

2023 Amendments to Delaware Alternative Entity Statutes

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This year's proposed amendments to the Delaware Revised Uniform Partnership Act (Partnership Act), the Delaware Limited Liability Company Act (LLC Act), and the Delaware Revised Uniform Limited Partnership Act (LP Act) (collectively, the acts) add several notable changes concerning amendments to certificates of division, revocation of termination of a protected series, and revocation of dissolution of a registered series. These amendments, along with this year's amendments to the Delaware General Corporation Law, will take effect on August 1.

Certificate of Amendment to Certificate of Division

Where an LLC or limited partnership divides into two or more entities, the LLC Act and LP Act provide that the LLC or limited partnership must submit a certificate of division containing specific information about the dividing entity. As amended, the LLC Act and LP Act permit the filing of a certificate of amendment to such certificate of division, if the name or business address of the division contact, or the business address where the plan of division is filed was inaccurate when filed, or such information has changed since the filing was made. These entities must file a certificate of amendment if it is determined that the information in the certificate of division was inaccurate, or has changed during the six years following its initial filing.

Revocation of Termination/Dissolution of Protected or Registered Series

The current LLC Act and LP Act allow for the revocation of dissolution of an LLC or limited partnership. The amendments to those acts would similarly permit the revocation of the termination of a protected series or dissolution of a registered series.

Unless provided otherwise in the entity's partnership or operating agreement, the termination of a protected series may be revoked prior to the completion of its winding up. Similarly, unless otherwise provided in the entity's partnership or operating agreement, the dissolution of a registered series may be revoked prior to the filing of a certificate of cancellation. If the protected series is terminated, or registered series dissolved as a part of the dissolution of the entity itself, the termination of the protected series or dissolution of the registered series will be automatically revoked if the dissolution of the entity itself is revoked.

Irrevocable Subscription Agreements

The amendments to the acts will allow parties to subscription agreements for interests in those entities to be

irrevocable, if it is specifically stated in the subscription agreement that it is irrevocable.

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