

CLIENT ALERT

CORPORATE AND SECURITIES



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2015 Amendments to Delaware Alternative Entity Acts

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NEW AMENDMENTS AFFECT DELAWARE GENERAL PARTNERSHIPS, LIMITED LIABILITY PARTNERSHIPS, LIMITED PARTNERSHIPS AND LIMITED LIABILITY COMPANIES.

On July 24, Delaware Governor Jack Markell signed into law several amendments to the Delaware Revised Uniform Partnership Act, 6 Del. C. §§ 15-101, et. seq. (the Partnership Act); the Delaware Revised Uniform Limited Partnership Act, 6 Del. C. §§ 17-101, et. seq. (the LP Act); and the Delaware Limited Liability Company Act, 6 Del. C. §§ 18-101, et.

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seq. (the LLC Act) (collectively, the Alternative Entity Acts). These acts govern general partnerships (GPs), limited liability partnerships (LLPs), limited partnerships (LPs), and limited liability companies (LLCs).

The amendments, which become effective on August 1, 2015, are summarized below.

Default Class or Group Voting Requirements

The LLC Act and the LP Act have been amended to eliminate default class or group voting requirements in connection with a variety of transactions, including mergers and consolidations, transfers and continuances, conversions, dissolutions, and the winding up of a Delaware LLC, a Delaware LP, or a series of a Delaware LLC or a Delaware LP.

The default class or group voting requirements under the LLC Act and the LP Act for the transactions outlined above will remain in effect for Delaware LLCs and Delaware LPs whose formation documents were filed and effective on or before July 31, 2015, unless otherwise provided in an LLC agreement or a partnership agreement. Thus, the elimination of default class or group voting requirements under the LLC Act and the LP Act for the transactions outlined above will only apply to LLCs and LPs formed on or after August 1, 2015, unless existing LLCs and LPs amend their limited liability or partnership agreements to eliminate default class or group voting requirements, which may be done at any time.

The amendments to the LP Act also eliminate default class or group voting requirements for revocations of dissolution of a Delaware LP, conversions of a Delaware LP to a Delaware LLP, and the execution of a certificate of cancellation for a Delaware LP being wound up by its limited partners. For these transactions, the 2015 amendments eliminate default class or group voting and execution requirements for all LPs, regardless of when formed, unless otherwise provided in a partnership agreement.

Irrevocable Power of Attorney and Proxy

The Alternative Entity Acts have been amended to confirm that a power of attorney and proxy shall be irrevocable if such power of attorney or proxy states that it is irrevocable, unless the limited liability agreement or partnership agreement states otherwise. The Alternative Entity Acts were previously amended in 2010 to clarify when a power of

attorney will be irrevocable and the effects of irrevocability, but those amendments did not explicitly address whether such rules also applied to proxies. The 2015 amendments to the Alternative Entity Acts confirm that the 2010 amendments regarding irrevocability also apply to proxies.

The Alternative Entity Acts have also been amended to confirm that the provisions of the LLC and Partnership Acts addressing powers of attorney and proxies will not be construed to limit the enforceability of a power of attorney or proxy that is part of an LLC agreement or a partnership agreement.

Irrevocable Delegation

The Alternative Entity Acts have also been amended to confirm that a delegation of authority to manage the business and affairs of the company shall be irrevocable if such delegation states that it is irrevocable, unless otherwise provided in an LLC agreement or a partnership agreement.