

## **Delaware Amends Business Statutes**

Ellisa Opstbaum Habbart\*

The Delaware Counsel Group LLP, Wilmington, Delaware

Each year, the Delaware legislature considers amendments to its business statutes in order to keep Delaware law on the cutting edge. Again in 2009, the Delaware legislature passed Bills that have been signed into law by the governor, making a number of revisions to Delaware's business statutes.

These recent changes to Delaware law, effective August 1, 2009, apply to alternative business entities, including the limited liability company, the limited partnership and the general partnership statutes, as well as Delaware corporations.

### ***LLC ACT, DRULPA and DRUPA.***<sup>1</sup>

A. **Jurisdiction.** Amended §18-111 of the LLC Act, §17-111 of DRULPA and §15-122 of DRUPA to:

- Add language to clarify that the jurisdiction of the Court of Chancery extends to actions to interpret provisions of the respective Acts and documents contemplated by the Acts.

B. **Execution of Certificates.** Amended §18-204(a) of the LLC Act and §15-105(c) of DRUPA to:

- Add language to expressly provide that execution of a certificate of merger or consolidation where the surviving entity is the other business entity may be executed by any person authorized on behalf of such entity.

C. **Certificate of Merger.** Amended §18-209(c)(4) of the LLC Act, §17-211(c)(4) of DRULPA, and §15-902(c)(4) of DRUPA to:

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<sup>1</sup> "LLC Act" refers to the Delaware Limited Liability Company Act (6 Del. C. § 18-101, et seq.), "DRULPA" refers to the Delaware Revised Uniform Limited Partnership Act (6 Del. C. § 17-101, et seq.), and "DRUPA" refers to the Delaware Revised Uniform Partnership Act (6 Del. C. § 15-101, et seq.).

- Permit a change of registered agent and registered office to be set forth in a certificate of merger.
- D. **Amendment.** Amended §18-209(f) of the LLC Act, §17-211(g) of DRULPA and §15-902(g) of DRUPA to:
- Confirm the ability by merger to amend an LLC agreement, limited partnership agreement, or partnership agreement or adopt a new LLC agreement, limited partnership agreement or partnership agreement for the successor LLC, limited partnership or partnership, by the vote required under §18-209(b) of the LLC Act, §17-211(b) of DRULPA, or §15-902(b) of DRUPA, unless the LLC agreement, limited partnership agreement or partnership agreement provides otherwise.
- E. **Independent Legal Significance.** Amended §18-1101 of the LLC Act, §17-1101 of DRULPA, and §15-1201 of DRUPA to:
- Add a new subsection (h) to each such section to clarify that the corporation law doctrine of independent legal significance applies to LLCs, limited partnerships and partnerships.

***DRUPA***<sup>2</sup>

- A. **Statement of Qualification.** Amended §§15-103(c), 15-201(a), 15-203 and 15-501 of DRUPA to:
- Permit a limited liability partnership to use its statement of qualification rather than a statement of partnership existence to opt-out of the default rules provided for in those sections.
- B. **Execution of Certificates.** Amended §15-105 (c) of DRUPA to:
- Clarify that a certificate of conversion to a partnership and a certificate of partnership domestication may be executed either by at least one partner, by one or more authorized persons or by any person authorized to execute such certificate on behalf of the other entity or non-United States entity.
- C. **Statement of Qualification.** Amended §15-106(c) of DRUPA to:
- Provide that a limited liability partnership that files a statement of qualification may receive the benefits of §15-106(c) of DRUPA.

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<sup>2</sup> These amendments are applicable only to DRUPA.

*General Corporation Law of the State of Delaware*<sup>3</sup>

A. **Proxy Materials – Director Nominations.** Added a new §112:

- To clarify that bylaws may require that if the corporation solicits proxies with respect to an election of directors, the corporation may be required to include in its proxy materials one or more nominees submitted by stockholders in addition to individuals nominated by the board of directors.
- Section 112 also identifies a non-exclusive list of conditions that the bylaws may impose on the right of access to the corporation's proxy materials, such as a minimum level of stock ownership, whether or not a majority of board seats is to be contested, or whether nominations are related to an acquisition of a significant percentage of the corporation's stock.

B. **Proxy Solicitation Expenses.** Added a new §113:

Which provides that a bylaw may require the corporation to reimburse proxy solicitation expenses incurred by a stockholder, and identifies a non-exclusive list of conditions that the bylaws may impose on the right to reimbursement.

C. **Indemnification and Advancement.** Amended §145(f) to:

Provide that a right to indemnification or advancement of expenses under the certificate of incorporation or a bylaw cannot be eliminated or impaired by an amendment of such right after the act or omission to which indemnification or advancement of expenses relates, unless the subject provision contains, at the time of the act or omission, an explicit authorization to do so.

D. **Record Date.** Amended §213(a) to:

Permit a board of directors to separate the record date for determining the stockholders entitled to vote at a meeting from the record date for determining those stockholders entitled to notice of the meeting, allowing the board to choose a later record date for stockholders entitled to vote.

E. **Stockholder List.** Amended §219(a) to:

Clarify that, where the record date for determining stockholders entitled to vote is set less than ten days before the date of the meeting, the corporation's obligation to provide a stockholders list

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<sup>3</sup> 8 Del. C. § 101, *et seq.*

prior to the meeting is limited to a list of stockholders as of the tenth day before the meeting date.

F. **Removal of Director.** Added a new subsection (c) to §225:

- Which changes existing law by granting to the Court of Chancery the power to remove directors under certain circumstances.
- An application to the Court must be preceded by either a felony conviction or a judgment by a court that the director breached his or her duty of loyalty and removal is permitted only when the Court of Chancery determines that the director did not act in good faith and that removal is necessary to avoid irreparable harm to the corporation.

\*Ellisa Opstbaum Habbart is the Conference Coordinator for the Corporate and M&A Law Committee of the International Bar Association, Chair of the ABA International Use of U.S. Business Entities Subcommittee, a member of the Delaware Bar Association Committee responsible for the creation and amendment of the Delaware statutory trust act, and the co-author of the annually updated legal text “Delaware Limited Liability Companies Forms and Practice Manual” published by Data Trace and co-author of “Delaware Limited Partnership Law”, a chapter of New York Law Journal’s text “Partnership and Joint Venture Agreements.”

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