

**DELAWARE UPDATE – 2008 LEGISLATION AMENDING  
CERTAIN CORPORATIONS AND ALTERNATIVE ENTITY LAWS**

by

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In its legislative session ended June 30, 2008, the Delaware General Assembly enacted amendments to the General Corporation Law of the State of Delaware, 8 Del. C. § 101 et seq. (the “DGCL”), the Delaware Limited Liability Company Act, 6 Del. C. § 18-101 et seq. (the “DLLC Act”), and the Delaware Revised Uniform Limited Partnership Act, 6 Del. C. § 17-101 et seq. (the “DLP Act”). The amendments to the DGCL took effect when signed by Governor Minner on June 26, 2008. The amendments to the DLLC Act and the DLP Act took effect on August 1, 2008.

The amendments to the DGCL are modest, and relate to stockholder lists. Likewise, the amendments to each of the DLLC Act and the DLP Act are modest. Both were amended to clarify that “person” includes trusts of all kinds and to clarify who may execute certificates of conversion or domestication. The DLLC Act was also amended to provide greater consistency in the use of the term “manager.” The DLP Act was also amended to clarify that certain formation formalities may be attended to by a single person, notwithstanding that a limited partnership must consist of two or more persons, and to confirm that a limited partner’s participation in certain specified activities do not constitute participation in control of the limited partnership’s business.

This article summarizes these amendments to the DGCL (Senate Bill No. 244, 76 Del. Laws 252), the DLLC Act (House Bill No. 429, 76 Del. Laws 387), and the DLP Act (House Bill No. 427, 76 Del. Laws 386).

Amendments to the DGCL.

The DGCL was amended by Senate Bill No. 244, 76 Del. Laws 252, effective June 26, 2008. The amendments are three. First, Section 219(a) was amended by deleting the word “inspected” to clarify that no distinction is intended between the words “inspected” and “examined” in connection with the examination of lists of stockholders entitled to vote. Second, Section 219(b) was essentially restated, eliminating the concept of “willful neglect,” allocating and specifying the burden of proof where an application is made to compel examination of a list of stockholders, and explicitly granting the Court of Chancery authority to fashion such relief as it may deem appropriate.

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### Amendments Common to the DLLC Act and the DLP Act.

The definition of “person” in both the DLLC Act and the DLP Act has been amended to confirm the intended broad scope of the term “trust” as used in such definition. In Section 18-101(12) of the former and Section 17-101(14) of the latter, the term “trust” is now followed by the parenthetical “(including a common law trust, business trust, statutory trust, voting trust or any other form of trust).” Both Acts have been amended to clarify the persons who may execute certificates of conversion or domestication. Under Section 18-204(a) of the DLLC Act and Section 17-204(a)(1) of the DLP Act, such action may be taken by any person authorized to execute the certificate on behalf of the other entity or non-United States entity. Conforming changes were made to Sections 18-204, 18-212, and 18-214 of the DLLC Act, and to Sections 17-204, 17-215, and 17-217 of the DLP Act.

### Amendments to the DLLC Act.

Sections 18-110 (Contested matters relating to managers; contested votes) and 18-111 (Interpretation and enforcement of limited liability company agreement) were both amended by insertion of the following new text:

“As used in this section, the term ‘manager’ refers (i) to a person who is a manager as defined in § 18-101(10) of this Title, and (ii) to a person, whether or not a member of a limited liability company, who, although not a manager as defined in § 18-101(10) of this Title, participates materially in the management of the limited liability company; provided however, that the power to elect or otherwise select or to participate in the election or selection of a person to be a manager as defined in § 18-101(10) of this Title shall not, by itself, constitute participation in the management of the limited liability company.”

With this amendment, the term “manager” has the same meaning for purposes of these two sections as it has had in Section 18-109 (Service of process on managers and liquidating trustees).

### Amendments to the DLP Act.

Section 17-303(b)(8) of the DLP Act was amended to augment the list of specific actions (or inactions) that may be taken (or omitted) by a limited partner without causing such limited partner to be “participat[ing] in the control of the business” and thereby incur potential liability from which he would otherwise be insulated by reason of Section 17-303(a). New subsection n. provides as follows:

“n. The nomination, appointment, election or other manner of selection or removal of an independent contractor for, or an agent or employee of, the limited partnership or a general partner, or an officer, director or stockholder of a corporate general partner, or a partner of a partnership which is a general partner, or a trustee, administrator, executor, custodian or other fiduciary or beneficiary of an estate or trust which is a general partner, or a trustee, officer, advisor,

stockholder or beneficiary of a business trust or a statutory trust which is a general partner, or a member or manager of a limited liability company which is a general partner, or a member of a governing body of, or a fiduciary for, any person, whether domestic or foreign, which is a general partner; or”

No Amendments to Statutory Trust Act, General Partnership Act, or Uniform Commercial Code.

There were no 2008 amendments to the Delaware Statutory Trust Act, 12 Del. C. § 3801 et seq., the Delaware Revised Uniform Partnership Act, 6 Del. C. § 15-101 et seq., or the Uniform Commercial Code as adopted in Delaware, 6 Del. C. § 1-101 et seq.