

SPONSOR: [INSERT SPONSORS]

[HOUSE OF REPRESENTATIVES][DELAWARE STATE SENATE]
152nd GENERAL ASSEMBLY

[HOUSE][SENATE] BILL NO. [●]

AN ACT TO AMEND TITLE 6 OF THE DELAWARE CODE RELATING TO THE CREATION, REGULATION, OPERATION, AND DISSOLUTION OF DOMESTIC PARTNERSHIPS AND THE REGISTRATION AND REGULATION OF FOREIGN LIMITED LIABILITY PARTNERSHIPS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE

1 Section 1. Amend § 15-902, Title 6 of the Delaware Code by making deletions as shown by strike through
2 and insertions as shown by underline as follows:

3 § 15-902. Merger or consolidation.

4 (c) Except in the case of a merger under subsection (m) of this section, if a domestic partnership is merging
5 or consolidating under this section, (i) if the domestic partnership has not filed a statement of partnership existence,
6 then the domestic partnership shall file a statement of partnership existence and (ii) the domestic partnership or other
7 business entity surviving or resulting in or from the merger or consolidation shall file a certificate of merger or
8 consolidation executed by at least 1 partner or by 1 or more authorized persons on behalf of the domestic partnership
9 when it is the surviving or resulting entity with the Secretary of State. The certificate of merger or consolidation shall
10 state:

11 (4) In the case of a merger in which a domestic partnership is the surviving entity, such amendments, if
12 any, to the statement of partnership existence of the surviving domestic partnership (and in the case of a surviving
13 domestic partnership that is a limited liability partnership, to the statement of qualification of such surviving
14 domestic partnership) ~~to change its name, registered office or registered agent~~ as are desired to be effected by the
15 merger (which amendments may amend and restate the statement of partnership existence of the surviving
16 domestic partnership in its entirety);

17 (f) A certificate of merger or consolidation or a certificate of ownership and merger shall act as a statement
18 of cancellation of the statement of partnership existence (and if applicable the statement of qualification) for a domestic
19 partnership which is not the surviving or resulting entity in the merger or consolidation. A certificate of merger or a
20 certificate of ownership and merger that sets forth any amendment in accordance with paragraph (c)(4) or subsection
21 (m) of this section shall be deemed to be an amendment to the statement of partnership existence (and if applicable to
22 the statement of qualification) of the domestic partnership, and the domestic partnership shall not be required to take

23 any further action to amend its statement of partnership existence (or if applicable its statement of qualification) under
24 § 15-105 or § 15-116 of this title with respect to such amendments set forth in the certificate of merger or certificate
25 of ownership and merger. Whenever this section requires the filing of a certificate of merger or consolidation, such
26 requirement shall be deemed satisfied by the filing of an agreement of merger or consolidation containing the
27 information required by this section to be set forth in the certificate of merger or consolidation.

28 (m) In any case in which (i) at least 90% of the outstanding shares of each class of the stock of a corporation
29 or corporations (other than a corporation which has in its certificate of incorporation the provision required by §
30 251(g)(7)(A) and (B) of Title 8), of which class there are outstanding shares that, absent § 267(a) of Title 8, would be
31 entitled to vote on such merger, is owned by a domestic partnership, (ii) 1 or more of such corporations is a corporation
32 of the State of Delaware, and (iii) any corporation that is not a corporation of the State of Delaware is a corporation
33 of any other state or the District of Columbia or another jurisdiction, the laws of which do not forbid such merger, the
34 domestic partnership having such stock ownership may either merge the corporation or corporations into itself and
35 assume all of its or their obligations, or merge itself, or itself and 1 or more of such corporations, into 1 of the other
36 corporations, pursuant to a plan of merger. If a domestic partnership is causing a merger under this subsection, (i) if
37 the domestic partnership has not filed a statement of partnership existence, then the domestic partnership shall file a
38 statement of partnership existence, and (ii) the domestic partnership shall file a certificate of ownership and merger
39 executed by at least 1 partner or by 1 or more authorized persons on behalf of the domestic partnership in the office
40 of the Secretary of State. The certificate of ownership and merger shall certify that such merger was authorized in
41 accordance with the domestic partnership's partnership agreement and this chapter, and if the domestic partnership
42 shall not own all the outstanding stock of all the corporations that are parties to the merger, shall state the terms and
43 conditions of the merger, including the securities, cash, property, or rights to be issued, paid, delivered or granted by
44 the surviving domestic partnership or corporation upon surrender of each share of the corporation or corporations not
45 owned by the domestic partnership, or the cancellation of some or all of such shares. The terms and conditions of the
46 merger may not result in a holder of stock in a corporation becoming a partner in a surviving domestic partnership
47 (other than a limited liability partnership). In the case of a merger under this subsection in which a domestic partnership
48 is the surviving entity, the certificate of ownership and merger may also state such amendments, if any, to the statement
49 of partnership existence of the surviving domestic partnership (and in the case of a surviving domestic partnership that
50 is a limited liability partnership, to the statement of qualification of such surviving domestic partnership) as are desired

51 to be effected by the merger (which amendments may amend and restate the statement of partnership existence of the
52 surviving domestic partnership in its entirety). If a corporation surviving a merger under this subsection is not a
53 corporation organized under the laws of the State of Delaware, then the terms and conditions of the merger shall
54 obligate such corporation to agree that it may be served with process in the State of Delaware in any proceeding for
55 enforcement of any obligation of the domestic partnership or any obligation of any constituent corporation of the State
56 of Delaware, as well as for enforcement of any obligation of the surviving corporation, including any suit or other
57 proceeding to enforce the right of any stockholders as determined in appraisal proceedings pursuant to § 262 of Title
58 8, and to irrevocably appoint the Secretary of State as its agent to accept service of process in any such suit or other
59 proceedings, and to specify the address to which a copy of such process shall be mailed by the Secretary of State.
60 Process may be served upon the Secretary of State under this subsection by means of electronic transmission but only
61 as prescribed by the Secretary of State. The Secretary of State is authorized to issue such rules and regulations with
62 respect to such service as the Secretary of State deems necessary or appropriate. In the event of such service upon the
63 Secretary of State in accordance with this subsection, the Secretary of State shall forthwith notify such surviving
64 corporation thereof by letter, directed to such surviving corporation at its address so specified, unless such surviving
65 corporation shall have designated in writing to the Secretary of State a different address for such purpose, in which
66 case it shall be mailed to the last address so designated. Such letter shall be sent by a mail or courier service that
67 includes a record of mailing or deposit with the courier and a record of delivery evidenced by the signature of the
68 recipient. Such letter shall enclose a copy of the process and any other papers served on the Secretary of State pursuant
69 to this subsection. It shall be the duty of the plaintiff in the event of such service to serve process and any other papers
70 in duplicate, to notify the Secretary of State that service is being effected pursuant to this subsection and to pay the
71 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
72 the proceeding, if the plaintiff shall prevail therein. The Secretary of State shall maintain an alphabetical record of any
73 such service setting forth the name of the plaintiff and the defendant, the title, docket number and nature of the
74 proceeding in which process has been served, the fact that service has been effected pursuant to this subsection, the
75 return date thereof, and the day and hour service was made. The Secretary of State shall not be required to retain such
76 information longer than 5 years from receipt of the service of process.

77 Section 2. This Act takes effect August 1, 2024.

78

SYNOPSIS

This Act continues the practice of amending periodically the Delaware Revised Uniform Partnership Act (the “GP Act”) to keep it current and to maintain its national preeminence. The following is a section-by-section review of the proposed amendments to the GP Act:

Section 1 amends § 15-902 of the GP Act to permit a certificate of merger or a certificate of ownership and merger to state any amendments to the statement of partnership existence of a surviving domestic partnership in a merger (and in the case of a surviving domestic partnership that is a limited liability partnership, to the statement of qualification of such surviving domestic partnership) as are desired to be effected by the merger. This section also amends § 15-902 of the GP Act to require a domestic partnership that is causing a merger under § 15-902(m) of the GP Act to file a statement of partnership existence (if it has not already filed a statement of partnership existence).

Section 2 provides that the amendments to the GP Act take effect August 1, 2024.

Author: _____

SPONSOR: [INSERT SPONSORS]

[HOUSE OF REPRESENTATIVES][DELAWARE STATE SENATE]
152nd GENERAL ASSEMBLY

[HOUSE][SENATE] BILL NO. [●]

AN ACT TO AMEND TITLE 6 OF THE DELAWARE CODE RELATING TO THE CREATION, REGULATION, OPERATION, AND DISSOLUTION OF DOMESTIC LIMITED PARTNERSHIPS AND THE REGISTRATION AND REGULATION OF FOREIGN LIMITED PARTNERSHIPS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE

1 Section 1. Amend § 17-204, Title 6 of the Delaware Code by making deletions as shown by strike through
2 and insertions as shown by underline as follows:

3 § 17-204. Execution.

4 (a) Each certificate required by this chapter to be filed in the Office of the Secretary of State shall be executed
5 in the following manner:

6 (4) If a domestic limited partnership is filing a certificate of merger or consolidation or a certificate of
7 ownership and merger, the certificate of merger or consolidation or certificate of ownership and merger must be
8 signed by at least 1 general partner of the domestic limited partnership and, if the certificate of merger or
9 certificate of ownership and merger amends the certificate of limited partnership of the surviving limited
10 partnership to reflect the admission of 1 or more new general partners of the surviving domestic limited
11 partnership, each new general partner, or, if the certificate of merger or consolidation is being filed by another an
12 other business entity, as “other business entity” is (as defined in § 17-211(a) of this title), the certificate of merger
13 or consolidation, must be signed by a person authorized by ~~such~~ the other business entity;

14 (11) A certificate of merger or consolidation of registered series must be signed by all general partners
15 associated with the surviving or resulting registered series and, if the certificate of merger amends the certificate
16 of registered series of the surviving registered series to reflect the association of one or more new general partners
17 with the surviving registered series, each new general partner;

18 Section 2. Amend § 17-211, Title 6 of the Delaware Code by making deletions as shown by strike through
19 and insertions as shown by underline as follows:

20 § 17-211. Merger and consolidation.

21 (c) Except in the case of a merger under subsection (l) of this section, if a domestic limited partnership is
22 merging or consolidating under this section, the domestic limited partnership or other business entity surviving or

23 resulting in or from the merger or consolidation shall file a certificate of merger or consolidation executed by at least
24 1 general partner on behalf of the domestic limited partnership when it is the surviving or resulting entity in the office
25 of the Secretary of State. The certificate of merger or consolidation shall state:

26 (4) In the case of a merger in which a domestic limited partnership is the surviving entity, such
27 amendments, if any, to the certificate of limited partnership of the surviving domestic limited partnership (and in
28 the case of a surviving domestic limited partnership that is a limited liability limited partnership, to the statement
29 of qualification of such surviving domestic limited partnership filed under § 15-1001 of this title) ~~to change its~~
30 ~~name, registered office or registered agent~~ as are desired to be effected by the merger (which amendments may
31 amend and restate the certificate of limited partnership of the surviving domestic limited partnership in its
32 entirety);

33 (f) A certificate of merger or consolidation or a certificate of ownership and merger shall act as a certificate
34 of cancellation for a domestic limited partnership which is not the surviving or resulting entity in the merger or
35 consolidation. A certificate of merger or a certificate of ownership and merger that sets forth any amendment in
36 accordance with paragraph (c)(4) or subsection (l) of this section shall be deemed to be an amendment to the certificate
37 of limited partnership (and if applicable to the statement of qualification) of the limited partnership, and the limited
38 partnership shall not be required to take any further action to amend its certificate of limited partnership under § 17-
39 202 or § 17-210 of this title (or if applicable its statement of qualification under § 15-105 of this title) with respect to
40 such amendments set forth in the certificate of merger or certificate of ownership and merger. Whenever this section
41 requires the filing of a certificate of merger or consolidation, such requirement shall be deemed satisfied by the filing
42 of an agreement of merger or consolidation containing the information required by this section to be set forth in the
43 certificate of merger or consolidation.

44 (l) In any case in which (i) at least 90% of the outstanding shares of each class of the stock of a corporation
45 or corporations (other than a corporation which has in its certificate of incorporation the provision required by §
46 251(g)(7)(A) and (B) of Title 8), of which class there are outstanding shares that, absent § 267(a) of Title 8, would be
47 entitled to vote on such merger, is owned by a domestic limited partnership, (ii) 1 or more of such corporations is a
48 corporation of the State of Delaware, and (iii) any corporation that is not a corporation of the State of Delaware is a
49 corporation of any other state or the District of Columbia or another jurisdiction, the laws of which do not forbid such
50 merger, the domestic limited partnership having such stock ownership may either merge the corporation or

51 corporations into itself and assume all of its or their obligations, or merge itself, or itself and 1 or more of such
52 corporations, into 1 of the other corporations, pursuant to a plan of merger. If a domestic limited partnership is causing
53 a merger under this subsection, the domestic limited partnership shall file a certificate of ownership and merger
54 executed by at least 1 general partner on behalf of the domestic limited partnership in the office of the Secretary of
55 State. The certificate of ownership and merger shall certify that such merger was authorized in accordance with the
56 domestic limited partnership's partnership agreement and this chapter, and if the domestic limited partnership shall
57 not own all the outstanding stock of all the corporations that are parties to the merger, shall state the terms and
58 conditions of the merger, including the securities, cash, property, or rights to be issued, paid, delivered or granted by
59 the surviving domestic limited partnership or corporation upon surrender of each share of the corporation or
60 corporations not owned by the domestic limited partnership, or the cancellation of some or all of such shares. The
61 terms and conditions of the merger may not result in a holder of stock in a corporation becoming a general partner in
62 a surviving domestic limited partnership (other than a limited liability limited partnership). In the case of a merger
63 under this subsection in which a domestic limited partnership is the surviving entity, the certificate of ownership and
64 merger may also state such amendments, if any, to the certificate of limited partnership of the surviving domestic
65 limited partnership (and in the case of a surviving domestic limited partnership that is a limited liability limited
66 partnership, to the statement of qualification of such surviving domestic limited partnership filed under § 15-1001 of
67 this title) as are desired to be effected by the merger (which amendments may amend and restate the certificate of
68 limited partnership of the surviving domestic limited partnership in its entirety). If a corporation surviving a merger
69 under this subsection is not a corporation organized under the laws of the State of Delaware, then the terms and
70 conditions of the merger shall obligate such corporation to agree that it may be served with process in the State of
71 Delaware in any proceeding for enforcement of any obligation of the domestic limited partnership or any obligation
72 of any constituent corporation of the State of Delaware, as well as for enforcement of any obligation of the surviving
73 corporation, including any suit or other proceeding to enforce the right of any stockholders as determined in appraisal
74 proceedings pursuant to § 262 of Title 8, and to irrevocably appoint the Secretary of State as its agent to accept service
75 of process in any such suit or other proceedings, and to specify the address to which a copy of such process shall be
76 mailed by the Secretary of State. Process may be served upon the Secretary of State under this subsection by means
77 of electronic transmission but only as prescribed by the Secretary of State. The Secretary of State is authorized to issue
78 such rules and regulations with respect to such service as the Secretary of State deems necessary or appropriate. In the

79 event of such service upon the Secretary of State in accordance with this subsection, the Secretary of State shall
80 forthwith notify such surviving corporation thereof by letter, directed to such surviving corporation at its address so
81 specified, unless such surviving corporation shall have designated in writing to the Secretary of State a different
82 address for such purpose, in which case it shall be mailed to the last address so designated. Such letter shall be sent
83 by a mail or courier service that includes a record of mailing or deposit with the courier and a record of delivery
84 evidenced by the signature of the recipient. Such letter shall enclose a copy of the process and any other papers served
85 on the Secretary of State pursuant to this subsection. It shall be the duty of the plaintiff in the event of such service to
86 serve process and any other papers in duplicate, to notify the Secretary of State that service is being effected pursuant
87 to this subsection and to pay the Secretary of State the sum of \$50 for the use of the State of Delaware, which sum
88 shall be taxed as part of the costs in the proceeding, if the plaintiff shall prevail therein. The Secretary of State shall
89 maintain an alphabetical record of any such service setting forth the name of the plaintiff and the defendant, the title,
90 docket number and nature of the proceeding in which process has been served, the fact that service has been effected
91 pursuant to this subsection, the return date thereof, and the day and hour service was made. The Secretary of State
92 shall not be required to retain such information longer than 5 years from receipt of the service of process.

93 Section 3. Amend § 17-218, Title 6 of the Delaware Code by making deletions as shown by strike through
94 and insertions as shown by underline as follows:

95 § 17-218. Series of limited partners, general partners, partnership interests or assets.

96 (d) If a partnership agreement provides the manner in which a termination of a protected series may be
97 revoked, it may be revoked in that manner and, unless the limited partnership has dissolved and such dissolution has
98 not been revoked or the partnership agreement prohibits revocation of termination of a protected series, then
99 notwithstanding the occurrence of an event set forth in paragraph (b)(10)a., b., c., or d. of this section, the protected
100 series shall not be terminated and its affairs shall not be wound up if, prior to the completion of the winding up of the
101 protected series, the business of the protected series is continued, effective as of the occurrence of such event:

102 (1) In the case of termination effected by the vote or consent of the partners associated with the protected
103 series (or other persons whose approval is required for such termination pursuant to the partnership agreement),
104 pursuant to such vote or consent (and the approval of any partners associated with the protected series or other
105 persons whose approval is required under the partnership agreement to revoke a termination contemplated by this
106 paragraph);

107 (2) In the case of termination under paragraph (b)(10)a. or b. of this section (other than a termination
108 effected by the vote or consent of the partners associated with the protected series (or other persons whose
109 approval is required for such termination pursuant to the partnership agreement) or an event of withdrawal of a
110 general partner associated with the protected series), pursuant to such vote or consent that, pursuant to the terms
111 of the partnership agreement, is required to amend the provision of the partnership agreement effecting such
112 termination (and the approval of any partners associated with the protected series or other persons whose approval
113 is required under the partnership agreement to revoke a termination contemplated by this paragraph); and

114 Section 4. Amend § 17-221, Title 6 of the Delaware Code by making deletions as shown by strike through
115 and insertions as shown by underline as follows:

116 § 17-221. Registered series of limited partners, general partners, partnership interests or assets.

117 (f) If a partnership agreement provides the manner in which a dissolution of a registered series may be
118 revoked, it may be revoked in that manner and, unless the limited partnership has dissolved and such dissolution has
119 not been revoked or the partnership agreement prohibits revocation of dissolution of a registered series, then
120 notwithstanding the occurrence of an event set forth in paragraph (c)(10)a., b., c., or d. of this section, the registered
121 series shall not be dissolved and its affairs shall not be wound up if, prior to the filing of a certificate of cancellation
122 of the certificate of registered series in the office of the Secretary of State, the business of the registered series is
123 continued, effective as of the occurrence of such event:

124 (1) In the case of dissolution effected by the vote or consent of the partners associated with the registered
125 series (or other persons whose approval is required for such dissolution pursuant to the partnership agreement),
126 pursuant to such vote or consent (and the approval of any partners associated with the registered series or other
127 persons whose approval is required under the partnership agreement to revoke a dissolution contemplated by this
128 paragraph);

129 (2) In the case of dissolution under paragraph (c)(10)a. or b. of this section (other than a dissolution
130 effected by the vote or consent of the partners associated with the registered series (or other persons whose
131 approval is required for such dissolution pursuant to the partnership agreement) or an event of withdrawal of a
132 general partner associated with the registered series), pursuant to such vote or consent that, pursuant to the terms
133 of the partnership agreement, is required to amend the provision of the partnership agreement effecting such

134 dissolution (and the approval of any partners associated with the registered series or other persons whose approval
135 is required under the partnership agreement to revoke a dissolution contemplated by this paragraph); and

136 Section 5. Amend § 17-224, Title 6 of the Delaware Code by making deletions as shown by strike through
137 and insertions as shown by underline as follows:

138 § 17-224. Merger and consolidation of registered series.

139 (b) If a registered series is merging or consolidating under this section, the registered series surviving or
140 resulting in or from the merger or consolidation shall file in the office of the Secretary of State a certificate of merger
141 or consolidation of registered series executed in accordance with § 17-204 of this title. The certificate of merger or
142 consolidation of registered series shall state:

143 (4) Such ~~amendment~~ amendments, if any, to the certificate of registered series of the surviving registered
144 series ~~to change the name of the surviving registered series, as is~~ as are desired to be effected by the merger (which
145 amendments may amend and restate the certificate of registered series of the surviving registered series in its
146 entirety);

147 Section 6. Amend § 17-806, Title 6 of the Delaware Code by making deletions as shown by strike through
148 and insertions as shown by underline as follows:

149 If a partnership agreement provides the manner in which a dissolution may be revoked, it may be revoked in
150 that manner and, unless a partnership agreement prohibits revocation of dissolution, then notwithstanding the
151 occurrence of an event set forth in § 17-801(1), (2), (3), (4) or (5) of this title, the limited partnership shall not be
152 dissolved and its affairs shall not be wound up if, prior to the filing of a certificate of cancellation in the office of the
153 Secretary of State, the business of the limited partnership is continued, effective as of the occurrence of such event:

154 (1) In the case of dissolution effected by the vote or consent of the partners (or other persons whose approval
155 is required for such dissolution pursuant to the partnership agreement), pursuant to such vote or consent (and the
156 approval of any partners or other persons whose approval is required under the partnership agreement to revoke a
157 dissolution contemplated by this paragraph);

158 (2) In the case of dissolution under § 17-801(1) or (5) of this title (other than a dissolution effected by the
159 vote or consent of the partners (or other persons whose approval is required for such dissolution pursuant to the
160 partnership agreement), an event of withdrawal of a general partner or the occurrence of an event that causes the last
161 remaining limited partner to cease to be a limited partner), pursuant to such vote or consent that, pursuant to the terms

162 of the partnership agreement, is required to amend the provision of the partnership agreement effecting such
163 dissolution (and the approval of any partners or other persons whose approval is required under the partnership
164 agreement to revoke a dissolution contemplated by this paragraph); and

165 Section 7. This Act takes effect August 1, 2024.

SYNOPSIS

This Act continues the practice of amending periodically the Delaware Revised Uniform Limited Partnership Act (the “LP Act”) to keep it current and to maintain its national preeminence. The following is a section-by-section review of the proposed amendments to the LP Act:

Section 1 amends § 17-204 of the LP Act. Because Section 2 contains amendments that permit a certificate of merger or a certificate of ownership and merger to amend the certificate of limited partnership of a surviving domestic limited partnership in a merger to reflect the admission of one or more new general partners of the surviving domestic limited partnership in connection with the merger, Section 1 amends § 17-204 of the LP Act to require each new general partner to sign the certificate of merger or certificate of ownership and merger. Further, because Section 5 contains amendments that permit a certificate of merger of registered series to amend the certificate of registered series of a surviving registered series in a merger to reflect the association of one or more new general partners with the surviving registered series in connection with the merger, Section 1 amends § 17-204 of the LP Act to require each new general partner to sign the certificate of merger of registered series.

Section 2 amends § 17-211 of the LP Act to permit a certificate of merger or a certificate of ownership and merger to state any amendments to the certificate of limited partnership of a surviving domestic limited partnership in a merger (and in the case of a surviving domestic limited partnership that is a limited liability limited partnership, to the statement of qualification of such surviving domestic limited partnership filed under § 15-1001 of the Delaware Revised Uniform Partnership Act) as are desired to be effected by the merger.

Section 3 amends § 17-218(d) of the LP Act to confirm and clarify certain of the mechanisms for revoking termination of a protected series. Specifically, Section 3 amends § 17-218(d) to confirm and clarify that the references to “other persons” in §§ 17-218(d)(1) and (2) are references to other persons whose approval is required for such termination of the protected series pursuant to the partnership agreement.

Section 4 amends § 17-221(f) of the LP Act to confirm and clarify certain of the mechanisms for revoking dissolution of a registered series. Specifically, Section 4 amends § 17-221(f) to confirm and clarify that the references to “other persons” in §§ 17-221(f)(1) and (2) are references to other persons whose approval is required for such dissolution of the registered series pursuant to the partnership agreement.

Section 5 amends § 17-224 of the LP Act to permit a certificate of merger of registered series to state any amendments to the certificate of registered series of a surviving registered series in a merger as are desired to be effected by the merger.

Section 6 amends § 17-806 of the LP Act to confirm and clarify certain of the mechanisms for revoking dissolution of a limited partnership. Specifically, Section 6 amends § 17-806 to confirm and clarify that the references to “other persons” in §§ 17-806(1) and (2) are references to other persons whose approval is required for such dissolution of the limited partnership pursuant to the partnership agreement.

Section 7 provides that the amendments to the LP Act take effect August 1, 2024.

Author: _____

SPONSOR: [INSERT SPONSORS]

[HOUSE OF REPRESENTATIVES][DELAWARE STATE SENATE]
152nd GENERAL ASSEMBLY

[HOUSE][SENATE] BILL NO. [●]

AN ACT TO AMEND TITLE 6 OF THE DELAWARE CODE RELATING TO THE CREATION, REGULATION, OPERATION, AND DISSOLUTION OF DOMESTIC LIMITED LIABILITY COMPANIES AND THE REGISTRATION AND REGULATION OF FOREIGN LIMITED LIABILITY COMPANIES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE

1 Section 1. Amend § 18-209, Title 6 of the Delaware Code by making deletions as shown by strike through
2 and insertions as shown by underline as follows:

3 § 18-209. Merger and consolidation.

4 (c) Except in the case of a merger under subsection (i) of this section, if a domestic limited liability company is
5 merging or consolidating under this section, the domestic limited liability company or other business entity surviving or
6 resulting in or from the merger or consolidation shall file a certificate of merger or consolidation executed by 1 or more
7 authorized persons on behalf of the domestic limited liability company when it is the surviving or resulting entity in the
8 office of the Secretary of State. The certificate of merger or consolidation shall state:

9 (4) In the case of a merger in which a domestic limited liability company is the surviving entity, such
10 amendments, if any, to the certificate of formation of the surviving domestic limited liability company ~~to change~~
11 ~~its name, registered office or registered agent~~ as are desired to be effected by the merger (which amendments may
12 amend and restate the certificate of formation of the surviving domestic limited liability company in its entirety);

13 (e) A certificate of merger or consolidation or a certificate of ownership and merger shall act as a certificate
14 of cancellation for a domestic limited liability company which is not the surviving or resulting entity in the merger or
15 consolidation. A certificate of merger or a certificate of ownership and merger that sets forth any amendment in
16 accordance with paragraph (c)(4) or subsection (i) of this section shall be deemed to be an amendment to the certificate
17 of formation of the limited liability company, and the limited liability company shall not be required to take any further
18 action to amend its certificate of formation under § 18-202 or § 18-208 of this title with respect to such amendments
19 set forth in the certificate of merger or certificate of ownership and merger. Whenever this section requires the filing
20 of a certificate of merger or consolidation, such requirement shall be deemed satisfied by the filing of an agreement
21 of merger or consolidation containing the information required by this section to be set forth in the certificate of merger
22 or consolidation.

23 (i) In any case in which (i) at least 90% of the outstanding shares of each class of the stock of a corporation
24 or corporations (other than a corporation which has in its certificate of incorporation the provision required by §
25 251(g)(7)(A) and (B) of Title 8), of which class there are outstanding shares that, absent § 267(a) of Title 8, would be
26 entitled to vote on such merger, is owned by a domestic limited liability company, (ii) 1 or more of such corporations
27 is a corporation of the State of Delaware, and (iii) any corporation that is not a corporation of the State of Delaware is
28 a corporation of any other state or the District of Columbia or another jurisdiction, the laws of which do not forbid
29 such merger, the domestic limited liability company having such stock ownership may either merge the corporation
30 or corporations into itself and assume all of its or their obligations, or merge itself, or itself and 1 or more of such
31 corporations, into 1 of the other corporations, pursuant to a plan of merger. If a domestic limited liability company is
32 causing a merger under this subsection, the domestic limited liability company shall file a certificate of ownership and
33 merger executed by 1 or more authorized persons on behalf of the domestic limited liability company in the office of
34 the Secretary of State. The certificate of ownership and merger shall certify that such merger was authorized in
35 accordance with the domestic limited liability company's limited liability company agreement and this chapter, and if
36 the domestic limited liability company shall not own all the outstanding stock of all the corporations that are parties
37 to the merger, shall state the terms and conditions of the merger, including the securities, cash, property, or rights to
38 be issued, paid, delivered or granted by the surviving domestic limited liability company or corporation upon surrender
39 of each share of the corporation or corporations not owned by the domestic limited liability company, or the
40 cancellation of some or all of such shares. In the case of a merger under this subsection in which a domestic limited
41 liability company is the surviving entity, the certificate of ownership and merger may also state such amendments, if
42 any, to the certificate of formation of the surviving domestic limited liability company as are desired to be effected by
43 the merger (which amendments may amend and restate the certificate of formation of the surviving domestic limited
44 liability company in its entirety). If a corporation surviving a merger under this subsection is not a corporation
45 organized under the laws of the State of Delaware, then the terms and conditions of the merger shall obligate such
46 corporation to agree that it may be served with process in the State of Delaware in any proceeding for enforcement of
47 any obligation of the domestic limited liability company or any obligation of any constituent corporation of the State
48 of Delaware, as well as for enforcement of any obligation of the surviving corporation, including any suit or other
49 proceeding to enforce the right of any stockholders as determined in appraisal proceedings pursuant to § 262 of Title
50 8, and to irrevocably appoint the Secretary of State as its agent to accept service of process in any such suit or other

51 proceedings, and to specify the address to which a copy of such process shall be mailed by the Secretary of State.
52 Process may be served upon the Secretary of State under this subsection by means of electronic transmission but only
53 as prescribed by the Secretary of State. The Secretary of State is authorized to issue such rules and regulations with
54 respect to such service as the Secretary of State deems necessary or appropriate. In the event of such service upon the
55 Secretary of State in accordance with this subsection, the Secretary of State shall forthwith notify such surviving
56 corporation thereof by letter, directed to such surviving corporation at its address so specified, unless such surviving
57 corporation shall have designated in writing to the Secretary of State a different address for such purpose, in which
58 case it shall be mailed to the last address so designated. Such letter shall be sent by a mail or courier service that
59 includes a record of mailing or deposit with the courier and a record of delivery evidenced by the signature of the
60 recipient. Such letter shall enclose a copy of the process and any other papers served on the Secretary of State pursuant
61 to this subsection. It shall be the duty of the plaintiff in the event of such service to serve process and any other papers
62 in duplicate, to notify the Secretary of State that service is being effected pursuant to this subsection and to pay the
63 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
64 the proceeding, if the plaintiff shall prevail therein. The Secretary of State shall maintain an alphabetical record of any
65 such service setting forth the name of the plaintiff and the defendant, the title, docket number and nature of the
66 proceeding in which process has been served, the fact that service has been effected pursuant to this subsection, the
67 return date thereof, and the day and hour service was made. The Secretary of State shall not be required to retain such
68 information longer than 5 years from receipt of the service of process.

69 Section 2. Amend § 18-215, Title 6 of the Delaware Code by making deletions as shown by strike through
70 and insertions as shown by underline as follows:

71 § 18-215. Series of members, managers, limited liability company interests or assets.

72 (d) If a limited liability company agreement provides the manner in which a termination of a protected series
73 may be revoked, it may be revoked in that manner and, unless the limited liability company has dissolved and such
74 dissolution has not been revoked or the limited liability company agreement prohibits revocation of termination of a
75 protected series, then notwithstanding the occurrence of an event set forth in paragraph (b)(9)a., b., or c. of this section,
76 the protected series shall not be terminated and its affairs shall not be wound up if, prior to the completion of the
77 winding up of the protected series, the protected series is continued, effective as of the occurrence of such event:

78 (1) In the case of termination effected by the vote or consent of the members associated with the protected
79 series (or other persons whose approval is required for such termination pursuant to the limited liability company
80 agreement), pursuant to such vote or consent (and the approval of any members associated with the protected
81 series or other persons whose approval is required under the limited liability company agreement to revoke a
82 termination contemplated by this paragraph); and

83 (2) In the case of termination under paragraph (b)(9)a. or b. of this section (other than a termination
84 effected by the vote or consent of the members associated with the protected series (or other persons whose
85 approval is required for such termination pursuant to the limited liability company agreement)), pursuant to such
86 vote or consent that, pursuant to the terms of the limited liability company agreement, is required to amend the
87 provision of the limited liability company agreement effecting such termination (and the approval of any members
88 associated with the protected series or other persons whose approval is required under the limited liability
89 company agreement to revoke a termination contemplated by this paragraph).

90 Section 3. Amend § 18-218, Title 6 of the Delaware Code by making deletions as shown by strike through
91 and insertions as shown by underline as follows:

92 § 18-218. Registered series of members, managers, limited liability company interests or assets.

93 (f) If a limited liability company agreement provides the manner in which a dissolution of a registered series
94 may be revoked, it may be revoked in that manner and, unless the limited liability company has dissolved and such
95 dissolution has not been revoked or the limited liability company agreement prohibits revocation of dissolution of a
96 registered series, then notwithstanding the occurrence of an event set forth in paragraph (c)(9)a., b., or c. of this section,
97 the registered series shall not be dissolved and its affairs shall not be wound up if, prior to the filing of a certificate of
98 cancellation of the certificate of registered series in the office of the Secretary of State, the registered series is
99 continued, effective as of the occurrence of such event:

100 (1) In the case of dissolution effected by the vote or consent of the members associated with the registered
101 series (or other persons whose approval is required for such dissolution pursuant to the limited liability company
102 agreement), pursuant to such vote or consent (and the approval of any members associated with the registered
103 series or other persons whose approval is required under the limited liability company agreement to revoke a
104 dissolution contemplated by this paragraph); and

105 (2) In the case of dissolution under paragraph (c)(9)a. or b. of this section (other than a dissolution
106 effected by the vote or consent of the members associated with the registered series (or other persons whose
107 approval is required for such dissolution pursuant to the limited liability company agreement)), pursuant to such
108 vote or consent that, pursuant to the terms of the limited liability company agreement, is required to amend the
109 provision of the limited liability company agreement effecting such dissolution (and the approval of any members
110 associated with the registered series or other persons whose approval is required under the limited liability
111 company agreement to revoke a dissolution contemplated by this paragraph).

112 Section 4. Amend § 18-221, Title 6 of the Delaware Code by making deletions as shown by strike through
113 and insertions as shown by underline as follows:

114 § 18-221. Merger and consolidation of registered series.

115 (b) If a registered series is merging or consolidating under this section, the registered series surviving or
116 resulting in or from the merger or consolidation shall file a certificate of merger or consolidation of registered series
117 executed by 1 or more authorized persons on behalf of the registered series when it is the surviving or resulting
118 registered series in the office of the Secretary of State. The certificate of merger or consolidation of registered series
119 shall state:

120 (4) Such ~~amendment~~ amendments, if any, to the certificate of registered series of the surviving registered
121 series ~~that is the surviving registered series to change the name of the surviving registered series, as is as are~~
122 desired to be effected by the merger (which amendments may amend and restate the certificate of registered series
123 of the surviving registered series in its entirety);

124 Section 5. Amend § 18-806, Title 6 of the Delaware Code by making deletions as shown by strike through
125 and insertions as shown by underline as follows:

126 § 18-806. Revocation of dissolution.

127 If a limited liability company agreement provides the manner in which a dissolution may be revoked, it may
128 be revoked in that manner and, unless a limited liability company agreement prohibits revocation of dissolution, then
129 notwithstanding the occurrence of an event set forth in § 18-801(a)(1), (2), (3) or (4) of this title, the limited liability
130 company shall not be dissolved and its affairs shall not be wound up if, prior to the filing of a certificate of cancellation
131 in the office of the Secretary of State, the limited liability company is continued, effective as of the occurrence of such
132 event:

133 (1) In the case of dissolution effected by the vote or consent of the members (or other persons whose approval
134 is required for such dissolution pursuant to the limited liability company agreement), pursuant to such vote or consent
135 (and the approval of any members or other persons whose approval is required under the limited liability company
136 agreement to revoke a dissolution contemplated by this paragraph);

137 (2) In the case of dissolution under § 18-801(a)(1) or (2) of this title (other than a dissolution effected by the
138 vote or consent of the members (or other persons whose approval is required for such dissolution pursuant to the
139 limited liability company agreement) or the occurrence of an event that causes the last remaining member to cease to
140 be a member), pursuant to such vote or consent that, pursuant to the terms of the limited liability company agreement,
141 is required to amend the provision of the limited liability company agreement effecting such dissolution (and the
142 approval of any members or other persons whose approval is required under the limited liability company agreement
143 to revoke a dissolution contemplated by this paragraph); and

144 Section 6. This Act takes effect August 1, 2024.

SYNOPSIS

This Act continues the practice of amending periodically the Delaware Limited Liability Company Act (the “LLC Act”) to keep it current and to maintain its national preeminence. The following is a section-by-section review of the proposed amendments to the LLC Act:

Section 1 amends § 18-209 of the LLC Act to permit a certificate of merger or a certificate of ownership and merger to state any amendments to the certificate of formation of a surviving domestic limited liability company in a merger as are desired to be effected by the merger.

Section 2 amends § 18-215(d) of the LLC Act to confirm and clarify certain of the mechanisms for revoking termination of a protected series. Specifically, Section 2 amends § 18-215(d) to confirm and clarify that the references to “other persons” in §§ 18-215(d)(1) and (2) are references to other persons whose approval is required for such termination of the protected series pursuant to the limited liability company agreement.

Section 3 amends § 18-218(f) of the LLC Act to confirm and clarify certain of the mechanisms for revoking dissolution of a registered series. Specifically, Section 3 amends § 18-218(f) to confirm and clarify that the references to “other persons” in §§ 18-218(f)(1) and (2) are references to other persons whose approval is required for such dissolution of the registered series pursuant to the limited liability company agreement.

Section 4 amends § 18-221 of the LLC Act to permit a certificate of merger of registered series to state any amendments to the certificate of registered series of a surviving registered series in a merger as are desired to be effected by the merger.

Section 5 amends § 18-806 of the LLC Act to confirm and clarify certain of the mechanisms for revoking dissolution of a limited liability company. Specifically, Section 5 amends § 18-806 to confirm and clarify that the references to “other persons” in §§ 18-806(1) and (2) are references to other persons whose approval is required for such dissolution of the limited liability company pursuant to the limited liability company agreement.

Section 6 provides that the amendments to the LLC Act take effect August 1, 2024.

Author: _____

The Judiciary's request for additional resources for the Court of Chancery.

The Corporation Law Section wishes to support the budgetary request from the Chief Justice on behalf of the Judiciary branch as a whole which includes certain additional resources for the Court of Chancery. The Chancellor has asked for formal support from the Corporation Law Council with respect to the budgetary request, and I think the Chancellor would welcome broader support as well—such as support from the DSBA Executive Committee or the Corporation Law Section. Subject to the views of the Executive Committee, the members of the Council are in favor of giving formal support with respect to the budgetary request.