Amendments to Delaware’s Limited Liability Company, Limited Partnership and General Partnership Legislation Enacted

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The Delaware General Assembly has recently enacted legislation amending the Delaware Limited Liability Company Act (DLLCA), the Delaware Revised Uniform Limited Partnership Act (DRULPA) and the Delaware Revised Uniform Partnership Act (DRUPA) (collectively, the Acts). The following is a brief summary of some of the amendments that affect Delaware limited liability companies (Delaware LLCs), Delaware limited partnerships (Delaware LPs) and Delaware general partnerships (Delaware GPs).

Statute of Frauds

In Olson v. Halvorsen, C.A. No. 1884 (Del. Supr. Dec. 15, 2009), the Delaware Supreme Court affirmed that a limited liability company agreement is subject to the statute of frauds. The statute of frauds requires agreements that cannot be performed within one year to be in writing. The Acts, however, permit oral agreements and provide that a member or partner may be bound by a limited liability company agreement, limited partnership agreement or general partnership agreement regardless of whether such member or partner executes such an agreement. In light of the decision in Olson, the Acts have been amended to provide that limited liability company agreements, limited partnership agreements and general partnership agreements are not subject to any statute of frauds.

Powers of Attorney

The amendments to the Acts confirm the broad powers granted to Delaware LLCs, Delaware LPs and Delaware GPs, including the ability to grant, hold or exercise a power of attorney. The amendments to the Acts also provide guidance on when powers of attorney, with respect to matters relating to the organization, internal affairs or termination of a Delaware LLC, Delaware LP and Delaware GP, are irrevocable by clarifying that, for purposes of the laws of the State of Delaware, such a power of attorney shall be irrevocable when it states that it is irrevocable and is coupled with an interest sufficient in law to support an irrevocable power. The amendments also clarify when such a power will be deemed coupled with an interest sufficient to support an irrevocable power and the effects of such irrevocability.

Short Form Merger

A new Section 267 was added to the General Corporation Law of the State of Delaware (the DGCL) providing a mechanism for a short form merger of a subsidiary corporation or corporations and a parent non-corporate entity. Accordingly, the Acts have been amended to provide a mechanism to implement such short form mergers under new Section 267 of the DGCL where a Delaware LLC, Delaware LP or Delaware GP is the parent entity.

Amendments to Agreements Involving Information Rights

The amendments to the Acts clarify and confirm that all amendments to a limited liability company agreement, limited partnership agreement or general partnership agreement, including amendments that restrict the rights of members and partners to obtain information, are valid if adopted in the manner provided for in the limited liability company agreement, limited partnership agreement or general partnership agreement.

Governing Law

The amendments to DLLCA and DRULPA confirm the enforceability of the choice of Delaware law to govern all provisions of a limited liability company agreement or limited partnership agreement. These amendments are not intended to negate the application of Delaware law to the interpretation and enforcement of a limited liability company agreement or limited partnership agreement that does not explicitly provide for the
application of Delaware law, or to negate the application of the internal affairs doctrine to Delaware LLCs or Delaware LPs.

The recent amendments reflect Delaware’s continuing commitment to maintaining statutes governing Delaware LLCs, Delaware LPs and Delaware GPs that effectively serve the business needs of the national and international business communities. The recent amendments to DLLCA are contained in House Bill No. 372 (effective August 2, 2010). The recent amendments to DRULPA are contained in House Bill No. 373 (effective August 2, 2010). The recent amendments to DRUPA are contained in House Bill No. 374 (effective August 2, 2010).
WORTH READING


Jens Dammann & Matthias Schundeln, *Where Are Limited Liability Companies Formed: An Imperical Analysis*, University of Texas School of Law, Law & Economics Research Paper no. 126, available on SSRN.
