

2012 Amendments to Delaware Alternative Entity Acts

If you have any questions regarding the matters discussed in this memorandum, please contact Allison Land in the Wilmington office at 302.651.3180, or call your regular Skadden contact.

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As part of Delaware's annual review and updating of its alternative entity laws, the Delaware legislature has adopted a series of amendments to the Delaware Limited Liability Company Act (the DLLCA), the Delaware Revised Uniform Limited Partnership Act (DRULPA), and the Delaware Revised Uniform Partnership Act (DRUPA and, together with the DLLCA and DRULPA, the Acts), which will become effective on August 1, 2012.

Usury Defense Unavailable. Each of the Acts will be amended to provide that obligations between or among members of an LLC and between or among partners of an LP or GP, arising under an LLC agreement, partnership agreement or other writing, are not subject to the defense of usury. This amendment is intended to protect members/partners from usury defenses when their fellow members/partners are indebted to them (such as when a member/partner defaults in a capital call and one or more of the other members/partners contributes the defaulted amount, which, under the LLC or partnership agreement, is treated as an interest-bearing loan to the defaulting member/partner).

Limitation on Use of the Word "Bank" in Alternative Entity's Name. Each of the Acts will be amended to restrict the use of the word "bank," or any variation thereof, in the name of the LLC, LP or GP, other than for a state- or federal-chartered bank (or subsidiary thereof) or a bank holding company, unless the use of the word "bank" is in a context clearly not purporting to refer to a banking business or otherwise not likely to mislead the public about the nature of the entity's business, or lead to a pattern of abuse, in each case, as determined by the Division of Corporations in the Delaware Secretary of State's office. These amendments, which are consistent with provisions of the General Corporation Law of the State of Delaware, permit the Secretary of State to refer any such application to the banking commissioner for review and determination.

Registered Agent Consent. Each of the Acts will be amended to provide that, when an LLC or partnership transfers to another jurisdiction, the address it lists for service of process in Delaware may not be the address of its registered agent unless a written consent from the registered agent is filed with the certificate of transfer.

Effective Time of LLC and Partnership Agreements. DRULPA and the DLLCA will be amended to clarify that partnership agreements and LLC agreements may be made effective as of the effective time of the filing of the certificate of limited partnership or certificate of formation, as applicable.

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