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Recent Amendments to Delaware's Entity Laws Permit LPs, Like LLCs, to Divide and to Form Registered Series, and Provide That Emailing of Notices Will Be Effective for Corporations Unless Stockholders Opt Out, Among Other Changes

By Norman M. Powell, John J. Paschetto, and Tammy L. Mercer[1]

The Delaware legislature recently adopted amendments to the Delaware Revised Uniform Limited Partnership Act (the "DRULPA") that permit the "division" of Delaware limited partnerships ("LPs"), formation of "statutory public benefit" LPs, judicial cancellation of an LP for abuse, and formation of LP "registered series." Those amendments are in most respects very similar to amendments adopted in 2018 to the Delaware Limited Liability Company Act (the "DLLCA").[2] In addition, recent amendments to the General Corporation Law of the State of Delaware (the "DGCL") have, among other things, made the use of email for stockholder notices valid except as to stockholders who opt out (thus switching from the prior, opt-in regime), and amendments to the DRULPA, the DLLCA, and the DGCL have clarified the law regarding the use of electronic transmission and electronic signatures. Except as otherwise indicated, all of the amendments discussed below took effect on August 1, 2019.

DRULPA Amendments Corresponding to 2018 DLLCA Amendments

The DLLCA was amended last year to permit the division of limited liability companies ("LLCs"), the formation of statutory public benefit LLCs, judicial cancellation of an LLC for abuse or misuse, and, effective August 1, 2019, the formation of LLC registered series. Now analogues of those provisions have been added to the DRULPA by the 2019 amendments.

Division

The division provisions enable an LP to "divide" into multiple LPs and to allocate its assets and liabilities among those LPs without thereby effecting a transfer for purposes of Delaware law.[3] The LP undertaking the division (termed the "dividing partnership") may, but need not, survive the division.[4] If it does not survive, the

IN MEMORIAM

Jerome K. Grossman
April 15, 1953–July 3, 2019

With great sadness, we report the passing of our colleague Jerry Grossman, who succumbed to cancer on July 3, 2019. A graduate of Georgetown University, where he received his BA, JD, and LLM, Jerry was admitted to the Delaware bar in 1980 and joined Young Conaway in 1988. In his four decades of practice, Jerry was a trusted adviser to individuals and businesses, helping his clients navigate personal and legal issues with a holistic approach to tax, business, and estate planning. A Fellow in the American College of Tax Counsel, Jerry was also an active member of both the Delaware and American Bar Associations, serving in numerous leadership positions. Jerry was recognized by his peers as one of The Best Lawyers in America® and a Delaware Super Lawyer® in Tax, Estate Planning, and Probate Law. Beloved by clients and colleagues for his intellect, judgment, leadership, compassion, and friendship, Jerry will be greatly missed.

dividing partnership is not deemed by default to have dissolved as a result of the division, but instead simply ceases to exist as a separate entity.[5] The terms of the division must be set forth in a "plan of division," which shall include, among other things, the terms (if any) on which interests in the dividing partnership will be canceled or converted into interests in another entity or the right to receive cash, and how the assets and liabilities of the dividing partnership will be allocated in the division.[6] A division is effectuated by the dividing partnership's filing of a certificate of division with the Delaware Secretary of State and the simultaneous filing of a certificate of limited partnership for each LP formed in the division.[7]

Presumably because general partners of LPs are not afforded limited liability, division of an LP requires the approval of any person that, upon the effectiveness of the division, will be a general partner of any LP formed by or surviving the division.[8] In addition, a division requires, by default, the approval of all general partners of the dividing partnership and a majority-in-interest of its limited partners.[9] Any action pending against a general partner of a dividing partnership at the time of its division will be unaffected by the division and may be maintained not only against that general partner but also against any general partner of any LP to which an asset or liability associated with the pending action is allocated in the division.[10]

The 2019 amendments have also made some changes affecting the LLC division provision adopted in 2018. First, the amendments have clarified that a certificate of division must be filed by the LLC undertaking the division (the "dividing company"), as opposed to any entity formed in the division.[11] Second, it now appears that, in the absence of fraud, the allocation of liabilities under the plan of division will determine the identity of the defendant LLC or LLCs in the continuation, post-division, of an action that was pending against the dividing company at the time of its division.[12] Third, the amendments have added language providing that in a division, members may be admitted to an LLC formed by or surviving the division, in accordance with the operating agreement of such LLC or the plan of division.[13] Provisions parallel to these DLLCA amendments were included in the DRULPA amendments respecting division.[14]

Statutory Public Benefit LPs

Like the 2018 DLLCA amendments permitting the formation of statutory public benefit LLCs ("SPB-LLCs"), the 2019 amendments to the DRULPA now permit the formation of statutory public benefit LPs ("SPB-LPs").[15] The SPB-LP provisions generally track those adopted last year regarding SPB-LLCs.[16] An SPB-LP is a "for-profit" LP that is "intended to produce a public benefit or public benefits and to operate in a responsible and sustainable manner."[17] Its certificate of limited partnership must state in the heading (but not necessarily in the SPB-LP's name) that it is an SPB-LP and must "set forth one or more specific public benefits to be promoted" by the SPB-LP.[18] For purposes of an SPB-LP, a public benefit is "a positive effect (or reduction of negative effects) on one or more categories of persons, entities, communities or interests (other than partners in their capacities as partners) including, but not limited to, effects of an artistic, charitable, cultural, economic, educational, environmental, literary, medical, religious, scientific or technological nature."[19]

The general partners of an SPB-LP are obligated to manage it "in a manner that balances the pecuniary interests of the partners, the best interests of those materially affected by the limited partnership's conduct, and the specific public benefit or public benefits set forth in its certificate of limited partnership."[20] Importantly, however, the amendments, by default, insulate the general partners of an SPB-LP from monetary damages for the failure to manage its affairs in accordance with that duty.[21] Moreover, no general partner shall have a duty, by virtue of

the statutory public benefit provisions, "to any person on account of any interest of such person in the public benefit or public benefits set forth in its certificate of limited partnership or on account of any interest materially affected by the limited partnership's conduct[.]"[22]

Judicial Cancellation

Judicial cancellation of an LP upon motion by the Delaware Attorney General is now provided for in new § 17-112 of the DRULPA, which tracks § 18-112 added to the DLLCA in 2018.[23] Under § 17-112, if the Attorney General so moves, the Delaware Court of Chancery may cancel an LP's certificate of limited partnership "for abuse or misuse of its limited partnership powers, privileges or existence."[24] In the event of a cancellation under § 17-112, the Court of Chancery is empowered, "by appointment of trustees, receivers or otherwise, to administer and wind up the affairs" of the LP, and to "make such orders and decrees with respect thereto as shall be just and equitable respecting its affairs and assets and the rights of its partners and creditors."[25]

Registered Series

The DRULPA and the DLLCA have permitted the establishment of series of assets, interests, and partners or members, as the case may be, since 1996.[26] Both Acts also specify certain conditions that, if met, will cause the assets associated with a given series to be shielded from claims of creditors against other series or against the entity as a whole.[27] In the case of an LP, a general partner associated with a given series could be similarly shielded from claims against other series or the LP itself.[28] Under the DRULPA and the DLLCA as amended, such shielded series are now termed "protected series."[29]

Amendments to the DLLCA adopted in 2018, but not effective until August 1, 2019, enable LLCs to establish registered series, which constitute "registered organizations" under Article 9 of the UCC.[30] Thus, unlike the case with non-registered series (including protected series), an Article 9 security interest in most types of assets of a registered series can be perfected simply by filing a UCC financing statement with the Delaware Secretary of State, regardless of where the series' principal place of business may be located. It is important to note, however, that a registered series will not have the shielding characteristics of a protected series unless the LLC complies with the notice and other requirements for shielding set forth in the DLLCA.[31]

The 2019 amendments have added comparable provisions to the DRULPA, effective August 1, 2019, allowing LPs to form registered series.[32] An LP registered series is formed by filing, with the Delaware Secretary of State, a certificate of registered series, which must contain the name of the LP, the name of the registered series, and the name and address of each general partner associated with the registered series.[33] The registered series' name must begin with the full name of the LP,[34] and at least one general partner must be associated with each registered series.[35]

LP registered series, like LLC registered series, can be dissolved independently, can merge with other registered series of the same entity, can be revived if they lose good standing, and can convert into protected series of the same entity.[36] (Series conversion can also be from protected to registered.[37]) For each registered series of an LP, an annual tax of $75 must be paid to the State.[38]

As with divisions, the 2019 amendments have also made some changes affecting the LLC registered-series provisions adopted in 2018. These include amendments clarifying that references in the DLLCA to "members" and "managers" include members and managers associated with a series,[39] and confirming that any shielding characteristics a protected or registered series may have will not be lost solely because a different

registered series has failed to pay its annual tax in Delaware.[40] Provisions parallel to these DLLCA amendments are included in the DRULPA amendments respecting registered series.[41]

Notice Provided by Corporations to Stockholders via Email

The provisions of the DGCL that pertain generally to the means by which a corporation may give notice to stockholders have been substantially revised and reorganized. The most important aspect of these changes affects the default rules governing notice to stockholders by electronic means. Before the 2019 amendments, the DGCL provided that notice to a stockholder by electronic transmission was effective only if the stockholder had consented to receive notice in the form in which it was given.[42] The amendments have reversed this rule insofar as it applied to email. Now a corporation may give effective notice to a stockholder by "electronic mail" unless the stockholder has opted out.[43] In addition, to be effective, notice by email "must include a prominent legend that the communication is an important notice regarding the corporation."[44]

"Electronic mail" is defined as "an electronic transmission directed to a unique electronic mail address" and is "deemed to include any files attached thereto and any information hyperlinked to a website if such electronic mail includes the contact information of an officer or agent of the corporation who is available to assist with accessing such files and information[.]"[45] An "electronic mail address" is "a destination, commonly expressed as a string of characters, consisting of a unique user name or mailbox . . . and a reference to an internet domain . . . , to which electronic mail can be sent or delivered."[46]

A stockholder who wishes to opt out of receiving notice by email may so notify the corporation either in writing or by electronic transmission directed to the corporation.[47] In addition, as was the case before the 2019 amendments, notice by any form of electronic transmission, including email, will not be deemed effective if the person responsible for giving notice has become aware that two consecutive notices sent by electronic transmission could not be delivered.[48] However, that person's inadvertent failure to discover that the notices were undeliverable will not "invalidate any meeting or other action."[49] Notice by means of electronic transmission *other* than email (e.g., by posting on an electronic network) continues to be ineffective unless consented to by the stockholder.[50]

Notice by email is deemed given when it is "directed" to the stockholder's email address.[51] The amendments further specify that notice delivered by courier service is deemed given upon "the earlier of when the notice is received or left at such stockholder's address[,]" and (as was formerly provided in DGCL § 222(b)) notice by mail is deemed given when it is "deposited in the U.S. mail, postage prepaid[.]"[52]

Delivery of Stockholder Consents to the Corporation

The 2019 amendments also afford additional flexibility to corporations in how stockholder consents may be delivered. Under prior law, a stockholder consent by electronic transmission was not deemed delivered to the corporation until it had been printed out and delivered in paper form, unless the corporation's board of directors provided by resolution for another means of delivery. The amendments have retained paper delivery as the default but also provide that a stockholder consent by electronic transmission is deemed delivered "when the consent enters an information processing system, if any, designated by the corporation for receiving consents, so long as the electronic transmission is in a form capable of being processed by that system and the corporation is able to retrieve that electronic transmission[.]"[53]

Importantly, a corporation's designation of an "information processing system" for the receipt of stockholder consents may be determined not only from the certificate of incorporation and bylaws, but also "from the context and surrounding circumstances, including the conduct of the corporation."[54] In addition, a stockholder consent by electronic transmission is deemed delivered "even if no person is aware of its receipt."[55]

Acting by Electronic Means

The DGCL, the DRULPA, and the DLLCA (together, the "Entity Acts") have been amended to provide greater specificity about how electronic transmission and electronic signatures may be used in taking actions under the Entity Acts or organic entity documents.

Before the 2019 amendments, the Entity Acts already permitted the use of "electronic transmission" for multiple purposes, such as stockholder, member, or partner consents and proxies.[56] In addition, since its adoption in Delaware on July 14, 2000, the Uniform Electronic Transactions Act (the "DUETA") has provided for the use of "electronic records" and "electronic signatures" generally in business and government transactions.[57] But the provisions in the Entity Acts regarding electronic transmission were not as thorough as those in the DUETA, while the DUETA—which "does not apply to a transaction to the extent it is governed by" the Entity Acts[58]—left unclear just when an Entity Act "governed" a transaction such that the DUETA was displaced.

The 2019 amendments to the Entity Acts have clarified when electronic means such as those permitted by the DUETA will be effective under the Entity Acts. Central to these amendments is an entirely new section added to each of the Entity Acts.[59]

These new sections contain general authorization for the use of electronic transmission and electronic signatures in entity actions or transactions, subject to important statutory exceptions summarized below and any restrictions expressly set forth in the organic entity documents.[60] Respecting electronic transmission, "[a]ny act or transaction contemplated or governed by" the applicable Entity Act or the relevant organic entity documents may "be provided for in a document, and an electronic transmission shall be deemed the equivalent of a written document."[61] The definition of "electronic transmission" in each Entity Act has remained unchanged by the 2019 amendments. Specifically, an electronic transmission is "any form of communication, not directly involving the physical transmission of paper, . . . that creates a record that may be retained, retrieved and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process."[62]

Respecting electronic signatures, the new sections state that whenever a signature is required or permitted by the applicable Entity Act or the relevant organic entity documents, "the signature may be a manual, facsimile, conformed or electronic signature."[63] "Electronic signature" is defined as "an electronic symbol or process that is attached to, or logically associated with, a document and executed or adopted by a person with an intent to authenticate or adopt the document."[64]

The new sections also specify safe-harbor conditions under which an electronic transmission will be deemed "delivered" for purposes of the applicable Entity Act and the relevant organic entity documents.[65] Specifically, unless "the sender and recipient" agree otherwise (or in the case of an LP or LLC, its operating agreement provides otherwise), the electronic transmission is deemed delivered to a person "when it enters an information processing system that the person has designated for the purpose of receiving electronic transmissions of the type delivered, so long as the electronic transmission is in a form capable of being processed by that system and such person is able to retrieve the electronic

transmission."[66] Whether a recipient has designated an information processing system for purposes of this safe harbor depends upon the entity's organic documents and "the context and surrounding circumstances, including the parties' conduct."[67] Finally, the new sections provide that a person need not be "aware" of the receipt of an electronic transmission for it to be deemed delivered under the safe harbor, and that an "electronic acknowledgement" from an information processing system "establishes that an electronic transmission was received" but not that the content received "corresponds to" what was sent.[68]

As mentioned above, the new sections contain exceptions to their broad authorization of the use of electronic transmission and electronic signatures. Accordingly, that authorization does not apply to documents filed with any Delaware court or governmental body, including the office of the Secretary of State; certificates of stock or of partnership or LLC interests; or acts under provisions that address registered agents in Delaware, foreign entities, or commencement of suits against entities or their fiduciaries.[69] Also excluded from coverage specifically under the DGCL are certain documents that may take electronic form pursuant to other sections, such as notices to stockholders and director and stockholder consents.[70]

Conforming changes have been made to other sections of the Entity Acts, generally eliminating language that is now surplusage or that could be interpreted as prohibiting the use of electronic transmission for certain actions.

Communications-Contact Information Now Required When a Registered Agent Resigns

Since 2006, every Delaware corporation, LP, and LLC has been required to provide to its registered agent in Delaware (but not to the State) "the name, business address and business telephone number of a natural person . . . who is then authorized to receive communications from the registered agent."[71] Such person is known as the "communications contact" for the entity.[72] Pursuant to the 2019 amendments, the Entity Acts now provide that when a Delaware registered agent resigns without appointing a successor registered agent for any affected entity, the information the resigning registered agent must provide to the Secretary of State shall include the communications-contact information last provided to the registered agent by the entity.[73] Such information, however, "shall not be deemed public."[74]

Additional Amendments to the Entity Acts

The DRULPA and the DLLCA expressly permit LP and LLC operating agreements and merger agreements to afford "contractual appraisal rights" respecting interests in LPs or LLCs in the event of certain transactions, including mergers, conversions, and transfers of the entity; operating-agreement amendments; and sales of all or substantially all of the entity's assets.[75] The 2019 amendments have confirmed that appraisal rights may also be made available in connection with divisions, mergers of registered series, and conversions of registered series to protected series (or the reverse).[76]

In connection with corporate mergers, stockholders seeking appraisal of their shares may now deliver appraisal demands by electronic transmission "if directed to an information processing system (if any) expressly designated for that purpose" in the corporation's notice of appraisal rights.[77] Delivery of a written stockholder demand, however, remains the default.[78]

The DGCL's requirement that a merger agreement be signed by corporate officers has been loosened. As a result of the 2019 amendments, a merger agreement may now be signed by any person who has been authorized to do so if (as is typically the case) a certificate of merger is filed with the Secretary of State in lieu of filing the merger agreement itself.[79] Although textual changes in this regard were made only to DGCL § 251 (merger of Delaware stock corporations) and § 255 (merger of Delaware nonstock corpo-

rations), cross-references in other sections cause the amended signature requirement to apply also to mergers between Delaware and non-Delaware corporations, stock and nonstock corporations, and corporations and LLCs or partnerships.[80]

The provisions of the DGCL permitting a board of directors to act by unanimous written consent have been amended to remove the implication that a board consent was not effective until it had been filed with the board minutes. While the amendment did not change the requirement that a board consent be filed with the minutes, the consent's effective time no longer depends on such filing.[81]

In 2014, the DGCL was amended to permit director and stockholder consents to be made effective as of a future time, including upon the happening of a future event, "whether through instruction to an agent or otherwise[.]"[82] Similar amendments now make clear that the action taken by incorporators to organize a newly formed corporation may also be taken by means of a future-effective consent.[83] A future-effective consent may now be used as well for an organizational action by the corporation's initial board of directors if the initial directors are named in the certificate of incorporation,[84] although an initial board was presumably already permitted to do so under the 2014 amendments.

Finally, the amendments have removed the implication that a nonprofit corporation could not be revived if its certificate of incorporation was declared forfeited because the corporation did not have a registered agent.[85] This was already clear as to for-profit corporations (under DGCL § 312), but the prior wording of DGCL § 313(a) implied that a nonprofit corporation could be revived only if it was void for failure to file its annual franchise tax report.

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[2] The 2018 amendments to the DLLCA authorizing division, statutory public benefit companies, judicial cancellation, and registered series are described in detail in the September 2018 *Delaware Transactional & Corporate Law Update*, which can be downloaded at https://www.youngconaway.com/john-j-paschetto/publications/delaware-transactional-corporate-law-update-fall-2018/

[3] 6 *Del. C.* § 17-220(b), (l)(8).

[4] 6 *Del. C.* § 17-220(a)(1), (b).

[5] 6 *Del. C.* § 17-220(d), (l)(1).

[6] 6 *Del. C.* § 17-220(g).

[7] 6 *Del. C.* § 17-220(h). The certificate of division may provide that it will be effective at a specific future date and time. If so, each certificate of limited partnership filed in the division must also provide that it will be effective at that date and time. 6 *Del. C.* § 17-220(i).

[8] 6 *Del. C.* § 17-220(c).

[9] *Id.*

[10] 6 *Del. C.* § 17-220(l)(9).

[11] 6 *Del. C.* § 18-217(h).

[12] 6 *Del. C.* § 18-217(l)(9).

[13] 6 *Del. C.* § 18-301(b)(4). The plan of division will control in the event that its terms conflict with the terms of an operating agreement respecting the admission of members in a division. *Id.*

[14] 6 *Del. C.* § 17-220(h), (l)(9), § 17-301(b)(4).

[15] 6 *Del. C.* §§ 17-1201 to 17-1208.

[16] *See* 6 *Del. C.* §§ 18-1201 to 18-1208.

[17] 6 *Del. C.* § 17-1202(a).

[18] *Id.*

[19] 6 *Del. C.* § 17-1202(b).

[20] 6 *Del. C.* § 17-1204(a).

[21] *Id.*

[22] 6 *Del. C.* § 17-1204(b).

[23] 6 *Del. C.* §§ 17-112 (for LPs), 18-112 (for LLCs).

[24] 6 *Del. C.* § 17-112(a).

[25] 6 *Del. C.* § 17-112(b).

[26] 6 *Del. C.* §§ 17-218 (for LPs), 18-215 (for LLCs).

[27] 6 *Del. C.* §§ 17-218(b) (for LPs), 18-215(b) (for LLCs).

[28] 6 *Del. C.* § 17-218(b).

[29] 6 *Del. C.* §§ 17-101(18), 17-218(b) (for LPs); 6 *Del. C.* §§ 18-101(14), 18-215(b) (for LLCs).

[30] 6 *Del. C.* § 18-218; UCC § 9-102(a)(71).

[31] 6 *Del. C.* § 18-218(c).

[32] 6 *Del. C.* § 17-221.

[33] 6 *Del. C.* § 17-221(d).

[34] 6 *Del. C.* § 17-221(e).

[35] 6 *Del. C.* § 17-221(c)(1).

[36] 6 *Del. C.* §§ 17-221(c)(10) (dissolution), 17-224 (merger), 17-1112 (revival), 17-223 (conversion to protected series).

[37] 6 *Del. C.* § 17-222.

[38] 6 *Del. C.* § 17-1109(a).

[39] 6 *Del. C.* § 18-101(12)-(13).

[40] 6 *Del. C.* § 18-1107(n).

[41] 6 *Del. C.* § 17-101(7), (10), § 17-1109(m).

[42] *See* 8 *Del. C.* § 232 (2018).

[43] 8 *Del. C.* § 232(a). The legislative synopsis accompanying the amendments explains that, as regards notices given pursuant to the DGCL or a corporation's certificate of incorporation or bylaws, "no provision of the certificate of incorporation or bylaws (including any provision requiring notice to be in writing or mailed) may prohibit the corporation from giving notice in the form, or delivering notice in the manner, permitted by Section 232(a)." Del. S.B. 88 syn. § 11, 150th Gen. Assem. (2019).

[44] 8 *Del. C.* § 232(a).

[45] 8 *Del. C.* § 232(d). Pursuant to the quoted text, the contact information of an officer or agent of the corporation must be supplied if an email notice is to be deemed to include attached files, not just hyperlinked information. *Id.*

[46] *Id.*

[47] 8 *Del. C.* § 232(a).

[48] 8 *Del. C.* § 232(e).

[49] *Id.*

[50] 8 *Del. C.* § 232(b).

[51] 8 *Del. C.* § 232(a).

[52] *Id.*

[53] 8 *Del. C.* § 228(d)(1).

[54] *Id.*

[55] *Id.*

[56] 8 *Del. C.* §§ 212(c)(2) (stockholder proxies), 228(d)(1) (stockholder consents); 6 *Del. C.* §§ 17-302(e) (limited partner consents and proxies), 17-405(d) (general partner consents and proxies), 18-302(d) (member consents and proxies).

[57] 6 *Del. C.* §§ 12A-101 to 12A-117.

[58] 6 *Del. C.* § 12A-103(b).

[59] 8 *Del. C.* § 116 (for corporations); 6 *Del. C.* §§ 17-113 (for LPs), 18-113 (for LLCs).

[60] 8 *Del. C.* § 116(a) (for corporations); 6 *Del. C.* §§ 17-113(a) (for LPs), 18-113(a) (for LLCs). The legislative synopsis accompanying the amendments for each of the Entity Acts emphasizes that any restrictions contained in organic entity documents regarding the use of electronic transmission and electronic signatures must be "expressly stated" to be effective. "A provision merely specifying that an act or transaction will be documented in writing, or that a document will be signed or delivered manually, will not prohibit" application of the broad authorization contained in DGCL § 116(a), DRULPA § 17-113(a), and DLLCA § 18-113(a).

Del. S.B. 88 syn. § 2, 150th Gen. Assem. (2019) (DGCL amendments); Del. S.B. 89 syn. § 7, 150th Gen. Assem. (2019) (DRULPA amendments); Del. S.B. 91 syn. § 4, 150th Gen. Assem. (2019) (DLLCA amendments).

[61] 8 *Del. C.* § 116(a)(1) (for corporations). *See also* 6 *Del. C.* §§ 17-113(a)(1) (for LPs), 18-113(a)(1) (for LLCs).

[62] 8 *Del. C.* § 232(d) (for corporations). *See also* 6 *Del. C.* §§ 17-101(4) (for LPs), 18-101(5) (for LLCs).

[63] 8 *Del. C.* § 116(a)(2) (for corporations); 6 *Del. C.* §§ 17-113(a)(2) (for LPs), 18-113(a)(2) (for LLCs).

[64] *Id*. The definition of "electronic signature" in the Entity Acts is broadly similar to the definition in the DUETA, i.e., "an electronic sound, symbol or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record." 6 *Del. C.* § 12A-102(9).

[65] 8 *Del. C.* § 116(a)(3) (for corporations); 6 *Del. C.* §§ 17-113(a)(3) (for LPs), 18-113(a)(3) (for LLCs).

[66] *Id*. The conditions for when an electronic transmission is deemed delivered under the Entity Acts are substantively similar to the conditions for when an "electronic record" is "received" under the DUETA. *See* 6 *Del. C.* § 12A-115(b).

[67] 8 *Del. C.* § 116(a)(3) (for corporations); 6 *Del. C.* §§ 17-113(a)(3) (for LPs), 18-113(a)(3) (for LLCs).

[68] *Id*. Similar provisions are contained in the DUETA. 6 *Del. C.* § 12A-115(e)-(f).

[69] 8 *Del. C.* § 116(b) (for corporations); 6 *Del. C.* §§ 17-113(b) (for LPs), 18-113(b) (for LLCs).

[70] 8 *Del. C.* §§ 232 (notice to stockholders), 141(f) (director consent), 228(d) (stockholder consent).

[71] 8 *Del. C.* § 132(d) (for corporations); 6 *Del. C.* §§ 17-104(g) (for LPs), 18-104(g) (for LLCs).

[72] *Id.*

[73] 8 *Del. C.* § 136(a) (for corporations); 6 *Del. C.* §§ 17-104(d) (for LPs), 18-104(d) (for LLCs).

[74] *Id.*

[75] 6 *Del. C.* §§ 17-212 (for LPs), 18-210 (for LLCs).

[76] *Id.*

[77] 8 *Del. C.* § 262(d)(1)-(2).

[78] *Id.*

[79] 8 *Del. C.* §§ 251(b) (merger between Delaware stock corporations), 255(b) (merger between Delaware nonstock corporations).

[80] 8 *Del. C.* §§ 252 (merger between Delaware and foreign stock corporations), 254 (merger between corporation and joint-stock association), 256 (merger between Delaware and foreign nonstock corporations), 257 (merger between Delaware stock and nonstock corporations), 258 (merger between Delaware and foreign stock and nonstock corporations), 263 (merger between corporation and partnership), 264 (merger between corporation and LLC).

[81] 8 *Del. C.* § 141(f).

[82] *Id.* (director consent); 8 *Del. C.* § 228(c) (stockholder consent).

[83] 8 *Del. C.* § 108(c).

[84] *Id.*

[85] 8 *Del. C.* § 313(a).

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