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## 2021 Delaware General Corporation Law and Alternative Entity Amendments

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On June 30, Delaware Governor John Carney signed into law the 2021 amendments to the General Corporation Law of the State of Delaware (the “DGCL”), the Delaware Limited Liability Company Act (the “LLC Act”), the Delaware Revised Uniform Partnership Act (the “Partnership Act”), and the Delaware Revised Uniform Limited Partnership Act (the “LP Act”). The LLC Act, the Partnership Act and the LP Act are sometimes referred to as the “Alternative Entity Statutes.”

### What You Need to Know:

Amongst other changes, these amendments:

- Provide for ratification of void or voidable acts of LLCs, LPs and Partnerships;
- Clarify information rights of members and partners of LLCs, LPs and Partnerships; and
- Update the rules surrounding Public Benefit LLCs and Public Benefit LPs.

There were no amendments to the Delaware Statutory Trust Act.

The amendments each became effective on August 1, 2021. Set forth below is a brief summary of the amendments

### General Corporation Law

#### Voting of Stock Held by Corporation

Section 160 of the DGCL addresses a corporation’s powers respecting, among other things, ownership and voting of its own stock. Subsection 160(c) previously provided that shares of a corporation’s stock may not be voted or counted for quorum purposes if they are owned by the corporation itself or directly or indirectly by the corporation’s majority-owned subsidiary corporation. Subsection 160(c) was amended to add that the same rule applies to shares of stock owned by any other form of entity the majority of the voting power of which is owned directly or indirectly by the corporation or if such other entity is otherwise controlled directly or indirectly by the corporation.

### Alternative Entity Statutes

#### Ratifying Acts

The Alternative Entity Statutes were amended to add new subsections to each of Section 18-106 of the LLC Act, Section 17-106 of the LP Act and Section 15-202 of the Partnership Act. The amendments were made in response to two recent Delaware court cases, *Composecure, L.L.C. v. Cardux, LLC* and *Absalom Absalom Trust v. Saint Gervais LLC*, where the courts found that certain transactions were void and could not be ratified.

These new subsections expressly permit the ratification or waiver of void or voidable acts where permitted by law. They are not intended to preempt or restrict other valid means of ratifying or waiving acts.

## Right to Information

In another change designed to overrule a recent decision adopted by the Delaware courts, *Murfey v. WHC Venture, LLC*, the Alternative Entity Statutes were amended to clarify that a member's, partner's or limited partner's right to obtain information for a particular purpose from a limited liability company, a partnership or a limited partnership, respectively, by statute or agreement, must be to "obtain such information as is necessary and essential to achieving that purpose." The amendments further provided that the rights of a member, partner or limited partnership, respectively, to obtain "necessary and essential" information may be expanded or restricted in a limited liability company agreement, partnership agreement or limited partnership agreement.

## Delegation by Partner, General Partner, Member or Manager With a Conflict of Interest

Under the Delaware Chancery Court's recent decision in *Wenske v. Bluebell Creameries*, a conflicted principal was legally disabled from delegating authority over the subject matter as to which the principal was conflicted. In response to this, the Alternative Entity Statutes were amended to clarify that a member, manager or partner may delegate its rights, powers or duties "irrespective" of whether such person has a conflict of interest with respect to the matter as to which such person's rights, powers or duties are being delegated, and the person to whom such powers or duties are being delegated shall not be deemed conflicted solely by reason of the conflict of interest of the delegating member, manager or partner.

## Statutory Public Benefit Entity Requirements

The LLC Act and the LP Act were amended to require that the LLC Agreement of a statutory public benefit limited liability company and the LP Agreement of a statutory public benefit limited partnership, respectively, state that such entity is a statutory public benefit entity and set forth the specific benefit(s) to be promoted by such entity.

The amendments further clarify that the certificate of formation or the certificate of limited partnership of a statutory public benefit entity be promptly amended if the manager, member or general partner becomes aware that the specific public benefits to be promoted by such entity as set forth in such certificate is inaccurate.

Lastly, the amendments provided that a limited liability company or a limited partnership may become a statutory public benefit entity by (i) complying with specific requirements to convert itself as specified in its limited liability company agreement or limited partnership agreement or (ii) amending its limited liability company agreement or limited partnership agreement, as applicable, and its certificate of formation or certificate of limited partnership, as applicable, to comply with the requirements under the LLC Act or the LP Act to be a statutory public benefit entity.

## General Partnership Opt-Outs

Prior to the adoption of the amendments, the Partnership Act provided that general partnerships could opt-out of certain default provisions, provided that the modification was included in (i) the statement of partnership existence or (ii) a statement of qualification and in a partnership agreement. Section 15-103 of the Partnership Act was amended to clarify that, unless provided in a partnership agreement, a general partnership that has opted-out of those default provisions will continue to be governed by the Partnership Act.

For more information about Delaware's corporate and alternative entity laws, please contact the authors or the attorneys at the Firm with whom you are regularly in contact.

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