held out by the person as  
212 a place for receiving communications.

213 (e) Except as otherwise provided in subsection (f), a person other than an individual knows, has  
214 notice, or receives a notification of a fact for purposes of a particular transaction when the individual  
215 conducting the transaction knows, has notice, or receives a notification of the fact, or in any event when  
216 the fact would have been brought to the individual's attention if the person had exercised reasonable  
217 diligence. The person exercises reasonable diligence if it maintains reasonable routines for  
218 communicating significant information to the individual conducting the transaction and there is  
219 reasonable compliance with the routines. Reasonable diligence does not require an individual acting for  
220 the person to communicate information unless the communication is part of the individual's regular duties

or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

(f) A partner's knowledge, notice or receipt of a notification of a fact relating to the partnership is effective immediately as knowledge by, notice to or receipt of a notification by the partnership, except in the case of a fraud on the partnership committed by or with the consent of that partner.

#### SECTION 15-103. EFFECT OF PARTNERSHIP AGREEMENT; NONWAIVABLE PROVISIONS.

(a) Except as otherwise provided in subsection (b), relations among the partners and between the partners and the partnership are governed by the partnership agreement. To the extent the partnership agreement does not otherwise provide, this chapter governs relations among the partners and between the partners and the partnership.

(b) The partnership agreement may not:

(1) vary the rights and duties under Section 15-105 except to eliminate the duty to provide copies of statements to all of the partners;

(2) unreasonably restrict a partner's rights under Section 15-403;

(3) eliminate the obligation of good faith and fair dealing under Section 15-404(d), but the partnership agreement may restrict the obligation or prescribe the standards by which the performance of the obligation is to be measured;

(4) vary the power to dissociate as a partner under Section 15-602(a), except to require the notice under Section 15-601(1) to be in writing;

(5) vary the right of a court to expel a partner in the events specified in Section 15-601(5);

(6) vary the requirement to wind up the partnership business in cases specified in Section 15-801(4), (5) or (6);

(7) vary the law applicable to a limited liability partnership under Section 15-106(b); or

(8) restrict rights of third parties under this chapter without the consent of those third parties.

(c) It is the policy of this chapter to give maximum effect to the principle of freedom of contract and to the enforceability of partnership agreements.

(d) A partner or another person shall not be liable to the partnership or the other partners or another person for the partner's or other person's good faith reliance on the provisions of the partnership agreement.

#### SECTION 15-104. SUPPLEMENTAL PRINCIPLES OF LAW.

(a) In any case not provided for in this chapter, the rules of law and equity, including the law merchant, shall govern.

(b) No obligation of partner to a partnership arising under a partnership agreement or a separate agreement or writing, and no note, instruction or other writing evidencing any such obligation of a partner, shall be subject to the defense of usury, and no partner shall interpose the defense of usury with respect to any such obligation in any action. If an obligation to pay interest arises under this chapter and the rate is not specified, the rate is that specified in 6 Del. Ch. § 2301.

#### SECTION 15-105. EXECUTION, FILING AND RECORDING OF STATEMENTS AND CERTIFICATES.

(a) A statement or certificate may be filed with the Secretary of State by delivery to the Secretary of State of the original signed copy of the statement or of the certificate. A certified copy of a statement that is filed in an office in another state may be filed with the Secretary of State. Either filing in the State of Delaware has the effect provided in this chapter with respect to partnership property located in or transactions that occur in the State of Delaware.

(b) Only a certified copy of a filed statement recorded in the office for recording transfers of real property has the effect provided for recorded statements in this chapter.

(c) A statement or certificate filed by a partnership must be executed by at least one partner or by one or more authorized persons. Other statements must be executed by a partner or other authorized person. The execution of a statement or certificate by an individual as, or on behalf of, a partner or other person named as a partner in a statement or certificate constitutes an oath or affirmation, under the

penalties of perjury in the third degree, that, to the best of the individual's knowledge and belief, the facts stated therein are true. A person who executes a statement or a certificate as an agent or fiduciary need not exhibit evidence of his authority as a prerequisite to filing. Any signature on any statement or certificate authorized to be filed with the Secretary of State under any provision of this chapter may be a facsimile, a conformed signature or an electronically transmitted signature. Unless the Secretary of State finds that any statement or certificate does not conform to law, upon receipt of all filing fees required by law the Secretary of State shall:

(1) Certify that the statement or certificate has been filed with the Secretary of State by endorsing upon the original statement or certificate the word 'Filed', and the date and hour of the filing. This endorsement is conclusive of the date and time of its filing in the absence of actual fraud;

(2) File and index the endorsed statement or certificate; and

(3) Prepare and return to the person who filed it or the person's representative a copy of the original signed instrument, similarly endorsed, and shall certify such copy as a true copy of the original signed instrument.

(d) A person authorized by this chapter to file a statement or certificate may amend or cancel the statement or certificate by filing an amendment or cancellation that names the partnership, identifies the statement or certificate, and states the substance of the amendment or cancellation. A person authorized by this chapter to file a statement or certificate who becomes aware that such statement or certificate was false when made, or that any matter described in the statement or certificate has changed, making the statement or certificate false in any material respect, shall promptly amend the statement or certificate. Upon the filing of a statement or a certificate amending or correcting a statement or a certificate (or judicial decree of amendment) with the Secretary of State, or upon the future effective date or time of a statement or a certificate amending or correcting a statement or a certificate (or judicial decree thereof), as provided for therein, the statement or the certificate being corrected or amended shall be corrected or amended as set forth therein. Upon the filing of a statement of cancellation (or judicial decree thereof), or a certificate of merger or consolidation which acts as a statement of cancellation, or a certificate of transfer, or upon the future effective date or time of a statement of cancellation (or a judicial decree

thereof) or of a certificate of merger or consolidation which acts as a statement of cancellation, or a certificate of transfer, as provided for therein, or as specified in Section 15-111(d) of this chapter, the statement of partnership existence is cancelled. A statement of partnership existence shall be cancelled upon the dissolution and the completion of winding up of the partnership, or as provided in Section 15-111(d) of this chapter, or upon the filing of a certificate of merger or consolidation if the domestic partnership is not the surviving or resulting entity in a merger or consolidation, or upon the filing of a certificate of transfer, or upon the conversion of a domestic partnership approved in accordance with Section 15-903 of this chapter. A statement of cancellation shall be filed with the Secretary of State to accomplish the cancellation of a statement of partnership existence upon the dissolution and the completion of winding up of a domestic partnership or upon the conversion of a domestic partnership approved in accordance with Section 15-903 of this chapter and shall set forth:

- (1) The name of the partnership;
- (2) The date of filing of its statement of partnership existence;
- (3) The reason for filing the statement of cancellation;
- (4) In the case of the conversion of a domestic partnership, the name of the entity to which the domestic partnership has been converted; and
- (5) Any other information the person filing the statement of cancellation determines.

Upon the filing of a certificate of partnership domestication, or upon the future effective date or time of a certificate of partnership domestication, the entity filing the certificate of partnership domestication is domesticated as a partnership with the effect provided in Section 15-904 of this chapter. Upon the filing of a certificate of conversion to partnership, or upon the future effective date or time of a certificate of conversion to partnership, the entity filing the certificate of conversion to partnership is converted to a partnership with the effect provided in Section 15-901 of this chapter. Upon the filing of a certificate of termination of a merger or consolidation, the certificate of merger or consolidation identified in the certificate of termination of a merger or consolidation is terminated. Upon the filing of a certificate of amendment of a certificate of merger or consolidation, the certificate of merger or consolidation identified in the certificate of amendment of a certificate of merger or consolidation is amended. Upon

the filing of a certificate of transfer and continuance, or upon the future effective date or time of a certificate of transfer and continuance, as provided for therein, the partnership filing the certificate of transfer and continuance shall continue to exist as a partnership of the State of Delaware with the effect provided in Section 15-905 of this chapter.

(e) A person who files a statement or certificate pursuant to this section shall promptly send a copy of the statement or certificate to every nonfiling partner and to any other person named as a partner in the statement or certificate. Failure to send a copy of a statement or certificate to a partner or other person does not limit the effectiveness of the statement or certificate as to a person not a partner.

(f) The filing of a statement of partnership existence under Section 15-303, a statement of qualification under Section 15-1001 or a statement of foreign qualification under Section 15-1102 with the Secretary of State shall make it unnecessary to file any other document under Chapter 31 of this Title.

(g) A statement or certificate filed with the Secretary of State shall be effective if there has been substantial compliance with the requirements of this chapter.

(h) A statement or certificate shall be effective at the time of its filing with the Secretary of State or at any later date or time specified in the statement or certificate.

(i) A fee as set forth in Section 15-1207 of this chapter shall be paid at the time of the filing of a statement or a certificate.

(j) A fee as set forth in Section 15-1207 of this chapter shall be paid for a certified copy of any paper on file as provided for by this chapter, and a fee as set forth in Section 15-1207 of this chapter shall be paid for each page copied.

#### SECTION 15-106. GOVERNING LAW.

(a) Except as otherwise provided in subsection (b), the law of the jurisdiction governing a partnership agreement governs relations among the partners and between the partners and the partnership.

(b) The law of the State of Delaware governs relations among the partners and between the partners and the partnership and the liability of partners for an obligation of a limited liability partnership.

SECTION 15-107. RESERVED POWER OF STATE OF DELAWARE TO ALTER OR  
REPEAL CHAPTER.

All provisions of this chapter may be altered from time to time or repealed and all rights of partners are subject to this reservation. Unless expressly stated to the contrary in this chapter, all amendments of this chapter shall apply to partnerships and partners whether or not existing at the time of the enactment of any such amendment.

SECTION 15-108. NAME OF PARTNERSHIP.

(a) The name of a partnership (i) may contain the name of a partner and (ii) may contain the following words: 'Company,' 'Association,' 'Club,' 'Foundation,' 'Fund,' 'Institute,' 'Society,' 'Union,' 'Syndicate,' 'Trust' (or abbreviations of like import).

(b) The name of a limited liability partnership shall contain as the last words or letters of its name the words 'Limited Liability Partnership,' the abbreviation 'L.L.P.' or the designation 'LLP.'

(c) The name of a partnership to be included in the statement of partnership existence, statement of qualification or statement of foreign qualification filed by such partnership must be such as to distinguish it upon the records of the Secretary of State from the name of any corporation, partnership (including a limited liability partnership), limited partnership (including a limited liability limited partnership), business trust or limited liability company organized under the laws of the State of Delaware and reserved or registered with the Secretary of State or qualified to do business and registered as a foreign corporation, foreign limited liability partnership, foreign limited partnership, foreign business trust or foreign limited liability company in the State of Delaware; provided, however, that a partnership may be registered under any name which is not such as to distinguish it upon the records of the Secretary of State from the name of any domestic or foreign corporation, partnership (including a limited liability partnership), limited partnership (including a limited liability limited partnership), business trust or limited liability company reserved or registered under the laws of the State of Delaware with the written consent of the other corporation, partnership (including a limited liability partnership), limited partnership

(including a limited liability limited partnership), business trust or limited liability company, which written consent shall be filed with the Secretary of State.

#### SECTION 15-109. RESERVATION OF NAME.

(a) The exclusive right to use of a specified name in a statement using the specified name may be reserved by: (1) any person intending to organize a partnership under this chapter and to adopt that name; (2) any partnership or any foreign limited liability partnership registered in the State of Delaware which, in either case, proposes to change its name; (3) any foreign limited liability partnership intending to register in the State of Delaware and adopt that name; and (4) any person intending to organize a foreign limited liability partnership and intending to have it register in the State of Delaware and adopt that name.

(b) The reservation of a specified name shall be made by filing with the Secretary of State an application, executed by the applicant, specifying the name to be reserved and the name and address of the applicant. If the Secretary of State finds that the name is available for use, the Secretary shall reserve the name for exclusive use of the applicant in a statement using the specified name for a period of 120 days. Once having so reserved a name, the same applicant may again reserve the same name for successive 120 day periods. The right to the exclusive use of a reserved name in a statement using the specified name may be transferred to any other person by filing with the Secretary of State a notice of the transfer, executed by the applicant for whom the name was reserved, specifying the name to be transferred and the name and address of the transferee. The reservation of a specified name may be canceled by filing with the Secretary of State a notice of cancellation, executed by the applicant or transferee, specifying the name reservation to be canceled and the name and address of the applicant or transferee. Unless the Secretary of State finds that any application, notice of transfer or notice of cancellation filed with the Secretary of State as required by this subsection does not conform to law, upon receipt of all filing fees required by law, the Secretary shall prepare and return to the person who filed such instrument a copy of the filed instrument with a notation thereon of the action taken by Secretary of State.



(c) A fee as set forth in Section 15-1207 of this chapter shall be paid at the time of the initial reservation of any name, at the time of the renewal of any such reservation and at the time of the filing of a notice of the transfer or cancellation of any such reservation.

#### SECTION 15-110. INDEMNIFICATION.

Subject to such standards and restrictions, if any, as are set forth in its partnership agreement, a partnership may, and shall have the power to, indemnify and hold harmless any partner or other person from and against any and all claims and demands whatsoever.

#### SECTION 15-111. REGISTERED OFFICE; REGISTERED AGENT.

(a) Each partnership that files a statement of partnership existence, a statement of qualification or a statement of foreign qualification shall have and maintain in the State of Delaware:

(1) A registered office, which may but need not be a place of its business in the State of Delaware; and

(2) A registered agent for service of process on the partnership, which agent may be either an individual resident of the State of Delaware whose business office is identical with the partnership's registered office, or a domestic corporation, or a domestic limited partnership, or a domestic limited liability company, or a domestic business trust, or a domestic limited liability partnership, or a foreign corporation, or a foreign limited partnership, or a foreign limited liability company, or a foreign business trust, or a foreign limited liability partnership authorized to do business in the State of Delaware having a business office identical with such registered office, which is generally open during normal business hours to accept service of process and otherwise perform the functions of a registered agent, or the partnership itself.

(b) A registered agent may change the address of the registered office of the partnerships for which it is registered agent to another address in the State of Delaware by paying a fee as set forth in Section 15-1207 of this chapter and filing with the Secretary of State a certificate, executed by such registered agent, setting forth the names of all the partnerships represented by such registered agent, and the address at which such registered agent has maintained the registered office for each of such partnerships, and further certifying to the new address to which each such registered office will be

428 changed on a given day, and at which new address such registered agent will thereafter maintain the  
429 registered office for each of the partnerships recited in the certificate. Upon the filing of such certificate,  
430 the Secretary of State shall furnish to the registered agent a certified copy of the same under his hand and  
431 seal of office, and thereafter, or until further change of address as authorized by law, the registered office  
432 in the State of Delaware of each of the partnerships recited in the certificate shall be located at the new  
433 address of the registered agent thereof as given in the certificate. In the event of a change of name of any  
434 person acting as registered agent of a partnership, such registered agent shall file with the Secretary of  
435 State a certificate, executed by such registered agent, setting forth the new name of such registered agent,  
436 the name of such registered agent before it was changed, the names of all the partnerships represented by  
437 such registered agent, and the address at which such registered agent has maintained the registered office  
438 for each of such partnerships, and shall pay a fee as set forth in Section 15-1207 of this chapter. Upon the  
439 filing of such certificate, the Secretary of State shall furnish to the registered agent a certified copy of the  
440 same under his hand and seal of office. Filing a certificate under this section shall be deemed to be an  
441 amendment of the statement of partnership existence, statement of qualification or statement of foreign  
442 qualification of each partnership affected thereby and each such partnership shall not be required to take  
443 any further action, with respect thereto, to amend its statement of partnership existence, statement of  
444 qualification or statement of foreign qualification under Section 15-105(d) of this chapter. Any registered  
445 agent filing a certificate under this section shall promptly, upon such filing, deliver a copy of any such  
446 certificate to each partnership affected thereby.

447 (c) The registered agent of 1 or more partnerships may resign and appoint a successor agent by  
448 paying a fee as set forth in Section 15-1207 of this chapter and filing a certificate with the Secretary of  
449 State stating that it resigns and the name and address of the successor registered agent. There shall be  
450 attached to such certificate a statement executed by each affected partnership ratifying and approving  
451 such change of registered agent. Upon such filing, the successor registered agent shall become the  
452 registered agent of such partnerships as have ratified and approved such substitution and the successor  
453 registered agent's address, as stated in such certificate, shall become the address of each such partnership's  
454 registered office in the State of Delaware. The Secretary of State shall furnish to the successor registered

agent a certified copy of the certificate of resignation. Filing of such certificate of resignation shall be deemed to be an amendment of the statement of partnership existence, statement of qualification or statement of foreign qualification of each partnership affected thereby and each such partnership shall not be required to take any further action, with respect thereto, to amend its statement of partnership existence, statement of qualification or statement of foreign qualification under Section 15-105(d) of this chapter.

(d) The registered agent of a partnership may resign without appointing a successor registered agent by paying a fee as set forth in Section 15-1207 of this chapter and filing a certificate with the Secretary of State stating that it resigns as registered agent for the partnership identified in the certificate, but such resignation shall not become effective until 120 days after the certificate is filed. There shall be attached to such certificate an affidavit of such registered agent that at least 30 days prior to and on or about the date of filing of said certificate, notices were sent by certified or registered mail to the partnership for which such registered agent is resigning as registered agent, at the principal office thereof within or outside the State of Delaware, if known to such registered agent or, if not, to the last known address of the attorney or other individual at whose request such registered agent was appointed for such partnership, of the resignation of such registered agent. After receipt of the notice of the resignation of its registered agent, the partnership for which such registered agent was acting shall obtain and designate a new registered agent to take the place of the registered agent so resigning. If such partnership fails to obtain and designate a new registered agent as aforesaid prior to the expiration of the period of 120 days after the filing by the registered agent of the certificate of resignation, the statement of partnership existence, statement of qualification or statement of foreign qualification of such partnership shall be deemed to be canceled. After the resignation of the registered agent shall have become effective as provided in this section and if no new registered agent shall have been obtained and designated in the time and manner aforesaid, service of legal process against the partnership for which the resigned registered agent had been acting shall thereafter be upon the Secretary of State in accordance with Section 15-113 of this chapter.

#### SECTION 15-112. SERVICE OF PROCESS ON PARTNERSHIP FILING A STATEMENT.

(a) Service of legal process upon any partnership which has filed a statement of partnership existence, a statement of qualification or a statement of foreign qualification shall be made by delivering a copy personally to any partner of the partnership in the State of Delaware or any partner who signed a statement of partnership existence, a statement of qualification or a statement of foreign qualification or the registered agent of the partnership in the State of Delaware or by leaving it at the dwelling house or usual place of abode in the State of Delaware of any such partner or registered agent (if the registered agent be an individual), or at the registered office or any place of business of the partnership in the State of Delaware. Service by copy left at the dwelling house or usual place of abode of a partner, registered agent, or at the registered office or any place of business of the partnership in the State of Delaware, to be effective, must be delivered thereat at least 6 days before the return date of the process, and in the presence of an adult person, and the officer serving the process shall distinctly state the manner of service in the return thereto. Process returnable forthwith must be delivered personally to the partner or registered agent.

(b) In case the officer whose duty it is to serve legal process cannot by due diligence serve the process in any manner provided for by subsection (a) of this section, it shall be lawful to serve the process against the partnership upon the Secretary of State, and such service shall be as effectual for all intents and purposes as if made in any of the ways provided for in subsection (a) hereof. In the event that service is effected through the Secretary of State in accordance with this subsection, the Secretary of State shall forthwith notify the partnership by letter, certified mail, return receipt requested, directed to the partnership at the address of any partner as it appears on the records relating to such partnership on file with the Secretary of State or, if no such address appears, at the last registered office. 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 defendant, the title, docket number and nature of the proceeding in which process has been served upon him, the fact that service has been effected pursuant to this subsection, the return date thereof, and the day and hour when the service was made. The Secretary of State shall not be required to retain such information for a period longer than 5 years from receipt of the service of process.

SECTION 15-113. SERVICE OF PROCESS ON A PARTNERSHIP NOT FILING A STATEMENT.

(a) Service of legal process upon any partnership which has not filed a statement of partnership existence, a statement of qualification or a statement of foreign qualification and which is formed under the laws of the State of Delaware or doing business in the State of Delaware shall be made by delivering a copy personally to any partner doing business in the State of Delaware or by leaving it at the dwelling house or usual place of abode in the State of Delaware of a partner or at a place of business of the partnership in the State of Delaware. Service by copy left at the dwelling house or usual place of abode of a partner or at a place of business of the partnership in the State of Delaware, to be effective, must be delivered thereat at least 6 days before the return date of the process, and in the presence of an adult person, and the officer serving the process shall distinctly state the manner of service in the return thereto. Process returnable forthwith must be delivered personally to the partner.

(b) In case the officer whose duty it is to serve legal process cannot by due diligence serve the process in any manner provided for by subsection (a) of this section, it shall be lawful to serve the process against the partnership upon the Secretary of State, and such service shall be as effectual for all intents and purposes as if made in any of the ways provided for in subsection (a) hereof. In the event that service is effected through the Secretary of State in accordance with this subsection, the Secretary of State shall forthwith notify the partnership by letter, certified mail, return receipt requested, directed to the

partnership at the address of any partner or the partnership as it is furnished to the Secretary State by the person desiring to make service. 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 on 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 defendant, the title, docket number and nature of the proceeding in which process has been served upon the Secretary of State, the fact that service has been effected pursuant to this subsection, the return date thereof, and the day and hour when the service was made. The Secretary of State shall not be required to retain such information for a period longer than 5 years from the Secretary of State's receipt of the service of process.

SECTION 15-114. SERVICE OF PROCESS ON A PARTNER AND LIQUIDATING TRUSTEE.

(a) A partner or a liquidating trustee of a partnership which is formed under the laws of the State of Delaware or doing business in the State of Delaware may be served with process in the manner prescribed in this section in all civil actions or proceedings brought in the State of Delaware involving or relating to the business of the partnership or a violation by the partner or the liquidating trustee of a duty to the partnership or any partner of the partnership, whether or not the partner or the liquidating trustee is a partner or a liquidating trustee at the time suit is commenced. A person who is at the time of the effectiveness of this section or who becomes a partner or a liquidating trustee of a partnership thereby consents to the appointment of the registered agent of the partnership (or, if there is none, the Secretary of State) as such person's agent upon whom service of process may be made as provided in this section. Any process when so served shall be of the same legal force and validity as if served upon such partner or liquidating trustee within the State of Delaware and such appointment of the registered agent (or, if there is none, the Secretary of State) shall be irrevocable.

(b) Service of process shall be effected by serving the registered agent (or, if there is none, the Secretary of State) with 1 copy of such process in the manner provided by law for service of writs of summons. In the event service is made under this subsection upon the Secretary of State, the plaintiff shall pay to 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 of the proceeding if the plaintiff shall prevail therein. In addition, the Prothonotary or the Register in Chancery of the court in which the civil action or proceeding is pending shall, within 7 days of such service, deposit in the United States mails, by registered mail, postage prepaid, true and attested copies of the process, together with a statement that service is being made pursuant to this section, addressed to such partner or liquidating trustee at the partner's or liquidating trustee's address furnished to the Prothonotary or Register in Chancery by the person desiring to make service, which address shall be the partner's or the liquidating trustee's address as the same appears in any statement of the partnership or, if no such address appears, the partner's or the liquidating trustees's last known address.

(c) In any action in which any such partner or liquidating trustee has been served with process as hereinabove provided, the time in which a defendant shall be required to appear and file a responsive pleading shall be computed from the date of mailing by the Prothonotary or the Register in Chancery as provided in subsection (b) of the section; however, the court in which such action has been commenced may order such continuance or continuances as may be necessary to afford such partner or liquidating trustee reasonable opportunity to defend the action.

(d) In a written partnership agreement or other writing, a partner may consent to be subject to the nonexclusive jurisdiction of the courts of, or arbitration in, a specified jurisdiction, or the exclusive jurisdiction of the courts of the State of Delaware, or the exclusivity of arbitration in a specified jurisdiction or the State of Delaware, and to be served with legal process in the manner proscribed in such partnership agreement or other writing.

(e) Nothing herein contained limits or affects the right to serve process in any other manner now or hereafter provided by law. This section is an extension of and not a limitation upon the right otherwise existing of service of legal process upon nonresidents.

(f) The Court of Chancery and the Superior Court may make all necessary rules respecting the form of process, the manner of issuance and return thereof and such other rules which may be necessary to implement this section and are not inconsistent with this section.

#### SECTION 15-115. DOING BUSINESS.

A limited partnership, a partnership, a limited liability company, a business or other trust or association, or a corporation formed or organized under the laws of any foreign country or other foreign jurisdiction or the laws of any state shall not be deemed to be doing business in the State of Delaware solely by reason of its being a partner in a domestic partnership.

#### SECTION 15-116. RESTATED STATEMENT OF PARTNERSHIP EXISTENCE.

(a) A statement of partnership existence may be restated by integrating into a single instrument all of the provisions of the statement of partnership existence which are then in effect and operative as a result of there having been theretofore filed 1 or more amendments pursuant to Section 15-105(d) or other instruments having the effect of amending a statement of partnership existence and the statement of partnership existence may be amended or further amended by the filing of a restated statement of partnership existence. The restated statement of partnership existence shall be specifically designated as such in its heading and shall set forth:

(1) The present name of the partnership, and if it has been changed, the name under which the partnership was originally formed;

(2) The date of filing of the original statement of partnership existence with the Secretary of State;

(3) The information required to be included pursuant to Section 15-303(a); and

(4) Any other information desired to be included therein.

(b) Upon the filing of the restated statement of partnership existence with the Secretary of State, or upon the future effective date or time of a restated statement of partnership existence as provided for therein, the initial statement of partnership existence, as theretofore amended, shall be superseded; thenceforth, the restated statement of partnership existence, including any further amendment made



thereby, shall be the statement of partnership existence of the partnership, but the original date of formation of the partnership shall remain unchanged.

(c) Any amendment effected in connection with the restatement of the statement of partnership existence shall be subject to any other provision of this chapter, not inconsistent with this section, which would apply if a separate amendment were filed to effect such amendment.

SECTION 15-117. EXECUTION, AMENDMENT OR CANCELLATION BY  
JUDICIAL ORDER.

(a) If a person required by this chapter to execute any statement or certificate fails or refuses to do so, any other person who is adversely affected by the failure or refusal, may petition the Court of Chancery to direct the execution of the statement or certificate. If the Court finds that the execution of the statement or certificate is proper and that any person so designated has failed or refused to execute the statement or certificate, the Court shall order the Secretary of State to file an appropriate statement or certificate.

(b) If a person required to execute a partnership agreement or amendment thereof fails or refuses to do so, any other person who is adversely affected by the failure or refusal may petition the Court of Chancery to direct the execution of the partnership agreement or amendment thereof. If the Court finds that the partnership agreement or amendment thereof should be executed and that any person so designated has failed or refused to do so, the Court shall enter an order granting appropriate relief.

SECTION 15-118. STATEMENT OR CERTIFICATE OF CORRECTION;  
CORRECTED STATEMENT OR CERTIFICATE.

(a) Whenever any statement or certificate authorized to be filed with the Secretary of State under any provision of this chapter has been so filed and is an inaccurate record of the action therein referred to, or was defectively or erroneously executed, such statement or certificate may be corrected by filing with the Secretary of State a statement or certificate of correction of such statement or certificate. The statement or certificate of correction shall specify the inaccuracy or defect to be corrected, shall set forth the portion of the statement or certificate in corrected form and shall be executed and filed as required by

638 this chapter. The statement or certificate of correction shall be effective as of the date the original  
639 statement or certificate was filed, except as to those persons who are substantially and adversely affected  
640 by the correction, and as to those persons the statement or certificate of correction shall be effective from  
641 the filing date.

642 (b) In lieu of filing a statement or certificate of correction, a statement or certificate may be  
643 corrected by filing with the Secretary of State a corrected statement or certificate which shall be executed  
644 and filed as if the corrected statement or certificate were the statement or certificate being corrected, and a  
645 fee equal to the fee payable to the Secretary of State if the statement or certificate being corrected were  
646 then being filed shall be paid to and collected by the Secretary of State for the use of the State of  
647 Delaware in connection with the filing of the corrected statement or certificate. The corrected statement  
648 or certificate shall be specifically designated as such in its heading, shall specify the inaccuracy or defect  
649 to be corrected, and shall set forth the entire statement or certificate in corrected form. A statement or  
650 certificate corrected in accordance with this section shall be effective as of the date the original statement  
651 or certificate was filed, except as to those persons who are substantially and adversely affected by the  
652 correction and as to those persons the statement or certificate as corrected shall be effective from the  
653 filing date.

654 SECTION 15-119. BUSINESS TRANSACTIONS OF PARTNER WITH THE  
655 PARTNERSHIP.

656 Except as provided in the partnership agreement, a partner may lend money to, borrow money from,  
657 act as a surety, guarantor or endorser for, guarantee or assume 1 or more specific obligations of, provide  
658 collateral for and transact other business with, the partnership and, subject to other applicable law, has the  
659 same rights and obligations with respect thereto as a person who is not a partner.

660 SECTION 15-120. CONTRACTUAL APPRAISAL RIGHTS.

661 A partnership agreement or an agreement of merger or consolidation may provide that contractual  
662 appraisal rights with respect to a partnership interest or another interest in a partnership shall be available  
663 for any class or group of partners or partnership interests in connection with any amendment of a

partnership agreement, any merger or consolidation in which the partnership is a constituent party to the merger or consolidation, or the sale of all or substantially all of the partnership's assets. The Court of Chancery shall have jurisdiction to hear and determine any matter relating to any such appraisal rights.

SECTION 15-121. CONTESTED MATTERS RELATING TO PARTNERS;  
CONTESTED VOTES.

(a) Upon application of any partner of a partnership which is formed under the laws of the State of Delaware or doing business in the State of Delaware, the Court of Chancery may hear and determine the validity of any admission, election, appointment or dissociation of a partner of the partnership, and the right of any person to become or continue to be a partner of the partnership, and to that end make such order or decree in any such case as may be just and proper, with power to enforce the production of any books, papers and records relating to the issue. In any such application, the partnership shall be named as a party, and service of copies of the application upon the partnership shall be deemed to be service upon the partnership and upon the person or persons whose right to be a partner is contested and upon the person or persons, if any, claiming to be a partner or claiming the right to be a partner; and the person upon whom service is made shall forward immediately a copy of the application to the partnership and to the person or persons whose right to be a partner is contested and to the person or persons, if any, claiming to be a partner or the right to be a partner, in a postpaid, sealed, registered letter addressed to such partnership and such person or persons at their post-office addresses last known to the person upon whom service is made or furnished to the person upon whom service is made by the applicant partner. The Court may make such order respecting further or other notice of such application as it deems proper under the circumstances.

(b) Upon application of any partner of a partnership which is formed under the laws of the State of Delaware or doing business in the State of Delaware, the Court of Chancery may hear and determine the result of any vote of partners upon matters as to which the partners of the partnership, or any class or group of partners, have the right to vote pursuant to the partnership agreement or other agreement or this chapter (other than the admission, election, appointment or dissociation of partners). In any such

690 application, the partnership shall be named as a party, and service of the application upon the person upon  
691 whom service is made shall be deemed to be service upon the partnership, and no other party need be  
692 joined in order for the Court to adjudicate the result of the vote. The Court may make such order  
693 respecting further or other notice of such application as it deems proper under the circumstances.

694 (c) Nothing herein contained limits or affects the right to serve process in any other manner now  
695 or hereafter provided by law. This section is an extension of and not a limitation upon the right otherwise  
696 existing of service of legal process upon nonresidents.

## 697 SECTION 15-122. INTERPRETATION AND ENFORCEMENT OF PARTNERSHIP 698 AGREEMENT.

699 Any action to interpret, apply or enforce the provisions of a partnership agreement of a partnership  
700 which is formed under the laws of the State of Delaware or doing business in the State of Delaware, or the  
701 duties, obligations or liabilities of such partnership to the partners of the partnership, or the duties,  
702 obligations or liabilities among partners or of partners to such partnership, or the rights or powers of, or  
703 restrictions on, such partnership or partners, including actions authorized by Section 15-405, may be  
704 brought in the Court of Chancery.

## 705 SUBCHAPTER II

### 706 NATURE OF PARTNERSHIP

707 Section 15-201. Partnership As Entity.

708 Section 15-202. Formation of Partnership; Powers.

709 Section 15-203. Partnership Property.

710 Section 15-204. When Property Is Partnership Property.

711 Section 15-205. Admission Without Contribution or Partnership Interest.

712 Section 15-206. Form of Contribution.

713 Section 15-207. Liability for Contribution.

714 SECTION 15-201. PARTNERSHIP AS ENTITY.

(a) A partnership is a separate legal entity which is an entity distinct from its partners unless or to the extent otherwise provided in a statement of partnership existence and in a partnership agreement.

(b) A limited liability partnership continues to be the same entity that existed before the filing of a statement of qualification under Section 15-1001.

#### SECTION 15-202. FORMATION OF PARTNERSHIP; POWERS.

(a) Except as otherwise provided in subsection (b), the association of two or more persons (i) to carry on as co-owners a business for profit forms a partnership, whether or not the persons intend to form a partnership, and (ii) to carry on any purpose or activity not for profit, forms a partnership when the persons intend to form a partnership. A limited liability partnership is for all purposes a partnership.

(b) Subject to Section 15-1206, an association formed under a statute other than this chapter, a predecessor statute or a comparable statute of another jurisdiction is not a partnership under this chapter.

(c) In determining whether a partnership is formed under Section 15-202(a)(i), the following rules apply:

(1) Joint tenancy, tenancy in common, tenancy by the entireties, joint property, common property or part ownership does not by itself establish a partnership, even if the co-owners share profits made by the use of the property.

(2) The sharing of gross returns does not by itself establish a partnership, even if the persons sharing them have a joint or common right or interest in property from which the returns are derived.

(3) A person who receives a share of the profits of a business is presumed to be a partner in the business, unless the profits were received in payment:

- (i) of a debt by installments or otherwise;
- (ii) for services as an independent contractor or of wages or other compensation to an employee;
- (iii) of rent;
- (iv) of an annuity or other retirement or health benefit to a beneficiary, representative or designee of a deceased or retired partner;

(v) of interest or other charge on a loan, even if the amount of payment varies with the profits of the business, including a direct or indirect present or future ownership of the collateral, or rights to income, proceeds or increase in value derived from the collateral; or

(vi) for the sale of the goodwill of a business or other property by installments or otherwise.

(d) A partnership shall possess and may exercise all the powers and privileges granted by this chapter or by any other law or by its partnership agreement, together with any powers incidental thereto, including such powers and privileges as are necessary or convenient to the conduct, promotion or attainment of the business, purposes or activities of the partnership.

#### SECTION 15-203. PARTNERSHIP PROPERTY.

Property acquired by a partnership is property of the partnership and not of the partners individually.

#### SECTION 15-204. WHEN PROPERTY IS PARTNERSHIP PROPERTY.

(a) Property is partnership property if acquired in the name of:

(1) the partnership; or

(2) one or more persons with an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership but without an indication of the name of the partnership.

(b) Property is acquired in the name of the partnership by a transfer to:

(1) the partnership in its name; or

(2) one or more persons in their capacity as partners in the partnership, if the name of the partnership is indicated in the instrument transferring title to the property.

(c) Property is presumed to be partnership property if purchased with partnership assets, even if not acquired in the name of the partnership or of one or more persons with an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership.

(d) Property acquired in the name of one or more persons, without an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership and without use of partnership assets, is presumed to be separate property, even if used for partnership purposes.

#### SECTION 15-205. ADMISSION WITHOUT CONTRIBUTION OR PARTNERSHIP INTEREST.

A person may be admitted to a partnership as a partner of the partnership and may receive a partnership interest in the partnership without making a contribution or being obligated to make a contribution to the partnership. A person may be admitted to a partnership as a partner of the partnership without acquiring a partnership interest in the partnership. Nothing contained in this section shall affect a partner's liability under Section 15-306.

#### SECTION 15-206. FORM OF CONTRIBUTION.

The contribution of a partner may be in cash, property or services rendered, or a promissory note or other obligation to contribute cash or property or to perform services.

#### SECTION 15-207. LIABILITY FOR CONTRIBUTION.

(a) A partner is obligated to the partnership to perform any promise to contribute cash or property or to perform services, even if the partner is unable to perform because of death, disability or any other reason. If a partner does not make the required contribution of property or services, the partner is obligated at the option of the partnership to contribute cash equal to that portion of the value of the contribution that has not been made. The foregoing option shall be in addition to, and not in lieu of, any other rights, including the right to specific performance, that the partnership may have against such partner under the partnership agreement or applicable law.

(b) A partnership agreement may provide that the partnership interest of any partner who fails to make any contribution that the partner is obligated to make shall be subject to specified penalties for, or specified consequences of, such failure. Such penalty or consequence may take the form of reducing or eliminating the defaulting partner's interest in the partnership, subordinating the partner's partnership

interest to that of nondefaulting partners, a forced sale of the partner's partnership interest, forfeiture of the partner's partnership interest, the lending by other partners of the amount necessary to meet the partner's commitment, a fixing of the value of the partner's partnership interest by appraisal or by formula and redemption or sale of the partner's partnership interest at such value, or other penalty or consequence.

### SUBCHAPTER III

## RELATIONS OF PARTNERS TO

## PERSONS DEALING WITH PARTNERSHIP

Section 15-301. Partner Agent of Partnership.

Section 15-302. Transfer of Partnership Property.

Section 15-303. Statement of Partnership Existence.

Section 15-304. Denial of Status as Partner.

Section 15-305. Partnership Liable for Partner's Actionable Conduct.

Section 15-306. Partner's Liability.

Section 15-307. Actions By and Against Partnership and Partners.

Section 15-308. Liability of Purported Partner.

Section 15-309. Limitations on Distribution.

### SECTION 15-301. PARTNER AGENT OF PARTNERSHIP.

Subject to the effect of a statement of partnership existence under Section 15-303:

(1) Each partner is an agent of the partnership for the purpose of its business, purposes or activities. An act of a partner, including the execution of an instrument in the partnership name, for apparently carrying on in the ordinary course the partnership's business, purposes or activities or business, purposes or activities of the kind carried on by the partnership binds the partnership, unless the partner had no authority to act for the partnership in the particular matter and the person with whom the partner was dealing had notice that the partner lacked authority.



(2) An act of a partner which is not apparently for carrying on in the ordinary course the partnership's business, purposes or activities or business, purposes or activities of the kind carried on by the partnership binds the partnership only if the act was authorized by the other partners.

#### SECTION 15-302. TRANSFER OF PARTNERSHIP PROPERTY.

(a) Partnership property may be transferred as follows:

(1) Subject to the effect of a statement of partnership existence under Section 15-303, partnership property held in the name of the partnership may be transferred by an instrument of transfer executed by a partner in the partnership name.

(2) Partnership property held in the name of one or more partners with an indication in the instrument transferring the property to them of their capacity as partners or of the existence of a partnership, but without an indication of the name of the partnership, may be transferred by an instrument of transfer executed by the persons in whose name the property is held.

(3) Partnership property held in the name of one or more persons other than the partnership, without an indication in the instrument transferring the property to them of their capacity as partners or of the existence of a partnership, may be transferred by an instrument of transfer executed by the persons in whose name the property is held.

(b) A partnership may recover partnership property from a transferee only if it proves that execution of the instrument of initial transfer did not bind the partnership under Section 15-301 and:

(1) as to a subsequent transferee who gave value for property transferred under subsection 15-302(a)(1) and (2), proves that the subsequent transferee had notice that the person who executed the instrument of initial transfer lacked authority to bind the partnership; or

(2) as to a transferee who gave value for property transferred under subsection 15-302(a)(3), proves that the transferee had notice that the property was partnership property and that the person who executed the instrument of initial transfer lacked authority to bind the partnership.

(c) A partnership may not recover partnership property from a subsequent transferee if the partnership would not have been entitled to recover the property, under subsection 15-302(b), from any earlier transferee of the property.

(d) If a person holds all of the partners' interests in the partnership, all of the partnership property vests in that person. The person may execute a document in the name of the partnership to evidence vesting of the property in that person and may file or record the document.

#### SECTION 15-303. STATEMENT OF PARTNERSHIP EXISTENCE.

(a) A partnership may file a statement of partnership existence, which:

(1) must include:

(i) the name of the partnership; and

(ii) the address of the registered office and the name and address of the registered agent for service of process required to be maintained by Section 15-111 of this chapter; and

(2) may state (i) the names of the partners authorized to execute an instrument transferring real property held in the name of the partnership, (ii) the authority, or limitations on the authority, of some or all of the partners to enter into other transactions on behalf of the partnership and (iii) any other matter.

(b) A statement of partnership existence supplements the authority of a partner to enter into transactions on behalf of the partnership as follows:

(1) Except for transfers of real property, a grant of authority contained in a statement of partnership existence is conclusive in favor of a person who gives value without knowledge to the contrary, so long as and to the extent that a limitation on that authority is not then contained in another statement. A filed cancellation of a limitation on authority revives the previous grant of authority.

(2) A grant of authority to transfer real property held in the name of the partnership contained in a certified copy of a statement of partnership existence recorded in the office for recording transfers of that real property is conclusive in favor of a person who gives value without knowledge to the contrary, so long as and to the extent that a certified copy of a statement containing a limitation on that authority is not then of record in the office for recording transfers of that real property. The recording in the office for recording transfers of that real property of a certified copy of a cancellation of a limitation on authority revives the previous grant of authority.

(c) A person not a partner is deemed to know of a limitation on the authority of a partner to transfer real property held in the name of the partnership if a certified copy of the statement containing the limitation on authority is of record in the office for recording transfers of that real property.

(d) Except as otherwise provided in subsections (b) and (c) and Sections 15-704 and 15-805, a person not a partner is not deemed to know of a limitation on the authority of a partner merely because the limitation is contained in a statement.

#### SECTION 15-304. DENIAL OF STATUS AS PARTNER.

If a person named in a statement of partnership existence is or may be adversely affected by being so named, the person may petition the Court of Chancery to direct the correction of the statement. If the Court finds that correction of the statement is proper and that an authorized person has failed or refused to execute and file a certificate of correction or a corrected statement, the Court shall order the Secretary of State to file an appropriate correction.

#### SECTION 15-305. PARTNERSHIP LIABLE FOR PARTNER'S ACTIONABLE CONDUCT.

(a) A partnership is liable for loss or injury caused to a person, or for a penalty incurred, as a result of a wrongful act or omission, or other actionable conduct, of a partner acting in the ordinary course of business of the partnership or with authority of the partnership.

(b) If, in the course of the partnership's business or while acting with authority of the partnership, a partner receives or causes the partnership to receive money or property of a person not a partner, and the money or property is misapplied by a partner, the partnership is liable for the loss.

#### SECTION 15-306. PARTNER'S LIABILITY.

(a) Except as otherwise provided in subsections (b) and (c), all partners are liable jointly and severally for all obligations of the partnership unless otherwise agreed by the claimant or provided by law.

(b) A person admitted as a partner into an existing partnership is not personally liable for any obligation of the partnership incurred before the person's admission as a partner.

(c) An obligation of a partnership incurred while the partnership is a limited liability partnership, whether arising in contract, tort or otherwise, is solely the obligation of the partnership. A partner is not personally liable, directly or indirectly, by way of indemnification, contribution, assessment or otherwise, for such an obligation solely by reason of being or so acting as a partner. (d) Subsection (c) of this section shall not affect the liability of a partner in a limited liability partnership for such partner's own negligence or willful misconduct.

(e) The ability of an attorney-at-law, admitted to the practice of law in the State of Delaware, to practice law in a limited liability partnership, shall be determined by the Rules of the Supreme Court of the State of Delaware.

#### SECTION 15-307. ACTIONS BY AND AGAINST PARTNERSHIP AND PARTNERS.

(a) A partnership may sue and be sued in the name of the partnership.

(b) An action may be brought against the partnership and, to the extent not inconsistent with Section 15-306, any or all of the partners in the same action or in separate actions.

(c) A judgment against a partnership is not by itself a judgment against a partner. A judgment against a partnership may not be satisfied from the assets of a partner liable as provided in Section 15-306 for a partnership obligation unless there is also a judgment against the partner for such obligation.

(d) A judgment creditor of a partner may not levy execution against the assets of the partner to satisfy a judgment based on a claim against the partnership unless:

(1) the claim is for an obligation of the partnership for which the partner is liable as provided in Section 15-306 and either:

(i) a judgment based on the same claim has been obtained against the partnership and a writ of execution on the judgment has been returned unsatisfied in whole or in part;

(ii) the partnership is a debtor in bankruptcy;

(iii) the partner has agreed that the creditor need not exhaust partnership assets; or

(iv) a court grants permission to the judgment creditor to levy execution against the assets of a partner based on a finding that partnership assets subject to execution are clearly insufficient to

satisfy the judgment, that exhaustion of partnership assets is excessively burdensome, or that the grant of permission is an appropriate exercise of the court's equitable powers; or

(2) liability is imposed on the partner by law or contract independent of the existence of the partnership.

(e) This section applies to any obligation of the partnership resulting from a representation by a partner or purported partner under Section 15-308.

#### SECTION 15-308. LIABILITY OF PURPORTED PARTNER.

(a) If a person, by words or conduct, purports to be a partner, or consents to being represented by another as a partner, in a partnership or with one or more persons not partners, the purported partner is liable to a person to whom the representation is made, if that person, relying on the representation, enters into a transaction with the actual or purported partnership. If the representation, either by the purported partner or by a person with the purported partner's consent, is made in a public manner, the purported partner is liable to a person who relies upon the purported partnership even if the purported partner is not aware of being held out as a partner to the claimant. If a partnership obligation results, the purported partner is liable with respect to that obligation as if the purported partner were a partner. If no partnership obligation results, the purported partner is liable with respect to that obligation jointly and severally with any other person consenting to the representation. In the case of a limited liability partnership, a person's liability under Section 15-308(a) is subject to Section 15-306 as if the person were a partner in the limited liability partnership.

(b) If a person is thus represented to be a partner in an existing partnership, or with one or more persons not partners, the purported partner is an agent of persons consenting to the representation to bind them to the same extent and in the same manner as if the purported partner were a partner, with respect to persons who enter into transactions in reliance upon the representation. If all of the partners of the existing partnership consent to the representation, a partnership act or obligation results. If fewer than all of the partners of the existing partnership consent to the representation, the person acting and the partners consenting to the representation are jointly and severally liable.

(c) A person is not liable as a partner merely because the person is named by another in a statement of partnership existence.

(d) A person does not continue to be liable as a partner merely because of a failure to file a statement of dissociation or to amend a statement of partnership existence to indicate the partner's dissociation from the partnership.

(e) Except as otherwise provided in subsections (a) and (b), persons who are not partners as to each other are not liable as partners to other persons.

#### SECTION 15-309. LIMITATIONS ON DISTRIBUTION.

(a) A partnership shall not make a distribution to a partner to the extent that at the time of the distribution, after giving effect to the distribution, all liabilities of the partnership, other than liabilities to partners on account of their partnership interests and liabilities for which the recourse of creditors is limited to specified property of the partnership, exceed the fair value of the assets of the partnership, except that the fair value of property that is subject to a liability for which the recourse of creditors is limited shall be included in the assets of the partnership only to the extent that the fair value of that property exceeds that liability.

(b) A partner of a limited liability partnership who receives a distribution in violation of subsection (a) of this section, and who knew at the time of the distribution that the distribution violated subsection (a) of this section, shall be liable to the partnership for the amount of the distribution. A partner of a limited liability partnership who receives a distribution in violation of subsection (a) of this section, and who did not know at the time of the distribution that the distribution violated subsection (a) of this section, shall not be liable for the amount of the distribution. Subject to subsection (c) of this section, this subsection (b) shall not affect any obligation or liability of a partner of a limited liability partnership under an agreement or other applicable law for the amount of a distribution.

(c) Unless otherwise agreed, a partner of a limited liability partnership who receives a distribution from a partnership shall have no liability under this chapter or other applicable law for the amount of the distribution after the expiration of three years from the date of the distribution.

972 SUBCHAPTER IV

973 RELATIONS OF PARTNERS TO EACH OTHER

974 AND TO PARTNERSHIP

975 Section 15-401. Partner's Rights and Duties.

976 Section 15-402. Distributions in Kind.

977 Section 15-403. Partner's Rights and Duties with Respect to Information.

978 Section 15-404. General Standards of Partner's Conduct.

979 Section 15-405. Actions by Partnership and Partners; Derivative Actions.

980 Section 15-406. Continuation of Partnership Beyond Definite Term or Particular Undertaking.

981 Section 15-407. Classes and Voting.

982 Section 15-408. Remedies for Breach of Partnership Agreement.

983 SECTION 15-401. PARTNER'S RIGHTS AND DUTIES.

984 (a) Each partner is deemed to have an account that is:

985 (1) credited with an amount equal to the money plus the value of any other property, net of  
986 the amount of any liabilities, the partner contributes to the partnership and the partner's share of the  
987 partnership profits; and

988 (2) charged with an amount equal to the money plus the value of any other property, net of  
989 the amount of any liabilities, distributed by the partnership to the partner and the partner's share of the  
990 partnership losses.

991 (b) Each partner is entitled to an equal share of the partnership profits and is chargeable with a  
992 share of the partnership losses in proportion to the partner's share of the profits.

993 (c) In addition to indemnification under Section 15-110, a partnership shall reimburse a partner  
994 for payments made and indemnify a partner for liabilities incurred by the partner in the ordinary course  
995 of the business of the partnership or for the preservation of its business or property; however, no person  
996 shall be required as a consequence of any such indemnification to make any payment to the extent that the  
997 payment is inconsistent with Sections 15-306(b) or (c).

(d) A partnership shall reimburse a partner for an advance to the partnership beyond the amount of capital the partner agreed to contribute.

(e) A payment or advance made by a partner which gives rise to a partnership obligation under subsection (c) or (d) constitutes a loan to the partnership which accrues interest from the date of the payment or advance.

(f) Each partner has equal rights in the management and conduct of the partnership business and affairs.

(g) A partner may use or possess partnership property only on behalf of the partnership.

(h) A partner is not entitled to remuneration for services performed for the partnership, except for reasonable compensation for services rendered in winding up the partnership.

(i) A person may become a partner only with the consent of all of the partners.

(j) A difference arising as to a matter in the ordinary course of business of a partnership may be decided by a majority of the partners. An act outside the ordinary course of business of a partnership may be undertaken only with the consent of all of the partners.

(k) This section does not affect the obligations of a partnership to other persons under Section 15-301.

(l) A partner has the power and authority to delegate to one or more other persons the partner's rights and powers to manage and control the business and affairs of the partnership, including to delegate to agents, officers and employees of the partner or the partnership, and to delegate by a management agreement or other agreement with, or otherwise to, other persons. Such delegation by a partner shall not cause the partner to cease to be a partner of the partnership.

#### SECTION 15-402. DISTRIBUTIONS IN KIND.

A partner, regardless of the nature of the partner's contribution, has no right to demand and receive any distribution from a partnership in kind. A partner may not be compelled to accept a distribution of any asset in kind from a partnership to the extent that the percentage of the asset distributed to the partner exceeds a percentage of that asset which is equal to the percentage in which the partner shares in distributions from the partnership. A partner may be compelled to accept a distribution of any asset in



kind from a partnership to the extent that the percentage of the asset distributed to the partner is equal to a percentage of that asset which is equal to the percentage in which the partner shares in distributions from the partnership.

SECTION 15-403. PARTNER'S RIGHTS AND DUTIES WITH RESPECT TO INFORMATION.

(a) Each partner and the partnership shall provide partners, former partners and the legal representative of a deceased partner or partner under a legal disability and their agents and attorneys, access to the books and records of the partnership and other information concerning the partnership's business and affairs (in the case of former partners, only with respect to the period during which they were partners) upon reasonable demand, for any purpose reasonably related to the partner's interest as a partner in the partnership. The right of access shall include access to:

(1) True and full information regarding the status of the business and financial condition of the partnership;

(2) Promptly after becoming available, a copy of the partnership's federal, state and local income tax returns for each year;

(3) A current list of the name and last known business, residence or mailing address of each partner;

(4) A copy of any statement and written partnership agreement and all amendments thereto, together with executed copies of any written powers of attorney pursuant to which the statement or the partnership agreement and any amendments thereto have been executed;

(5) True and full information regarding the amount of cash and a description and statement of the agreed value of any other property or services contributed by each partner and which each partner has agreed to contribute in the future, and the date on which each partner became a partner; and

(6) Other information regarding the affairs of the partnership as is just and reasonable.

The right of access includes the right to examine and make extracts from books and records and other information concerning the partnership's business and affairs. The partnership agreement may provide

for, and in the absence of such provision in the partnership agreement, the partnership or the partner from whom access is sought may impose, reasonable standards (including standards governing what information and documents are to be furnished at what time and location and at whose expense) with respect to exercise of the right of access.

(b) A partnership agreement may provide that the partnership shall have the right to keep confidential from partners for such period of time as the partnership deems reasonable, any information which the partnership reasonably believes to be in the nature of trade secrets or other information the disclosure of which the partnership in good faith believes is not in the best interest of the partnership or could damage the partnership or its business or affairs or which the partnership is required by law or by agreement with a third party to keep confidential.

(c) A partnership and its partners may maintain the books and records and other information concerning the partnership in other than a written form if such form is capable of conversion into written form within a reasonable time.

(d) Any demand by a partner under this section shall be in writing and shall state the purpose of such demand.

(e) Any action to enforce any right arising under this section shall be brought in the Court of Chancery. If the partnership or a partner refuses to permit access as described in subsection (a)(3) of this section or does not reply to a demand that has been made within 5 business days after the demand has been made, the demanding partner, former partner, or legal representative of a deceased partner or partner under a legal disability may apply to the Court of Chancery for an order to compel such disclosure. The Court of Chancery is hereby vested with exclusive jurisdiction to determine whether or not the person making the demand is entitled to the books and records or other information concerning the partnership's business and affairs sought. The Court of Chancery may summarily order the partnership or partner to permit the demanding partner, former partner or legal representative of a deceased partner or partner under a legal disability and their agents and attorneys to provide access to the information described in subsection (a)(3) of this section and to make copies or extracts therefrom; or the Court of Chancery may summarily order the partnership or partner to furnish to the demanding partner, former partner or legal

representative of a deceased partner or partner under a legal disability and their agents and attorneys the information described in subsection (a)(3) of this section on the condition that the partner, former partner or legal representative of a deceased partner or partner under a legal disability first pay to the partnership or to the partner from whom access is sought the reasonable cost of obtaining and furnishing such information and on such other conditions as the Court of Chancery deems appropriate. When a demanding partner, former partner or legal representative of a deceased partner or partner under a legal disability seeks to obtain access to information described in subsection (a)(3) of this section, the demanding partner, former partner or legal representative of a deceased partner or partner under a legal disability shall first establish (1) that the demanding partner, former partner or legal representative of a deceased partner or partner under a legal disability has complied with the provisions of this section respecting the form and manner of making demand for obtaining access to such information and (2) that the information the demanding partner, former partner or legal representative of a deceased partner or partner under a legal disability seeks is reasonably related to the partner's interest as a partner in the partnership. The Court of Chancery may, in its discretion, prescribe any limitations or conditions with reference to the access to information, or award such other or further relief as the Court of Chancery may deem just and proper. The Court of Chancery may order books, documents and records, pertinent extracts therefrom, or duly authenticated copies thereof, to be brought within the State of Delaware and kept in the State of Delaware upon such terms and conditions as the order may prescribe.

#### SECTION 15-404. GENERAL STANDARDS OF PARTNER'S CONDUCT.

(a) The only fiduciary duties a partner owes to the partnership and the other partners are the duty of loyalty and the duty of care set forth in subsections (b) and (c).

(b) A partner's duty of loyalty to the partnership and the other partners is limited to the following:

(1) to account to the partnership and hold as trustee for it any property, profit or benefit derived by the partner in the conduct or winding up of the partnership business or affairs or derived from a use by the partner of partnership property, including the appropriation of a partnership opportunity;

(2) to refrain from dealing with the partnership in the conduct or winding up of the partnership business or affairs as or on behalf of a party having an interest adverse to the partnership; and

(3) to refrain from competing with the partnership in the conduct of the partnership business or affairs before the dissolution of the partnership.

(c) A partner's duty of care to the partnership and the other partners in the conduct and winding up of the partnership business or affairs is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.

(d) A partner shall discharge the duties to the partnership and the other partners under this chapter or under the partnership agreement and exercise any rights consistently with the obligation of good faith and fair dealing.

(e) A partner does not violate a duty or obligation under this chapter or under the partnership agreement solely because the partner's conduct furthers the partner's own interest.

(f) A partner may lend money to, borrow money from, act as a surety, guarantor or endorser for, guarantee or assume 1 or more specific obligations of, provide collateral for and transact other business with, the partnership and, subject to other applicable law, has the same rights and obligations with respect thereto as a person who is not a partner.

(g) This section applies to a person winding up the partnership business or affairs as the personal or legal representative of the last surviving partner as if the person were a partner.

#### SECTION 15-405. ACTIONS BY PARTNERSHIP AND PARTNERS; DERIVATIVE ACTIONS.

(a) A partnership may maintain an action against a partner for a breach of the partnership agreement, or for the violation of a duty to the partnership, causing harm to the partnership.

(b) A partner may maintain an action against the partnership or another partner for legal or equitable relief, with or without an accounting as to partnership business, to:

(1) enforce the partner's rights under the partnership agreement;

(2) enforce the partner's rights under this chapter, including:

1130 (i) the partner's rights under Sections 15-401, 15-403 or 15-404;  
1131 (ii) the partner's right on dissociation to have the partner's interest in the partnership  
1132 purchased pursuant to Section 15-701 or enforce any other right under Subchapter VI or VII; or  
1133 (iii) the partner's right to compel a dissolution and winding up of the partnership business  
1134 under Section 15-801 or enforce any other right under Subchapter VIII; or  
1135 (3) enforce the rights and otherwise protect the interests of the partner, including rights and  
1136 interests arising independently of the partnership relationship.  
1137 (c) The accrual of, and any time limitation on, a right of action for a remedy under this section is  
1138 governed by other law. A right to an accounting upon a dissolution and winding up does not revive a  
1139 claim barred by law.  
1140 (d) A partner may bring a derivative action in the Court of Chancery in the right of a partnership  
1141 to recover a judgment in the partnership's favor.  
1142 (e) In a derivative action, the plaintiff must be a partner at the time of bringing the action and:  
1143 (1) At the time of the transaction of which the partner complains; or  
1144 (2) The partner's status as a partner had devolved upon the partner by operation of law or  
1145 pursuant to the terms of the partnership agreement from a person who was a partner at the time of the  
1146 transaction.  
1147 (f) In a derivative action, the complaint shall set forth with particularity the effort, if any, of the  
1148 plaintiff to secure initiation of the action by the partnership or the reason for not making the effort.  
1149 (g) If a derivative action is successful, in whole or in part, as a result of a judgment, compromise  
1150 or settlement of any such action, the court may award the plaintiff reasonable expenses, including  
1151 reasonable attorney's fees, from any recovery in any such action or from a partnership.

1152 SECTION 15-406. CONTINUATION OF PARTNERSHIP BEYOND DEFINITE TERM  
1153 OR PARTICULAR UNDERTAKING.

1154 (a) If a partnership for a definite term or particular undertaking is continued, without an express  
1155 agreement, after the expiration of the term or completion of the undertaking, the rights and duties of the

partners remain the same as they were at the expiration or completion, so far as is consistent with a partnership at will.

(b) If the partners, or those of them who habitually acted in the business or affairs during the term or undertaking, continue the business or affairs without any settlement or liquidation of the partnership, they are presumed to have agreed that the partnership will continue.

#### SECTION 15-407. CLASSES AND VOTING.

(a) A partnership agreement may provide for classes or groups of partners having such relative rights, powers and duties as the partnership agreement may provide, and may make provision for the future creation in the manner provided in the partnership agreement of additional classes or groups of partners having such relative rights, powers and duties as may from time to time be established, including rights, powers and duties senior to existing classes and groups of partners. A partnership agreement may provide for the taking of an action, including the amendment of the partnership agreement, without the vote or approval of any partner or class or group of partners, including an action to create under the provisions of the partnership agreement a class or group of partnership interests that was not previously outstanding. A partnership agreement may provide that any partner or class or group of partners shall have no voting rights.

(b) The partnership agreement may grant to all or certain identified partners or a specified class or group of the partners the right to vote separately or with all or any class or group of the partners on any matter. Voting by partners may be on a per capita, number, financial interest, class, group or any other basis.

(c) A partnership agreement may set forth provisions relating to notice of the time, place or purpose of any meeting at which any matter is to be voted on by any partners, waiver of any such notice, action by consent without a meeting, the establishment of a record date, quorum requirements, voting in person or by proxy, or any other matter with respect to the exercise of any such right to vote.

(d) On any matter that is to be voted on by partners, the partners may take such action without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the partners having not less than the minimum number of votes that

would be necessary to authorize or take such action at a meeting. On any matter that is to be voted on by partners, the partners may vote in person or by proxy.

(e) If a partnership agreement provides for the manner in which it may be amended, it may be amended in that manner or with the approval of all the partners or as otherwise permitted by law. If a partnership agreement does not provide for the manner in which it may be amended, the partnership agreement may be amended with the approval of all the partners or as otherwise permitted by law.

#### SECTION 15-408. REMEDIES FOR BREACH OF PARTNERSHIP AGREEMENT.

A partnership agreement may provide that (i) a partner, who fails to perform in accordance with, or to comply with the terms and conditions of, the partnership agreement shall be subject to specified penalties or specified consequences, and (ii) at the time or upon the happening of events specified in the partnership agreement, a partner shall be subject to specified penalties or specified consequences.

### SUBCHAPTER V

#### TRANSFEREES AND CREDITORS OF PARTNER

Section 15-501. Partner Not Co-Owner of Partnership Property.

Section 15-502. Partner's Economic Interest in Partnership; Personal Property.

Section 15-503. Transfer of Partner's Economic Interest.

Section 15-504. Partner's Economic Interest Subject to Charging Order.

#### SECTION 15-501. PARTNER NOT CO-OWNER OF PARTNERSHIP PROPERTY.

A partner is not a co-owner of partnership property and has no interest in specific partnership property.

#### SECTION 15-502. PARTNER'S ECONOMIC INTEREST IN PARTNERSHIP; PERSONAL PROPERTY.

A partnership interest is personal property. Only a partner's economic interest may be transferred.

#### SECTION 15-503. TRANSFER OF PARTNER'S ECONOMIC INTEREST.

(a) A transfer, in whole or in part, of a partner's economic interest in the partnership:

(1) is permissible;

1209                   (2) does not by itself cause the partner's dissociation or a dissolution and winding up of the  
1210 partnership business or affairs; and

1211                   (3) does not entitle the transferee to participate in the management or conduct of the  
1212 partnership business or affairs, to require access to information concerning partnership transactions, or to  
1213 inspect or copy the partnership books or records.

1214                   (b) A transferee of a partner's economic interest in the partnership has a right:

1215                   (1) to receive, in accordance with the transfer, distributions to which the transferor would  
1216 otherwise be entitled;

1217                   (2) to receive upon the dissolution and winding up of the partnership business or affairs, in  
1218 accordance with the transfer, the net amount otherwise distributable to the transferor; and

1219                   (3) to seek under Section 15-801(6) a judicial determination that it is equitable to wind up the  
1220 partnership business or affairs.

1221                   (c) In a dissolution and winding up, a transferee is entitled to an account of partnership  
1222 transactions only from the date of the latest account agreed to by all of the partners.

1223                   (d) Upon transfer, the transferor retains the rights and duties of a partner other than the economic  
1224 interest transferred.

1225                   (e) A partnership need not give effect to a transferee's rights under this section until it has notice  
1226 of the transfer. Upon request of a partnership or a partner, a transferee must furnish reasonable proof of a  
1227 transfer.

1228                   (f) A transfer of a partner's economic interest in the partnership in violation of a restriction on  
1229 transfer contained in a partnership agreement is ineffective.

1230                   (g) Notwithstanding anything to the contrary under applicable law, a partnership agreement may  
1231 provide that a partner's economic interest may not be transferred prior to the dissolution and winding up  
1232 of the partnership.

1233                   (h) The partnership agreement may provide that a partnership interest in a partnership may be  
1234 evidenced by a certificate of partnership interest issued by the partnership and may also provide for the



transfer of any partnership interest represented by such a certificate and make other provisions with respect to such certificates.

(i) Except to the extent assumed by agreement, until a transferee of a partnership interest becomes a partner, the transferee shall have no liability as a partner solely as a result of the transfer.

(j) A partnership may acquire, by purchase, redemption or otherwise, any partnership interest or other interest of a partner in the partnership. Any such interest so acquired by the partnership shall be deemed canceled.

#### SECTION 15-504. PARTNER'S ECONOMIC INTEREST SUBJECT TO CHARGING ORDER.

(a) On application by a judgment creditor of a partner or of a partner's transferee, a court having jurisdiction may charge the economic interest of the judgment debtor to satisfy the judgment. The court may appoint a receiver of the share of the distributions due or to become due to the judgment debtor in respect of the partnership which receiver shall have only the rights of a transferee, and the court may make all other orders, directions, accounts and inquiries the judgment debtor might have made or which the circumstances of the case may require.

(b) A charging order constitutes a lien on the judgment debtor's economic interest in the partnership. The court may order a foreclosure of the economic interest subject to the charging order at any time. The purchaser at the foreclosure sale has only the rights of a transferee.

(c) At any time before foreclosure, an economic interest charged may be redeemed:

(1) by the judgment debtor;

(2) with property other than partnership property, by one or more of the other partners; or

(3) by the partnership with the consent of all of the partners whose interests are not so charged.

(d) This chapter does not deprive a partner of a right under exemption laws with respect to the partner's economic interest in the partnership.

(e) This section provides the exclusive remedy by which a judgment creditor of a partner or partner's transferee may satisfy a judgment out of the judgment debtor's economic interest in the partnership.

## SUBCHAPTER VI

### PARTNER'S DISSOCIATION

Section 15-601. Events Causing Partner's Dissociation.

Section 15-602. Partner's Power to Dissociate; Wrongful Dissociation.

Section 15-603. Effect of Partner's Dissociation.

#### SECTION 15-601. EVENTS CAUSING PARTNER'S DISSOCIATION.

A partner is dissociated from a partnership upon the occurrence of any of the following events:

(1) the partnership's having notice of the partner's express will to withdraw as a partner on a later date specified by the partner in the notice or, if no later date is specified, then upon receipt of notice;

(2) an event agreed to in the partnership agreement as causing the partner's dissociation;

(3) the partner's expulsion pursuant to the partnership agreement;

(4) the partner's expulsion by the unanimous vote of the other partners if:

(i) it is unlawful to carry on the partnership business or affairs with that partner; or

(ii) there has been a transfer of all or substantially all of that partner's economic interest, other than a transfer for security purposes, or a court order charging the partner's interest which, in either case, has not been foreclosed;

(5) on application by or for the partnership or another partner to the Court of Chancery, the partner's expulsion by determination by the Court of Chancery because:

(i) the partner engaged in wrongful conduct that adversely and materially affected the partnership business or affairs;

(ii) the partner willfully or persistently committed a material breach of either the partnership agreement or of a duty owed to the partnership or the other partners; or

(iii) the partner engaged in conduct relating to the partnership business or affairs which makes it not reasonably practicable to carry on the business or affairs in partnership with the partner;

(6) the partner's:

(i) becoming a debtor in bankruptcy;

(ii) executing an assignment for the benefit of creditors;

(iii) seeking, consenting to, or acquiescing in the appointment of a trustee, receiver, or liquidator of that partner or of all or substantially all of that partner's property; or

(iv) failing, within 90 days after the appointment, to have vacated or stayed the appointment of a trustee, receiver or liquidator of the partner or of all or substantially all of the partner's property obtained without the partner's consent or acquiescence, or failing within 90 days after the expiration of a stay to have the appointment vacated;

(7) in the case of a partner who is an individual:

(i) the partner's death;

(ii) the appointment of a guardian or general conservator for the partner; or

(iii) a judicial determination that the partner has otherwise become incapable of performing the partner's duties under the partnership agreement;

(8) in the case of a partner that is a trust or is acting as a partner by virtue of being a trustee of a trust, distribution of the trust's entire economic interest, but not merely by reason of the substitution of a successor trustee;

(9) in the case of a partner that is an estate or is acting as a partner by virtue of being a personal representative of an estate, distribution of the estate's entire economic interest, but not merely by reason of the substitution of a successor personal representative;

(10) the expiration of 90 days after the partnership notifies a corporate partner that it will be expelled because it has filed a certificate of dissolution or the equivalent, its existence has been terminated or its certificate of incorporation has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation, if there is no revocation of the certificate of dissolution or no reinstatement of its existence, its certificate of incorporation or its right to conduct business;

(11) a partnership, a limited liability company, a trust or a limited partnership that is a partner has been dissolved and its business is being wound up; or

(12) termination of a partner who is not an individual, partnership, corporation, trust, limited partnership, limited liability company or estate.

#### SECTION 15-602. PARTNER'S POWER TO DISSOCIATE; WRONGFUL DISSOCIATION.

(a) A partner has the power to dissociate at any time, rightfully or wrongfully, by express will pursuant to Section 15-601(1).

(b) A partner's dissociation is wrongful only if any of the following apply:

(1) it is in breach of an express provision of the partnership agreement; or

(2) in the case of a partnership for a definite term or particular undertaking, before the expiration of the term or the completion of the undertaking if any of the following apply:

(i) the partner withdraws by express will, unless the withdrawal follows within 90 days after another partner's dissociation by death or otherwise under Section 15-601(6) through (12) or wrongful dissociation under this subsection;

(ii) the partner is expelled by judicial determination under Section 15-601(5);

(iii) the partner is dissociated under Section 15-601(6); or

(iv) in the case of a partner who is not an individual, trust (other than a business trust), or estate, the partner is expelled or otherwise dissociated because it willfully dissolved or terminated.

(c) A partner who wrongfully dissociates is liable to the partnership and to the other partners for damages caused by the dissociation. Such liability is in addition to any other obligation of the partner to the partnership or to the other partners.

#### SECTION 15-603. EFFECT OF PARTNER'S DISSOCIATION.

(a) If a partner's dissociation results in a dissolution and winding up of the partnership business, Subchapter VIII applies; otherwise, Subchapter VII applies.

(b) Upon a partner's dissociation:

(1) the partner's right to participate in the management and conduct of the partnership business terminates, except as otherwise provided in Section 15-803;

(2) the partner's duty of loyalty under Section 15-404(b)(3) terminates; and

(3) the partner's duty of loyalty under Section 15-404(b)(1) and (2) and duty of care under Section 15-404(c) continue only with regard to matters arising and events occurring before the partner's dissociation, unless the partner participates in winding up the partnership's business pursuant to Section 15-803.

## SUBCHAPTER VII

### PARTNER'S DISSOCIATION WHEN

### BUSINESS OR AFFAIRS NOT WOUND UP

Section 15-701. Purchase of Dissociated Partner's Partnership Interest.

Section 15-702. Dissociated Partner's Power to Bind and Liability to Partnership.

Section 15-703. Dissociated Partner's Liability to Other Persons.

Section 15-704. Statement of Dissociation.

Section 15-705. Continued Use of Partnership Name.

#### SECTION 15-701. PURCHASE OF DISSOCIATED PARTNER'S PARTNERSHIP INTEREST.

(a) If a partner is dissociated from a partnership without resulting in a dissolution and winding up of the partnership business or affairs under Section 15-801, the partnership shall cause the dissociated partner's interest in the partnership to be purchased for a buyout price determined pursuant to subsection (b).

(b) The buyout price of a dissociated partner's partnership interest is an amount equal to the fair value of the partner's interest in the partnership. Interest must be paid from the date of dissociation to the date of payment.

(c) Damages for wrongful dissociation under Section 15-602(b), and all other amounts owing, whether or not presently due, from the dissociated partner to the partnership, must be offset against the buyout price. Interest must be paid from the date the amount owed becomes due to the date of payment.

(d) A partnership shall indemnify a dissociated partner whose partnership interest is being purchased against all partnership obligations, whether incurred before or after the dissociation, except partnership obligations incurred by an act of the dissociated partner under Section 15-702.

(e) If no agreement for the purchase of a dissociated partner's partnership interest is reached within 120 days after a written demand for payment, the partnership shall pay, or cause to be paid, in cash to the dissociated partner the amount the partnership estimates to be the buyout price and accrued interest, reduced by any offsets and accrued interest under subsection (c).

(f) If a deferred payment is authorized under subsection (h), the partnership may tender a written offer to pay the amount it estimates to be the buyout price and accrued interest, reduced by any offsets under subsection (c), stating the time of payment, the amount and type of security for payment, and the other terms and conditions of the obligation.

(g) The payment or tender required by subsection (e) or (f) must be accompanied by the following:

- (1) a written statement of partnership assets and liabilities as of the date of dissociation;
- (2) the latest available partnership balance sheet and income statement, if any;
- (3) a written explanation of how the estimated amount of the payment was calculated; and
- (4) written notice which shall state that the payment is in full satisfaction of the obligation to purchase unless, within 120 days after the written notice, the dissociated partner commences an action in the Court of Chancery under (i) to determine the buyout price of that partner's partnership interest, any offsets under subsection (c) or other terms of the obligation to purchase.

(h) A partner who wrongfully dissociates before the expiration of a definite term or the completion of a particular undertaking is not entitled to payment of any portion of the buyout price until the expiration of the term or completion of the undertaking, unless the partner establishes to the satisfaction of the Court of Chancery that earlier payment will not cause undue hardship to the business of

the partnership. A deferred payment must bear interest and, to the extent it would not cause undue hardship to the business of the partnership, be adequately secured.

(i) A dissociated partner may maintain an action against the partnership, pursuant to Section 15-405(b)(2)(ii), to determine the buyout price of that partner's partnership interest, any offsets under subsection (c), or other terms of the obligation to purchase. The action must be commenced within 120 days after the partnership has tendered payment or an offer to pay or within one year after written demand for payment if no payment or offer to pay is tendered. The Court of Chancery shall determine the buyout price of the dissociated partner's partnership interest, any offset due under subsection (c), and accrued interest, and enter judgment for any additional payment or refund. If deferred payment is authorized under subsection (h), the Court of Chancery shall also determine the security, if any, for payment and other terms of the obligation to purchase. The Court of Chancery may assess reasonable attorney's fees and the fees and expenses of appraisers or other experts for a party to the action, in amounts the Court of Chancery finds equitable, against a party that the Court of Chancery finds acted arbitrarily, vexatiously or not in good faith. The finding may be based on the partnership's failure to tender payment or an offer to pay or to comply with subsection (g).

#### SECTION 15-702. DISSOCIATED PARTNER'S POWER TO BIND AND LIABILITY TO PARTNERSHIP.

(a) For one year after a partner dissociates without resulting in a dissolution and winding up of the partnership business, the partnership, including a surviving partnership under Subchapter IX, is bound by an act of the dissociated partner which would have bound the partnership under Section 15-301 before dissociation only if at the time of entering into the transaction the other party:

(1) reasonably believed that the dissociated partner was then a partner and reasonably relied on such belief in entering into the transaction;

(2) did not have notice of the partner's dissociation; and

1414 (3) is not deemed to have had knowledge under Section 15-303(c) or notice under Section 15-  
1415 704(c).

1416 (b) A dissociated partner is liable to the partnership for any damage caused to the partnership  
1417 arising from an obligation incurred by the dissociated partner after dissociation for which the partnership  
1418 is liable under subsection (a).

1419 SECTION 15-703. DISSOCIATED PARTNER'S LIABILITY TO OTHER PERSONS.

1420 (a) A partner's dissociation does not of itself discharge the partner's liability for a partnership  
1421 obligation incurred before dissociation. A dissociated partner is not liable for a partnership obligation  
1422 incurred after dissociation, except as otherwise provided in subsection (b).

1423 (b) A partner who dissociates without resulting in a dissolution and winding up of the partnership  
1424 business is liable as a partner to the other party in a transaction entered into by the partnership, or a  
1425 surviving partnership under Subchapter IX, within one year after the partner's dissociation, only if the  
1426 partner is liable for the obligation under Section 15-306 and at the time of entering into the transaction the  
1427 other party:

1428 (1) reasonably believed that the dissociated partner was then a partner and reasonably relied  
1429 on such belief in entering into the transaction;

1430 (2) did not have notice of the partner's dissociation; and

1431 (3) is not deemed to have had knowledge under Section 15-303(c) or notice under Section 15-  
1432 704(c).

1433 (c) By agreement with the partnership creditor and the partners continuing the business, a  
1434 dissociated partner may be released from liability for a partnership obligation.

1435 (d) A dissociated partner is released from liability for a partnership obligation if a partnership  
1436 creditor, with notice of the partner's dissociation but without the partner's consent, agrees to a material  
1437 alteration in the nature or time of payment of a partnership obligation.

1438 SECTION 15-704. STATEMENT OF DISSOCIATION.



(a) A dissociated partner or, after the filing by the partnership of a statement of partnership existence, the partnership may file a statement of dissociation stating the name of the partnership and that the partner is dissociated from the partnership.

(b) A statement of dissociation is a limitation on the authority of a dissociated partner for the purposes of Section 15-303(b) and (c).

(c) For the purposes of Sections 15-702(a)(3) and 15-703(b)(3), a person not a partner is deemed to have notice of the dissociation 60 days after the statement of dissociation is filed.

#### SECTION 15-705. CONTINUED USE OF PARTNERSHIP NAME.

Continued use of a partnership name, or a dissociated partner's name as part thereof, by partners continuing the business does not of itself make the dissociated partner liable for an obligation of the partners or the partnership.

### SUBCHAPTER VIII

#### WINDING UP PARTNERSHIP BUSINESS OR AFFAIRS

Section 15-801. Events Causing Dissolution and Winding Up of Partnership Business or Affairs.

Section 15-802. Partnership Continues After Dissolution.

Section 15-803. Right to Wind Up Partnership Business or Affairs.

Section 15-804. Partner's Power to Bind Partnership After Dissolution.

Section 15-805. Statement of Dissolution.

Section 15-806. Partner's Liability to Other Partners After Dissolution.

Section 15-807. Settlement of Accounts and Contributions Among Partners.

#### SECTION 15-801. EVENTS CAUSING DISSOLUTION AND WINDING UP OF PARTNERSHIP BUSINESS OR AFFAIRS.

A partnership is dissolved, and its business must be wound up, only upon the occurrence of any of the following events:

(1) in a partnership at will, the partnership's having notice from a partner, other than a partner who is dissociated under Section 15-601(2) through (12), of that partner's express will to withdraw as a

1465 partner, on a later date specified by the partner in the notice or, if no later date is specified, then upon  
1466 receipt of notice;

1467 (2) in a partnership for a definite term or particular undertaking:

1468 (i) within 90 days after a partner's dissociation by death or otherwise under Section 15-601(6)  
1469 through (12) or wrongful dissociation under Section 15-602(b), at least half of the remaining partners  
1470 express the will to wind up the partnership business, for which purpose a partner's rightful dissociation  
1471 pursuant to Section 15-602(b)(2)(i) constitutes the expression of that partner's will to wind up the  
1472 partnership business;

1473 (ii) the express will of all of the partners to wind up the partnership business or affairs; or

1474 (iii) the expiration of the term or the completion of the undertaking;

1475 (3) an event agreed to in the partnership agreement resulting in the winding up of the partnership  
1476 business or affairs;

1477 (4) an event that makes it unlawful for all or substantially all of the business or affairs of the  
1478 partnership to be continued, but a cure of such illegality within 90 days after the partnership has notice of  
1479 the event is effective retroactively to the date of the event for purposes of this section;

1480 (5) on application by or for a partner to the Court of Chancery, a determination by the Court of  
1481 Chancery that:

1482 (i) the economic purpose of the partnership is likely to be unreasonably frustrated;

1483 (ii) another partner has engaged in conduct relating to the partnership business or affairs  
1484 which makes it not reasonably practicable to carry on the business or affairs in partnership with that  
1485 partner; or

1486 (iii) it is not otherwise reasonably practicable to carry on the partnership business or affairs in  
1487 conformity with the partnership agreement; or

1488 (6) on application by a transferee of a partner's economic interest to the Court of Chancery, a  
1489 determination by the Court of Chancery that it is equitable to wind up the partnership business or affairs:

(i) after the expiration of the term or completion of the undertaking, if the partnership was for a definite term or particular undertaking at the time of the transfer or entry of the charging order that gave rise to the transfer; or

(ii) at any time, if the partnership was a partnership at will at the time of the transfer or entry of the charging order that gave rise to the transfer.

#### SECTION 15-802. PARTNERSHIP CONTINUES AFTER DISSOLUTION.

(a) Subject to subsection (b), a partnership continues after dissolution only for the purpose of winding up its business or affairs. The partnership is terminated when the winding up of its business or affairs is completed.

(b) At any time after the dissolution of a partnership and before the winding up of its business or affairs is completed, all of the partners, including any dissociating partner other than a wrongfully dissociating partner, may waive the right to have the partnership's business or affairs wound up and the partnership terminated. In that event:

(1) the partnership resumes carrying on its business or affairs as if dissolution had never occurred, and any liability incurred by the partnership or a partner after the dissolution and before the waiver is determined as if dissolution had never occurred; and

(2) the rights of a third party accruing under Section 15-804(1) or arising out of conduct in reliance on the dissolution before the third party knew or received a notification of the waiver may not be adversely affected.

#### SECTION 15-803. RIGHT TO WIND UP PARTNERSHIP BUSINESS OR AFFAIRS.

(a) A partner at the time of dissolution, including a partner who has dissociated but not wrongfully, may participate in winding up the partnership's business or affairs, but on application of any partner or a partner's legal representative or transferee, the Court of Chancery for good cause shown, may order judicial supervision of the winding up.

(b) The legal representative of the last surviving partner may wind up a partnership's business or affairs.

(c) The persons winding up the partnership's business or affairs may, in the name of, and for and on behalf of, the partnership, prosecute and defend suits, whether civil, criminal or administrative, gradually settle and close the partnership's business or affairs, dispose of and convey the partnership's property, discharge or make reasonable provision for the partnership's liabilities, distribute to the partners pursuant to Section 15-807 any remaining assets of the partnership, and perform other acts which are necessary or convenient to the winding up of the partnership's business or affairs.

#### SECTION 15-804. PARTNER'S POWER TO BIND PARTNERSHIP AFTER DISSOLUTION.

Subject to Section 15-805, a partnership is bound by a partner's act after dissolution that:

- (1) is appropriate for winding up the partnership business or affairs; or
- (2) would have bound the partnership under Section 15-301 before dissolution, if the other party to the transaction did not have notice of the dissolution.

#### SECTION 15-805. STATEMENT OF DISSOLUTION.

(a) After dissolution, a partnership may file a statement of dissolution stating the name of the partnership and that the partnership has dissolved and is winding up its business or affairs.

(b) A statement of dissolution cancels a filed statement of partnership existence for the purposes of Section 15-303(b) and is a limitation on authority for the purposes of Section 15-303(c).

(c) For the purposes of Sections 15-301 and 15-804, a person not a partner is deemed to have notice of the dissolution and the limitation on the partners' authority as a result of a statement of dissolution 60 days after it is filed.

(d) After filing a statement of dissolution, a dissolved partnership may file a statement of partnership existence which will operate with respect to a person not a partner as provided in Section 15-303(b) and (c) in any transaction, whether or not the transaction is appropriate for winding up the partnership business or affairs.

(e) If a partnership which has dissolved fails or refuses to file a statement of dissolution, any partner or dissociated partner who is or may be adversely affected by the failure or refusal

may petition the Court of Chancery to direct the filing. If the Court finds that the statement of dissolution should be filed and that the partnership has failed or refused to do so, it shall enter an order granting appropriate relief.

SECTION 15-806. PARTNER'S LIABILITY TO OTHER PARTNERS AFTER  
DISSOLUTION.

(a) Except as otherwise provided in subsection (b) and Section 15-306, after dissolution a partner is liable to the other partners for the partner's share of any partnership obligation incurred under Section 15-804.

(b) A partner who, with knowledge of the dissolution, causes the partnership to incur an obligation under Section 15-804(2) by an act that is not appropriate for winding up the partnership business or affairs is liable to the partnership for any damage caused to the partnership arising from the obligation.

SECTION 15-807. SETTLEMENT OF ACCOUNTS AND CONTRIBUTIONS AMONG  
PARTNERS.

(a) In winding up a partnership's business or affairs, the assets of the partnership, including the contributions of the partners required by this section, must be applied to pay or make reasonable provision to pay the partnership's obligations to creditors, including, to the extent permitted by law, partners who are creditors. Any surplus must be applied to pay in cash the net amount distributable to partners in accordance with their right to distributions under subsection (b).

(b) Each partner is entitled to a settlement of all partnership accounts upon winding up the partnership business or affairs. In settling accounts among the partners, profits and losses that result from the liquidation of the partnership assets must be credited and charged to the partners' accounts. The partnership shall make a distribution to a partner in an amount equal to any excess of the credits over the charges in the partner's account. A partner shall contribute to the partnership an amount equal to any excess of the charges over the credits in the partner's account but excluding from the calculation charges attributable to an obligation for which the partner is not personally liable under Section 15-306.

(c) After the settlement of accounts, each partner shall contribute, in the proportion in which the partner shares partnership losses, the amount necessary to pay or make reasonable provision to pay partnership obligations that were not known at the time of the settlement and for which the partner is personally liable under Section 15-306.

(d) If a partner fails to contribute, all of the other partners shall contribute, in the proportions in which those partners share partnership losses, the additional amount necessary to pay or make reasonable provision to pay the partnership obligations for which they are personally liable under Section 15-306.

(e) A partner or partner's legal representative may recover from the other partners any contributions the partner makes to the extent the amount contributed exceeds that partner's share of the partnership obligations for which the partner is personally liable under Section 15-306.

(f) The estate of a deceased partner is liable for the partner's obligation to contribute to the partnership.

(g) An assignee for the benefit of creditors of a partnership or a partner, or a person appointed by a court to represent creditors of a partnership or a partner, may enforce a partner's obligation to contribute to the partnership.

(h) A limited liability partnership which has dissolved (i) shall pay or make reasonable provision to pay all claims and obligations, including all contingent, conditional or unmatured contractual claims, known to the limited liability partnership, (ii) shall make such provision as will be reasonably likely to be sufficient to provide compensation for any claim against the limited liability partnership which is the subject of a pending action, suit or proceeding to which the limited liability partnership is a party and (iii) shall make such provision as will be reasonably likely to be sufficient to provide compensation for claims that have not been made known to the limited liability partnership or that have not arisen but that, based on facts known to the limited liability partnership, are likely to arise or to become known to the limited liability partnership within 10 years after the date of dissolution. If there are sufficient assets, such claims and obligations shall be paid in full and any such provision for payment made shall be made in full. If there are insufficient assets, such claims and obligations shall be paid or provided for according to their priority and, among claims of equal priority, ratably to the extent of assets available therefor. Unless

otherwise provided in the partnership agreement, any remaining assets shall be distributed as provided in this chapter. Any liquidating trustee winding up a limited liability partnership's affairs who has complied with this section shall not be personally liable to the claimants of the dissolved limited liability partnership by reason of such person's actions in winding up the limited liability partnership.

(i) A partner of a limited liability partnership who receives a distribution in violation of subsection (h) of this section, and who knew at the time of the distribution that the distribution violated subsection (h) of this section, shall be liable to the limited liability partnership for the amount of the distribution. A partner of a limited liability partnership who receives a distribution in violation of subsection (h) of this section, and who did not know at the time of the distribution that the distribution violated subsection (h) of this section, shall not be liable for the amount of the distribution. Subject to subsection (j) of this section, this subsection shall not affect any obligation or liability of a partner of a limited liability partnership under an agreement or other applicable law for the amount of a distribution.

(j) Unless otherwise agreed, a partner of a limited liability partnership who receives a distribution from a limited liability partnership shall have no liability under this chapter or other applicable law for the amount of the distribution after the expiration of 3 years from the date of the distribution.

(k) Section 15-309 of this chapter shall not apply to a distribution to which subsections (h), (i) and (j) of this section apply.

## SUBCHAPTER IX

### CONVERSION; MERGER; DOMESTICATION; AND TRANSFER

Section 15-901. Conversion of Certain Entities to a Domestic Partnership.

Section 15-902. Merger or Consolidation.

Section 15-903. Approval of Conversion of a Domestic Partnership.

Section 15-904. Domestication of Non-United States Entities.

Section 15-905. Transfer or Continuance of Domestic Partnerships.

SECTION 15-901. CONVERSION OF CERTAIN ENTITIES TO A DOMESTIC  
PARTNERSHIP.

(a) As used in this section, the term ‘other entity’ means a corporation, a business trust or association, a real estate investment trust, a common-law trust or any other unincorporated business, including a limited partnership (including a limited liability limited partnership), a foreign partnership or a limited liability company.

(b) Any other entity may convert to a domestic partnership (including a limited liability partnership) by complying with subsection (h) of this section and filing with the Secretary of State in accordance with Section 15-105 of this chapter:

(1) A certificate of conversion to partnership that has been executed in accordance with Section 15-105 of this chapter; and

(2) A statement of partnership existence that complies with Section 15-303 of this chapter and has been executed in accordance with Section 15-105 of this chapter.

(c) The certificate of conversion to partnership shall state:

(1) The date on which and jurisdiction where the other entity was first created, formed or otherwise came into being and, if it has changed, its jurisdiction immediately prior to its conversion to a domestic partnership;

(2) The name of the other entity immediately prior to the filing of the certificate of conversion to partnership;

(3) The name of the partnership as set forth in its statement of partnership existence filed in accordance with subsection (b) of this section; and

(4) The future effective date or time (which shall be a date or time certain) of the conversion to a partnership if it is not to be effective upon the filing of the certificate of conversion to partnership and the statement of partnership existence.

(d) Upon the filing with the Secretary of State of the certificate of conversion to partnership and the statement of partnership existence or upon the future effective date or time of the certificate of



conversion to partnership and the statement of partnership existence, the other entity shall be converted into a domestic partnership and the partnership shall thereafter be subject to all of the provisions of this chapter, except that the existence of the partnership shall be deemed to have commenced on the date the other entity commenced its existence in the jurisdiction in which the other entity was first created, formed, incorporated or otherwise came into being.

(e) The conversion of any other entity into a domestic partnership shall not be deemed to affect any obligations or liabilities of the other entity incurred prior to its conversion to a domestic partnership, or the personal liability of any person incurred prior to such conversion.

(f) When any conversion shall have become effective under this section, for all purposes of the laws of the State of Delaware, all of the rights, privileges and powers of the other entity that has converted, and all property, real, personal and mixed, and all debts due to such other entity as well as all other things and causes of action belonging to such other entity, shall be vested in the domestic partnership and shall thereafter be the property of the domestic partnership as they were of the other entity that has converted, and the title to any real property vested by deed or otherwise in such other entity shall not revert or be in any way impaired by reason of this chapter; but all rights of creditors and all liens upon any property of such other entity shall be preserved unimpaired, and all debts, liabilities and duties of the other entity that has converted shall thenceforth attach to the domestic partnership, and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it.

(g) Unless otherwise agreed, or as required under applicable non-Delaware law, the converting other entity shall not be required to wind up its affairs or pay its liabilities and distribute its assets, and the conversion shall not be deemed to constitute a dissolution of such other entity and shall constitute a continuation of the existence of the converting other entity in the form of a domestic partnership.

(h) Prior to filing a certificate of conversion to partnership with the Secretary of State, the conversion shall be approved in the manner provided for by the document, instrument, agreement or other writing, as the case may be, governing the internal affairs of the other entity and the conduct of its business or by applicable law, as appropriate, and a partnership agreement shall be approved by the same authorization required to approve the conversion; provided, that in any event, such approval shall include

the approval of any person who, at the effective date or time of the conversion, shall be a partner of the partnership.

(i) The provisions of this section shall not be construed to limit the accomplishment of a change in the law governing, or the domicile of, an other entity to the State of Delaware by any other means provided for in a document, instrument, agreement or other writing, including by the amendment of any such document, instrument, agreement or other writing, or by applicable law.

#### SECTION 15-902. MERGER OR CONSOLIDATION.

(a) As used in this section, 'other business entity' means a corporation, a business trust or association, a real estate investment trust, a common-law trust, or an unincorporated business, including a limited liability company, a limited partnership (including a limited liability limited partnership) and a foreign partnership, but excluding a domestic partnership.

(b) Pursuant to an agreement of merger or consolidation, 1 or more domestic partnerships may merge or consolidate with or into 1 or more domestic partnerships or 1 or more other business entities formed or organized under the laws of the State of Delaware or any other state or the United States or any foreign country or other foreign jurisdiction, or any combination thereof, with such domestic partnership or other business entity as the agreement shall provide being the surviving or resulting domestic partnership or other business entity. Unless otherwise provided in the partnership agreement, a merger or consolidation shall be approved by each domestic partnership which is to merge or consolidate by all of its partners. In connection with a merger or consolidation hereunder, rights or securities of, or interests in, a domestic partnership or other business entity which is a constituent party to the merger or consolidation may be exchanged for or converted into cash, property, rights or securities of, or interests in, the surviving or resulting domestic partnership or other business entity or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights or securities of, or interests in a domestic partnership or other business entity which is not the surviving or resulting domestic partnership or other business entity in the merger or consolidation. Notwithstanding prior approval, an agreement of

merger or consolidation may be terminated or amended pursuant to a provision for such termination or amendment contained in the agreement of merger or consolidation.

(c) If a domestic partnership is merging or consolidating under this section, (i) if the domestic partnership has not filed a statement of partnership existence, then the domestic partnership shall file a statement of partnership existence and (ii) the domestic partnership or other business entity surviving or resulting in or from the merger or consolidation shall file a certificate of merger or consolidation executed by at least one partner on behalf of the domestic partnership when it is the surviving or resulting entity with the Secretary of State. The certificate of merger or consolidation shall state:

(1) The name and jurisdiction of formation or organization of each of the domestic partnerships and other business entities which is to merge or consolidate;

(2) That an agreement of merger or consolidation has been approved and executed by each of the domestic partnerships and other business entities which is to merge or consolidate;

(3) The name of the surviving or resulting domestic partnership or other business entity;

(4) The future effective date or time (which shall be a date or time certain) of the merger or consolidation if it is not to be effective upon the filing of the certificate of merger or consolidation;

(5) That the agreement of merger or consolidation is on file at a place of business of the surviving or resulting domestic partnership or other business entity, and shall state the address thereof;

(6) That a copy of the agreement of merger or consolidation will be furnished by the surviving or resulting domestic partnership or other business entity, on request and without cost, to any partner of any domestic partnership or any person holding an interest in any other business entity which is to merge or consolidate; and

(7) If the surviving or resulting entity is not formed, organized or created under the laws of the State of Delaware, a statement that such surviving or resulting entity agrees that it may be served with process in the State of Delaware in any action, suit or proceeding for the enforcement of any obligation of any domestic partnership which is to merge or consolidate, irrevocably appointing the Secretary of State as its agent to accept service of process in any such action, suit or proceeding and specifying the address to which a copy of such process shall be mailed to it by the Secretary of State. In the event of service

hereunder upon the Secretary of State, the procedures set forth in Section 15-113(b) of this chapter shall be applicable, except that the plaintiff in any such action, suit or proceeding shall furnish the Secretary of State with the address specified in the certificate of merger or consolidation provided for in this section and any other address which the plaintiff may elect to furnish, together with copies of each process as required by the Secretary of State, and the Secretary of State shall notify such surviving or resulting entity at all such addresses furnished by the plaintiff in accordance with the procedures set forth in Section 15-113(b) of this chapter.

(d) Any failure to file a certificate of merger or consolidation in connection with a merger or consolidation which occurred prior to the effective date of this chapter shall not affect the validity or effectiveness of any such merger or consolidation.

(e) Any failure to file a certificate of merger or consolidation in connection with a merger or consolidation which occurred prior to the effective date of this chapter shall not affect the validity or effectiveness of any such merger or consolidation.

(f) Unless a future effective date or time is provided in a certificate of merger or consolidation, in which event a merger or consolidation shall be effective at any such future effective date or time, a merger or consolidation shall be effective upon the filing with the Secretary of State of a certificate of merger or consolidation. If a certificate of merger or consolidation provides for a future effective date or time and if an agreement of merger or consolidation is amended to change the future effective date or time, or if an agreement of merger or consolidation permits a certificate of merger or consolidation to be amended to change the future effective date or time without an amendment to the agreement of merger or consolidation, or if an agreement of merger or consolidation is amended to change any other matter described in the certificate of merger or consolidation so as to make the certificate of merger or consolidation false in any material respect, as permitted by Section 15-902(b) of this chapter prior to the future effective date or time, the certificate of merger or consolidation shall be amended by the filing of a certificate of amendment of a certificate of merger or consolidation which shall identify the certificate of merger or consolidation and the agreement of merger or consolidation, if applicable, which has been amended and shall state that the agreement of merger or consolidation, if applicable, has been amended

and shall set forth the amendment to the certificate of merger or consolidation. If a certificate of merger or consolidation provides for a future effective date or time and if an agreement of merger or consolidation is terminated as permitted by subsection (b) of this section prior to the future effective date or time, the certificate of merger or consolidation shall be terminated by the filing of a certificate of termination of a merger or consolidation which shall identify the certificate of merger or consolidation and the agreement of merger or consolidation which has been terminated and shall state that the agreement of merger or consolidation has been terminated.

(g) A certificate of merger or consolidation shall act as a certificate of cancellation of the statement of partnership existence for a domestic partnership which is not the surviving or resulting entity in the merger or consolidation. Whenever this section requires the filing of a certificate of merger or consolidation, such requirement shall be deemed satisfied by the filing of an agreement of merger or consolidation containing the information required by this section to be set forth in the certificate of merger or consolidation.

(h) An agreement of merger or consolidation approved in accordance with subsection (b) of this section may (1) effect any amendment to the partnership agreement or (2) effect the adoption of a new partnership agreement for a domestic partnership if it is the surviving or resulting partnership in the merger or consolidation. Any amendment to a partnership agreement or adoption of a new partnership agreement made pursuant to the foregoing sentence shall be effective at the effective time or date of the merger or consolidation. The provisions of this subsection shall not be construed to limit the accomplishment of a merger or of any of the matters referred to herein by any other means provided for in a partnership agreement or other agreement or as otherwise permitted by law, including that the partnership agreement of any constituent domestic partnership to the merger or consolidation (including a domestic partnership formed for the purpose of consummating a merger or consolidation) shall be the partnership agreement of the surviving or resulting domestic partnership.

(i) When any merger or consolidation shall have become effective under this section, for all purposes of the laws of the State of Delaware, all of the rights, privileges and powers of each of the domestic partnerships and other business entities that have merged or consolidated, and all property, real,

personal and mixed, and all debts due to any of said domestic partnerships and other business entities, as well as all other things and causes of action belonging to each of such domestic partnerships and other business entities, shall be vested in the surviving or resulting domestic partnership or other business entity, and shall thereafter be the property of the surviving or resulting domestic partnership or other business entity as they were of each of the domestic partnerships and other business entities that have merged or consolidated, and the title to any real property vested by deed or otherwise, under the laws of the State of Delaware, in any of such domestic partnerships and other business entities, shall not revert or be in any way impaired by reason of this chapter; but all rights of creditors and all liens upon any property of any of said domestic partnerships and other business entities shall be preserved unimpaired, and all debts, liabilities and duties of each of the said domestic partnerships and other business entities that have merged or consolidated shall thenceforth attach to the surviving or resulting domestic partnership or other business entity, and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it. Unless otherwise agreed, a merger or consolidation of a domestic partnership, including a domestic partnership which is not the surviving or resulting entity in the merger or consolidation, shall not require such domestic partnership to wind up its affairs under Subchapter VIII or pay its liabilities and distribute its assets under Subchapter VIII.

(j) Except as provided by agreement with a person to whom a partner of a domestic partnership is obligated, a merger or consolidation of a domestic partnership that has become effective shall not affect any obligation or liability existing at the time of such merger or consolidation of a partner of a domestic partnership which is merging or consolidating.

(k) If a domestic partnership is a constituent party to a merger or consolidation that shall have become effective, but the domestic partnership is not the surviving or resulting entity of the merger or consolidation, then a judgment creditor of a partner of such domestic partnership may not levy execution against the assets of the partner to satisfy a judgment based on a claim against the surviving entity of the merger or consolidation unless:

(1) The claim is for an obligation of the domestic partnership for which the partner is liable as provided in Section 15-306 and either:

(i) A judgment based on the same claim has been obtained against the surviving or resulting entity of the merger or consolidation and a writ of execution on the judgment has been returned unsatisfied in whole or in part;

(ii) The surviving or resulting entity of the merger or consolidation is a debtor in bankruptcy;

(iii) The partner has agreed that the creditor need not exhaust the assets of the domestic partnership that was not the surviving or resulting entity of the merger or consolidation; or

(iv) The partner has agreed that the creditor need not exhaust the assets of the surviving or resulting entity of the merger or consolidation;

(2) A court grants permission to the judgment creditor to levy execution against the assets of the partner based on a finding that the assets of the surviving or resulting entity of the merger or consolidation that are subject to execution are clearly insufficient to satisfy the judgment, that exhaustion of the assets of the surviving or resulting entity of the merger or consolidation is excessively burdensome, or that the grant of permission is an appropriate exercise of the court's equitable powers; or

(3) Liability is imposed on the partner by law or contract independent of the existence of the surviving or resulting entity of the merger or consolidation.

#### SECTION 15-903. APPROVAL OF CONVERSION OF A DOMESTIC PARTNERSHIP.

A domestic partnership may convert to a business trust or association, a real estate investment trust, a common-law trust, a limited partnership (including a registered limited liability limited partnership), a limited liability company or a corporation, organized, formed or created under the laws of the State of Delaware, upon the authorization of such conversion in accordance with this section. If the partnership agreement specifies the manner of authorizing a conversion of the partnership, the conversion shall be authorized as specified in the partnership agreement. If the partnership agreement does not specify the manner of authorizing a conversion of the partnership and does not prohibit a conversion of the partnership, the conversion shall be authorized in the same manner as is specified in the partnership agreement for authorizing a

merger or consolidation that involves the partnership as a constituent party to the merger or consolidation. If the partnership agreement does not specify the manner of authorizing a conversion of the partnership or a merger or consolidation that involves the partnership as a constituent party and does not prohibit a conversion of the partnership, the conversion shall be authorized by the approval by all partners.

#### SECTION 15-904. DOMESTICATION OF NON-UNITED STATES ENTITIES.

(a) As used in this section, 'non-United States entity' means a foreign limited partnership (other than one formed under the laws of a state) (including a foreign limited liability limited partnership (other than one formed under the laws of a state)), or a corporation, a business trust or association, a real estate investment trust, a common-law trust or any other unincorporated business, including a general partnership (including a limited liability partnership) or a limited liability company, formed, incorporated, created or that otherwise came into being under the laws of any foreign country or other foreign jurisdiction (other than any state).

(b) Any non-United States entity may become domesticated as a partnership in the State of Delaware by complying with subsection (g) of this section and filing with the Secretary of State in accordance with Section 15-105 of this chapter:

(1) A certificate of partnership domestication that has been executed in accordance with Section 15-105 of this chapter; and

(2) A statement of partnership existence that complies with Section 15-303 of this chapter and has been executed in accordance with Section 15-105 of this chapter.

(c) The certificate of partnership domestication shall state:

(1) The date on which and jurisdiction where the non-United States entity was first formed, incorporated, created or otherwise came into being;

(2) The name of the non-United States entity immediately prior to the filing of the certificate of partnership domestication;



1857                   (3) The name of the partnership as set forth in the statement of partnership existence filed in  
1858 accordance with subsection (b) of this section;

1859                   (4) The future effective date or time (which shall be a date or time certain) of the  
1860 domestication as a partnership if it is not to be effective upon the filing of the certificate of partnership  
1861 domestication and the statement of partnership existence; and

1862                   (5) The jurisdiction that constituted the seat, siege social, or principal place of business or  
1863 central administration of the non-United States entity, or any other equivalent thereto under applicable  
1864 law, immediately prior to the filing of the certificate of partnership domestication.

1865                   (d) Upon the filing with the Secretary of State of the certificate of partnership domestication and  
1866 the statement of partnership existence or upon the future effective date or time of the certificate of  
1867 partnership domestication and the statement of partnership existence, the non-United States entity shall be  
1868 domesticated as a partnership in the State of Delaware and the partnership shall thereafter be subject to all  
1869 of the provisions of this chapter, provided that the existence of the partnership shall be deemed to have  
1870 commenced on the date the non-United States entity commenced its existence in the jurisdiction in which  
1871 the non-United States entity was first formed, incorporated, created or otherwise came into being.

1872                   (e) The domestication of any non-United States entity as a partnership in the State of Delaware  
1873 shall not be deemed to affect any obligations or liabilities of the non-United States entity incurred prior to  
1874 its domestication as a partnership in the State of Delaware, or the personal liability of any person therefor.

1875                   (f) The filing of a certificate of partnership domestication shall not affect the choice of law  
1876 applicable to the non-United States entity, except that from the effective date or time of the domestication,  
1877 the laws of the State of Delaware, including the provisions of this chapter, shall apply to the non-United  
1878 States entity to the same extent as if the non-United States entity had been formed as a partnership on that  
1879 date.

1880                   (g) Prior to filing a certificate of partnership domestication with the Secretary of State, the  
1881 domestication shall be approved in the manner provided for by the document, instrument, agreement or  
1882 other writing, as the case may be, governing the internal affairs of the non-United States entity and the  
1883 conduct of its business or by applicable non-Delaware law, as appropriate, and a partnership agreement

shall be approved by the same authorization required to approve the domestication; provided that, in any event, such approval shall include the approval of any person who, at the effective date or time of the domestication, shall be a partner of the partnership.

(h) When any domestication shall have become effective under this section, for all purposes of the laws of the State of Delaware, all of the rights, privileges and powers of the non-United States entity that has been domesticated, and all property, real, personal and mixed, and all debts due to such non-United States entity, as well as all other things and causes of action belonging to such non-United States entity, shall be vested in the domestic partnership and shall thereafter be the property of the domestic partnership as they were of the non-United States entity immediately prior to its domestication, and the title to any real property vested by deed or otherwise in such non-United States entity shall not revert or be in any way impaired by reason of this chapter; but all rights of creditors and all liens upon any property of such non-United States entity shall be preserved unimpaired, and all debts, liabilities and duties of the non-United States entity that has been domesticated shall thenceforth attach to the domestic partnership, and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by the domestic partnership.

#### SECTION 15-905. TRANSFER OR CONTINUANCE OF DOMESTIC PARTNERSHIPS.

(a) Upon compliance with the provisions of this section, any domestic partnership may transfer to or domesticate in any jurisdiction, other than any state, that permits the transfer to or domestication in such jurisdiction of a partnership and, in connection therewith, may elect to continue its existence as a partnership in the State of Delaware.

(b) Unless otherwise provided in a partnership agreement, the transfer or domestication or continuance described in subsection (a) of this section shall be approved in writing by all of the partners. If all of the partners of the 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, a certificate of transfer if the partnership's existence as a partnership of the State of Delaware is to cease, or a certificate of transfer

and continuance if the partnership's existence as a partnership in the State of Delaware is to continue, executed in accordance with Section 15-105 of this chapter, shall be filed with the Secretary of State in accordance with Section 15-105 of this chapter. The certificate of transfer or the certificate of transfer and continuance shall state:

(1) The name of the partnership;

(2) The date of the filing of its original statement of partnership existence with the Secretary of State, if any;

(3) The jurisdiction to which the partnership shall be transferred or in which it shall be domesticated;

(4) The future effective date or time (which shall be a date or time certain) of the transfer or domestication to the jurisdiction specified in subsection (b)(3) of this section if it is not to be effective upon the filing of the certificate of transfer or the certificate of transfer and continuance;

(5) That the transfer or domestication or continuance of the partnership has been approved in accordance with the provisions of this section;

(6) In the case of a certificate of transfer, (i) that the existence of the partnership as a partnership of the State of Delaware shall cease when the certificate of transfer becomes effective and (ii) the agreement of the partnership that it may be served with process in the State of Delaware in any action, suit or proceeding for enforcement of any obligation of the partnership arising while it was a partnership of the State of Delaware, and that it irrevocably appoints the Secretary of State as its agent to accept service of process in any such action, suit or proceeding;

(7) The address to which a copy of the process referred to in subsection (b)(6) of this section shall be mailed to it by the Secretary of State. In the event of service hereunder upon the Secretary of State, the procedures set forth in Section 15-113(b) of this chapter shall be applicable, except that the plaintiff in any such action, suit or proceeding shall furnish the Secretary of State with the address specified in this subsection and any other address that the plaintiff may elect to furnish, together with copies of such process as required by the Secretary of State, and the Secretary of State shall notify the partnership that has transferred or domesticated out of the State of Delaware at all such addresses

furnished by the plaintiff in accordance with the procedures set forth in Section 15-113(b) of this chapter;  
and

(8) In the case of a certificate of transfer and continuance, that the partnership will continue to exist as a partnership of the State of Delaware after the certificate of transfer and continuance becomes effective.

(c) Upon the filing with the Secretary of State of the certificate of transfer or upon the future effective date or time of the certificate of transfer and payment to the Secretary of State of all fees prescribed in this chapter, the Secretary of State shall certify that the partnership has filed all documents and paid all fees required by this chapter, and thereupon the partnership shall cease to exist as a partnership of the State of Delaware. Such certificate of the Secretary of State shall be prima facie evidence of the transfer or domestication by such partnership out of the State of Delaware.

(d) The transfer or domestication of a partnership out of the State of Delaware in accordance with this section and the resulting cessation of its existence as a partnership of the State of Delaware pursuant to a certificate of transfer shall not be deemed to affect any obligations or liabilities of the partnership incurred prior to such transfer or domestication or the personal liability of any person incurred prior to such transfer or domestication, nor shall it be deemed to affect the choice of law applicable to the partnership with respect to matters arising prior to such transfer or domestication.

(e) If a partnership files a certificate of transfer and continuance, (i) at the time of the filing of the certificate of transfer and continuance, the partnership shall file a statement of partnership existence that complies with Section 15-303 of this chapter and has been executed in accordance with Section 15-105 of this chapter, if not previously filed, and (ii) after the time the certificate of transfer and continuance becomes effective, the partnership shall continue to exist as a partnership of the State of Delaware, and the laws of the State of Delaware, including the provisions of this chapter, shall apply to the partnership, to the same extent as prior to such time.

## SUBCHAPTER X

### LIMITED LIABILITY PARTNERSHIP

1963       Section 15-1001. Statement of Qualification.

1964       Section 15-1002. Name.

1965       Section 15-1003. Annual Report.

1966       SECTION 15-1001. STATEMENT OF QUALIFICATION.

1967           (a) A partnership may become a limited liability partnership pursuant to this section.

1968           (b) The terms and conditions on which a partnership becomes a limited liability partnership must  
1969 be approved by the vote necessary to amend the partnership agreement except, in the case of a partnership  
1970 agreement that expressly considers obligations to contribute to the partnership, the vote necessary to  
1971 amend those provisions.

1972           (c) After the approval required by subsection (b), a partnership may become a limited liability  
1973 partnership by filing a statement of qualification. The statement of qualification must contain:

1974               (1) the name of the partnership;

1975               (2) the address of the registered office and the name and address of the registered agent for  
1976 service of process required to be maintained by Section 15-111 of this chapter;

1977               (3) the number of partners of the partnership;

1978               (4) a statement that the partnership elects to be a limited liability partnership; and

1979               (5) the future effective date or time (which shall be a date or time certain) of the statement of  
1980 qualification if it is not to be effective upon the filing of the statement of qualification.

1981           (d) The status of a partnership as a limited liability partnership is effective on the later of the  
1982 filing of the statement of qualification or a future effective date or time specified in the statement of  
1983 qualification. The status as a limited liability partnership remains effective, regardless of changes in the  
1984 partnership, until it is canceled pursuant to Section 15-105(d) of this chapter or revoked pursuant to  
1985 Section 15-1003 of this chapter.

1986           (e) A partnership is a limited liability partnership if there has been substantial compliance with  
1987 the requirements of this subchapter. The status of a partnership as a limited liability partnership and the

liability of its partners is not affected by errors or later changes in the information required to be contained in the statement of qualification under subsection (c).

(f) The filing of a statement of qualification establishes that a partnership has satisfied all conditions precedent to the qualification of the partnership as a limited liability partnership.

(g) An amendment or cancellation of a statement of qualification is effective when it is filed or on a future effective date or time specified in the amendment or cancellation.

(h) If a person is included in the number of partners of a limited liability partnership set forth in a statement of qualification, a statement of foreign qualification or an annual report, the inclusion of such person shall not be admissible as evidence in any action, suit or proceeding, whether civil, criminal, administrative or investigative, for the purpose of determining whether such person is liable as a partner of such limited liability partnership. The status of a partnership as a limited liability partnership and the liability of a partner of such limited liability partnership shall not be adversely affected if the number of partners stated in a statement of qualification, a statement of foreign qualification or an annual report is erroneously stated provided that the statement of qualification, the statement of foreign qualification or the annual report was filed in good faith.

SECTION 15-1002. NAME. The name of a limited liability partnership shall comply with Section 15-108 of this chapter.

#### SECTION 15-1003. ANNUAL REPORT.

(a) A limited liability partnership, and a foreign limited liability partnership authorized to transact business in the State of Delaware, shall file an annual report with the Secretary of State which contains:

(1) the name of the limited liability partnership and the state or other jurisdiction under whose laws the foreign limited liability partnership is formed and the number of partners of the partnership; and

(2) the address of the registered office and the name and address of the registered agent for service of process required to be maintained by Section 15-111 of this chapter.

(b) An annual report must be filed by the first day of June of each year following the calendar year in which a partnership files a statement of qualification or a foreign partnership becomes authorized to transact business in the State of Delaware.

(c) The Secretary of State may revoke the statement of qualification or statement of foreign qualification of a partnership that fails to file an annual report when due or pay the required filing fee. To do so, the Secretary of State shall provide the partnership at least 60 days' written notice of intent to revoke the statement of qualification or statement of foreign qualification. The notice must be mailed to the partnership at its registered office set forth in the last filed statement of qualification or statement of foreign qualification or annual report. The notice must specify the annual report that has not been filed, the fee that has not been paid, and the effective date of the revocation. The revocation is not effective if the annual report is filed and the fee is paid before the effective date of the revocation.

(d) A revocation under subsection (c) only affects a partnership's status as a limited liability partnership and is not an event of dissolution of the partnership.

(e) A partnership whose statement of qualification or statement of foreign qualification has been revoked may apply to the Secretary of State for reinstatement within three years after the effective date of the revocation. The application must state:

(1) the name of the partnership and the effective date of the revocation; and

(2) that the ground for revocation either did not exist or has been corrected.

(f) A reinstatement under subsection (e) relates back to and takes effect as of the effective date of the revocation, and the partnership's status as a limited liability partnership continues as if the revocation had never occurred.

## SUBCHAPTER XI

### FOREIGN LIMITED LIABILITY PARTNERSHIP

Section 15-1101. Law Governing Foreign Limited Liability Partnership.

Section 15-1102. Statement of Foreign Qualification.

Section 15-1103. Effect of Failure to Qualify.

Section 15-1104. Activities Not Constituting Transacting Business.

Section 15-1105. Foreign Limited Liability Partnerships Doing Business Without Having Qualified; Injunctions.

SECTION 15-1101. LAW GOVERNING FOREIGN LIMITED LIABILITY  
PARTNERSHIP.

(a) The law under which a foreign limited liability partnership is formed governs relations among the partners and between the partners and the partnership and the liability of partners for obligations of the partnership.

(b) A foreign limited liability partnership may not be denied a statement of foreign qualification by reason of any difference between the law under which the partnership was formed and the law of the State of Delaware.

(c) A statement of foreign qualification does not authorize a foreign limited liability partnership to engage in any business or exercise any power that a partnership may not engage in or exercise in the State of Delaware as a limited liability partnership.

## SECTION 15-1102. STATEMENT OF FOREIGN QUALIFICATION.

(a) Before doing business in the State of Delaware, a foreign limited liability partnership shall register with the Secretary of State by filing a statement of foreign qualification. The statement of foreign qualification must contain:

(1) the name of the foreign limited liability partnership which satisfies the requirements of the State or other jurisdiction under whose law it is formed and ends with the words ‘Registered Limited Liability Partnership’ or ‘Limited Liability Partnership,’ the abbreviation ‘R.L.L.P.’ or ‘L.L.P.’ or the designation ‘RLLP’ or ‘LLP’;

(2) the address of the registered office and the name and address of the registered agent for service of process required to be maintained by Section 15-111 of this chapter;

(3) the number of partners of the partnership; and

(4) the future effective date or time (which shall be a date or time certain) of the statement of foreign qualification if it is not to be effective upon the filing of the statement of foreign qualification.



(b) The status of a partnership as a foreign limited liability partnership is effective on the later of the filing of the statement of foreign qualification or the future effective date or time specified in the statement of foreign qualification. The status remains effective, regardless of changes in the partnership, until it is canceled pursuant to Section 15-105(d) of this chapter or revoked pursuant to Section 15-1003 of this chapter.

(c) An amendment or cancellation of a statement of foreign qualification is effective when it is filed or on the future effective date or time specified in the amendment or cancellation.

#### SECTION 15-1103. EFFECT OF FAILURE TO QUALIFY.

(a) A foreign limited liability partnership doing business in the State of Delaware may not maintain an action or proceeding in the State of Delaware until it has in effect a statement of foreign qualification and has paid to the State of Delaware all fees and penalties for the years or parts thereof during which it did business in the State of Delaware without such qualification.

(b) The failure of a foreign limited liability partnership to have in effect a statement of foreign qualification does not impair the validity of a contract or act of the foreign limited liability partnership or preclude it from defending an action or proceeding in the State of Delaware or does not impair the right of any other party to a contract to maintain any action, suit or proceeding on the contract.

(c) A limitation on personal liability of a partner is not waived solely by doing business in the State of Delaware without a statement of foreign qualification having been filed.

(d) If a foreign limited liability partnership does business in the State of Delaware without a statement of foreign qualification having been filed, the Secretary of State is its agent for service of process with respect to a right of action arising out of the doing of business in the State of Delaware and service of process may be made in accordance with the procedures set forth in Section 15-113 of this chapter.

#### SECTION 15-1104. ACTIVITIES NOT CONSTITUTING DOING BUSINESS.

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

2092 (1) maintaining, defending or settling an action or proceeding;  
2093 (2) holding meetings of its partners or carrying on any other activity concerning its internal  
2094 affairs;  
2095 (3) maintaining bank accounts;  
2096 (4) maintaining offices or agencies for the transfer, exchange or registration of the  
2097 partnership's own securities or maintaining trustees or depositories with respect to those securities;  
2098 (5) selling through independent contractors;  
2099 (6) soliciting or obtaining orders, whether by mail or through employees or agents or  
2100 otherwise, if the orders require acceptance outside the State of Delaware before they become contracts;  
2101 (7) creating or acquiring indebtedness, with or without a mortgage, or other security interest  
2102 in property;  
2103 (8) collecting debts or foreclosing mortgages or other security interests in property securing  
2104 the debts, and holding, protecting and maintaining property so acquired;  
2105 (9) conducting an isolated transaction that is not one in the course of similar transactions; and  
2106 (10) doing business in interstate commerce.

2107 (b) A person shall not be deemed to be doing business in the State of Delaware solely by reason  
2108 of being a partner in a partnership.

2109 (c) This section does not apply in determining whether a foreign limited liability  
2110 partnership is subject to service of process, taxation or regulation under any other law of the  
2111 State of Delaware.

2112 SECTION 15-1105. FOREIGN LIMITED LIABILITY PARTNERSHIPS DOING  
2113 BUSINESS WITHOUT HAVING QUALIFIED; INJUNCTIONS.

2114 (a) The Court of Chancery shall have jurisdiction to enjoin any foreign limited liability  
2115 partnership, or any agent thereof, from doing any business in the State of Delaware if such foreign limited  
2116 liability partnership has failed to register under this subchapter or if such foreign limited liability  
2117 partnership's statement of foreign qualification contains false or misleading representations. The Attorney

General shall, upon his own motion or upon the relation of proper parties, proceed for this purpose by complaint in any county in which such foreign limited liability partnership is doing or has done business.

(b) Any foreign limited liability partnership doing business in the State of Delaware without first having registered shall pay to the Secretary of State a fee of \$200 for each year or part thereof during which the foreign limited liability partnership failed to register in the State of Delaware.

## SUBCHAPTER XII

### MISCELLANEOUS PROVISIONS

Section 15-1201. Uniformity of Application and Construction.

Section 15-1202. Short Title.

Section 15-1203. Severability.

Section 15-1204. Effective Date.

Section 15-1205. Repeals.

Section 15-1206. Applicability.

Section 15-1207. Fees.

Section 15-1208. Annual Tax of Partnership.

Section 15-1209. Cancellation of Statement of Partnership Existence for Failure to Pay Annual Tax.

Section 15-1210. Revival of Partnership.

SECTION 15-1201. UNIFORMITY OF APPLICATION AND CONSTRUCTION. This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it. The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this chapter.

SECTION 15-1202. SHORT TITLE. This chapter may be cited as the Delaware Revised Uniform Partnership Act.

SECTION 15-1203. SEVERABILITY CLAUSE. If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications

of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

SECTION 15-1204.EFFECTIVE DATE. This chapter takes effect January 1, 2000.

SECTION 15-1205.REPEALS. Except with respect to limited partnerships (see 6 Del. C. § 17-1105), effective January 1, 2002, the Delaware Uniform Partnership Law, 6 Del. C. § 1501 - § 1553 is repealed.

SECTION 15-1206.APPLICABILITY.

(a) Before January 1, 2002, this chapter governs only a partnership formed:

(1) after the effective date of this chapter, except a partnership that is continuing the business of a dissolved partnership under 6 Del. C. § 1541; and

(2) before the effective date of this chapter, that elects, as provided by subsection (c), to be governed by this chapter.

(b) On and after January 1, 2002, this chapter governs all partnerships.

(c) Before January 1, 2002, a partnership voluntarily may elect, in the manner provided in its partnership agreement or by law for amending the partnership agreement, to be governed by this chapter. The provisions of this chapter relating to the liability of the partnership's partners to third parties apply to limit those partners' liability to a third party who had done business with the partnership within one year before the partnership's election to be governed by this chapter only if the third party knows or has received a notification of the partnership's election to be governed by this chapter.

SECTION 15-1207. FEES.

(a) No document required to be filed under this chapter shall be effective until the applicable fee required by this section is paid. The following fees shall be paid to and collected by the Secretary of State for the use of the State of Delaware:

(1) Upon the receipt for filing of any statement or certificate, a fee in the amount of \$100.00.

(2) Upon the receipt for filing of an application for reservation of name, an application for renewal of reservation or a notice of transfer or cancellation of reservation pursuant to Section 15-109 of this chapter, a fee in the amount of \$75.

2171 (3) Upon the receipt for filing of a statement of qualification, a statement of foreign  
2172 qualification or an annual report for a limited liability partnership or a foreign limited liability partnership,  
2173 a fee in the amount of \$100 for each partner, but in no event shall the fee payable for any year with  
2174 respect to a limited liability partnership or a foreign limited liability partnership under this section be  
2175 more than \$120,000.

2176 (4) For certifying copies of any paper on file as provided for by this chapter, a fee in the  
2177 amount of \$20 for each copy certified.

2178 (5) The Secretary of State may issue photocopies or electronic image copies of instruments  
2179 on file, as well as instruments, documents and other papers not on file, and for all such photocopies or  
2180 electronic image copies, whether certified or not, a fee of \$5 shall be paid for the first page and \$1 for  
2181 each additional page. The Secretary of State may also issue microfiche copies of instruments on file as  
2182 well as instruments, documents and other papers not on file, and for each such microfiche a fee of \$2 shall  
2183 be paid therefor. Notwithstanding the State of Delaware's Freedom of Information Act or other provision  
2184 of this Code granting access to public records, the Secretary of State shall issue only photocopies,  
2185 microfiche or electronic image copies of records in exchange for the fees described above.

2186 (6) Upon the receipt for filing of a certificate under Section 15-111(b) of this chapter, a fee  
2187 in the amount of \$50, upon the receipt for filing of a certificate under Section 15-111(c) of this chapter, a  
2188 fee in the amount of \$50 and a further fee of \$2 for each partnership affected by such certificate, and upon  
2189 the receipt for filing of a certificate under Section 15-111(d) of this chapter, a fee in the amount of \$10.

2190 (7) For preclearance of any document for filing, a fee in the amount of \$250.

2191 (8) For preparing and providing a written report of a record search, a fee in the amount of  
2192 \$30.

2193 (9) For issuing any certificate of the Secretary of State, including but not limited to a  
2194 certificate of good standing, other than a certification of a copy under paragraph (2) of this subsection, a  
2195 fee in the amount of \$20, except that for issuing any certificate of the Secretary of State that recites all of  
2196 a partnership's filings with the Secretary of State, a fee of \$100 shall be paid for each such certificate.

2197                   (10) For receiving and filing and/or indexing any certificate, affidavit, agreement or any  
2198 other paper provided for by this chapter, for which no different fee is specifically prescribed, a fee in the  
2199 amount of \$25.

2200                   (11) The Secretary of State may in the Secretary of State's discretion charge a fee of \$25 for  
2201 each check received for payment of any fee that is returned due to insufficient funds or the result of a stop  
2202 payment order.

2203                   (b) In addition to those fees charged under subsection (a) of this section, there shall be collected  
2204 by and paid to the Secretary of State the following:

2205                   (1) For all services described in subsection (a) of this section that are requested to be  
2206 completed within 2 hours on the same day as the day of the request, an additional sum of up to \$500;

2207                   (2) For all services described in subsection (a) of this section that are requested to be  
2208 completed within the same day as the day of the request, an additional sum of up to \$200; and

2209                   (3) For all services described in subsection (a) of this section that are requested to be  
2210 completed within a 24-hour period from the time of the request, an additional sum of up to \$100.

2211                   The Secretary of State shall establish (and may from time to time amend) a schedule of specific  
2212 fees payable pursuant to this subsection.

2213                   (c) The Secretary of State may in the Secretary of State's discretion permit the extension of credit  
2214 for the fees required by this section upon such terms as the Secretary of State shall deem to be  
2215 appropriate.

2216                   (d) The Secretary of State shall retain from the revenue collected from the fees required by this  
2217 section a sum sufficient to provide at all times a fund of at least \$500, but not more than \$1,500, from  
2218 which the Secretary of State may refund any payment made pursuant to this section to the extent that it  
2219 exceeds the fees required by this section. The funds shall be deposited in a financial institution which is a  
2220 legal depository of State of Delaware moneys to the credit of the Secretary of State and shall be  
2221 disbursable on order of the Secretary of State.

2222                   (e) Except as provided in this section, the fees of the Secretary of State shall be as provided in  
2223 Section 2315 of Title 29.

Section 15-1208. ANNUAL TAX OF PARTNERSHIP.

(a) Every partnership that has filed a statement of partnership existence shall pay an annual tax, for the use of the State of Delaware, in the amount of \$100.

(b) The annual tax shall be due and payable on the first day of June following the close of the calendar year or upon the cancellation of a statement of partnership existence. The Secretary of State shall receive the annual tax and pay over all taxes collected to the Department of Finance of the State of Delaware. If the annual tax remains unpaid after the due date established by subsection (d) of this section, the tax shall bear interest at the rate of 1 1/2% for each month or portion thereof until fully paid.

(c) The Secretary of State shall, at least 60 days prior to the first day of June of each year, cause to be mailed to each partnership required to comply with the provisions of this section in care of its registered agent in the State of Delaware an annual statement for the tax to be paid hereunder.

(d) In the event of neglect, refusal or failure on the part of any partnership to pay the annual tax to be paid hereunder on or before the first day of June in any year, such partnership shall pay the sum of \$100 to be recovered by adding that amount to the annual tax, and such additional sum shall become a part of the tax and shall be collected in the same manner and subject to the same penalties.

(e) In case any partnership shall fail to pay the annual tax due within the time required by this section, and in case the agent in charge of the registered office of any partnership upon whom process against such partnership may be served shall die, resign, refuse to act as such, remove from the State of Delaware or cannot with due diligence be found, it shall be lawful while default continues to serve process against such partnership upon the Secretary of State. Such service upon the Secretary of State shall be made in the manner and shall have the effect stated in Section 15-113 of this chapter in the case of a partnership and shall be governed in all respects by said sections.

(f) The annual tax shall be a debt due from a partnership to the State of Delaware, for which an action at law may be maintained after the same shall have been in arrears for a period of one month. The tax shall also be a preferred debt in the case of insolvency.

(g) A partnership that neglects, refuses or fails to pay the annual tax when due shall cease to be in good standing as a partnership in the State of Delaware.

(h) A partnership that has ceased to be in good standing by reason of the failure to pay an annual tax shall be restored to and have the status of a partnership in good standing in the State of Delaware upon the payment of the annual tax and all penalties and interest thereon for each year for which such partnership neglected, refused or failed to pay an annual tax.

(i) The Attorney General, either on his own motion or upon request of the Secretary of State, whenever any annual tax due under this chapter from any partnership shall have remained in arrears for a period of 3 months after the tax shall have become payable, may apply to the Court of Chancery, by petition in the name of the State of Delaware, on 5 days' notice to such partnership, which notice may be served in such manner as the Court may direct, for an injunction to restrain such partnership from the transaction of any business within the State of Delaware or elsewhere, until the payment of the annual tax, and all penalties and interest due thereon and the cost of the application, which shall be fixed by the Court. The Court of Chancery may grant the injunction, if a proper case appears, and upon granting and service of the injunction, such partnership thereafter shall not transact any business until the injunction shall be dissolved.

(j) A partnership that has ceased to be in good standing by reason of its neglect, refusal or failure to pay an annual tax shall remain a partnership formed under this chapter. The Secretary of State shall not accept for filing any certificate (except a certificate of resignation of a registered agent when a successor registered agent is not being appointed) required or permitted by this chapter to be filed in respect of any partnership which has neglected, refused or failed to pay an annual tax, and shall not issue any certificate of good standing with respect to such partnership, unless and until such partnership shall have been restored to and have the status of a partnership in good standing in the State of Delaware.

(k) A partnership that has ceased to be in good standing in the State of Delaware by reason of its neglect, refusal or failure to pay an annual tax may not maintain any action, suit or proceeding in any court of the State of Delaware until such partnership has been restored to and has the status of a partnership in good standing in the State of Delaware. An action, suit or proceeding may not be maintained in any court of the State of Delaware by any successor or assignee of such partnership on any right, claim or demand arising out of the transaction of business by such partnership after it has ceased to



be in good standing in the State of Delaware until such partnership, or any person that has acquired all or substantially all of its assets, has paid any annual tax then due and payable, together with penalties and interest thereon.

(l) The neglect, refusal or failure of a partnership to pay an annual tax shall not impair the validity of any contract, deed, mortgage, security interest, lien or act of such partnership or prevent such partnership from defending any action, suit, or proceeding in any court of the State of Delaware.

Section 15-1209. CANCELLATION OF STATEMENT OF PARTNERSHIP EXISTENCE FOR FAILURE TO PAY ANNUAL TAX.

(a) The statement of partnership existence of a partnership shall be deemed to be canceled if the partnership shall fail to pay the annual tax due under Section 15-1208 of this chapter for a period of three years from the date it is due, such cancellation to be effective on the third anniversary of such due date.

(b) On or before October 31 of each calendar year, the Secretary of State shall publish in at least 1 newspaper of general circulation in the State of Delaware a list of those partnerships whose statements of partnership existence were canceled on June 1 of such calendar year pursuant to Section 15-1209(a) of this chapter.

Section 15-1210. REVIVAL OF PARTNERSHIP.

(a) A partnership whose statement of partnership existence has been canceled pursuant to Section 15-111(d) or Section 15-1209(a) of this chapter may be revived by filing in the office of the Secretary of State a certificate of revival accompanied by the payment of the fee required by Section 15-1207 of this chapter and payment of the annual tax due under Section 15-1208 of this chapter and all penalties and interest thereon for each year for which such partnership neglected, refused or failed to pay such annual tax, including each year between the cancellation of its statement of partnership existence and its revival. The certificate of revival shall set forth:

(1) The name of the partnership at the time its statement of partnership existence was canceled and, if such name is not available at the time of revival, the name under which the partnership is to be revived;

(2) The date of filing of the original statement of partnership existence of the partnership;

(3) The address of the partnership's registered office in the State of Delaware and the name and address of the partnership's registered agent in the State of Delaware;

(4) A statement that the certificate of revival is filed by one or more partners of the partnership authorized to execute and file the certificate of revival to revive the partnership; and

(5) Any other matters the partner or partners executing the certificate of revival determine to include therein.

(b) The certificate of revival shall be deemed to be an amendment to the statement of partnership existence of the partnership, and the partnership shall not be required to take any further action to amend its statement of partnership existence under Section 15-105 of this chapter with respect to the matters set forth in the certificate of revival.

(c) Upon the filing of a certificate of revival, a partnership shall be revived with the same force and effect as if its statement of partnership existence had not been canceled pursuant to Section 15-111(d) or Section 15-1209(a) of this chapter. Such revival shall validate all contracts, acts, matters and things made, done and performed by the partnership, its partners, employees and agents during the time when its statement of partnership existence was canceled pursuant to Section 15-111(d) or Section 15-1209(a) of this chapter, with the same force and effect and to all intents and purposes as if the statement of partnership existence had remained in full force and effect. All real and personal property, and all rights and interests, which belonged to the partnership at the time its statement of partnership existence was canceled pursuant to Section 15-111(d) or Section 15-1209(a) of this chapter, or which were acquired by the partnership following the cancellation of its statement of partnership existence pursuant to Section 15-111(d) or Section 15-1209(a) of this chapter, and which were not disposed of prior to the time of its revival, shall be vested in the partnership after its revival as fully as they were held by the partnership at, and after, as the case may be, the time its statement of partnership existence was canceled

2329 pursuant to Section 15-111(d) or Section 15-1209(a) of this chapter. After its revival, the partnership and  
2330 its partners shall have the same liability for all contracts, acts, matters and things made, done or  
2331 performed in the partnership's name and on its behalf by its partners, employees and agents as the  
2332 partnership and its partners would have had if the partnership's statement of partnership existence had at  
2333 all times remained in full force and effect.”

#### SYNOPSIS

This Bill contains Delaware's version of the Uniform Partnership Act of 1994, as amended in 1996 and 1997 by the National Conference of Commissioners on Uniform State Laws, popularly known as the "Revised Uniform Partnership Act" or "RUPA." As such, it will replace Delaware's Uniform Partnership Law, 6 Del. C. Chapter 15, which was based upon the Uniform Partnership Act which was promulgated by the Uniform Laws Commissioners in 1914. This Bill is a substantial modernization of general partnership law in that, inter alia, it emphasizes the contractual nature of the relationship among partners; primarily treats general partnerships as entities, rather than aggregates; generally provides that a partnership does not dissolve upon the dissociation of a partner; contains more extensive treatment of fiduciary duties of partners; and introduces provisions for the public filing of various types of statements and certificates containing information about the partnership, including the agency authority of one or more of its partners.

This Bill applies to general partnerships many of the procedures which have proven popular for Delaware limited partnerships and Delaware limited liability companies. It also continues to permit limited liability partnerships. Adoption of this Bill will continue Delaware's role as a leading jurisdiction for the formation of business entities and will permit Delaware to join other states which have already adopted their versions of RUPA.

Author: Sen. Sharp