

CHAPTER 49

S.B. No. 563

AN ACT

relating to limited partnerships.

*Be it enacted by the Legislature of the State of Texas:*

SECTION 1. The Texas Revised Limited Partnership Act is enacted to read as follows:

ARTICLE 1. GENERAL PROVISIONS

Sec. 1.01. SHORT TITLE. This Act may be cited as the Texas Revised Limited Partnership Act.

Sec. 1.02. DEFINITIONS. In this Act:

(1) "Capital account" means, unless otherwise provided in a written partnership agreement, the amount of a partner's original contribution to a limited partnership, which consists of cash and the agreed value of any other contribution to the partnership, increased by the amount of additional contributions made by that partner and allocations to that partner of partnership profits and decreased by the amount of distributions to that partner and allocations to that partner of partnership losses.

(2) "Contribution" means the cash, property, services rendered, or promissory note or other obligation of a person to pay cash or transfer property to the limited partnership that a person contributes to a limited partnership in the person's capacity as a partner, but does not include cash or property received by the partnership with respect to a promissory note or other obligation to the extent that the agreed value of the note or obligation has previously been included as a contribution.

(3) "Foreign limited partnership" means a partnership formed under the laws of another state and having as partners one or more general partners and one or more limited partners.

(4) "General partner" means a person who has been admitted to a limited partnership as a general partner in accordance with the partnership agreement.

(5) "Limited partner" means a person who has been admitted to a limited partnership as a limited partner as provided by Section 3.01 of this Act or, in the case of a foreign limited partnership, in accordance with the laws of the state under which the limited partnership is organized.

(6) "Limited partnership" means a partnership formed by two or more persons under the laws of Texas and having one or more general partners and one or more limited partners.

(7) "Majority in interest," unless otherwise provided in a written partnership agreement, means, as to all or any specified group of limited partners, partners who own more than 50 percent of the then current percentage or other interest in the profits of the limited partnership owned by all of the limited partners or by the limited partners in the specified group, as appropriate.

(8) "Partner" means a limited or general partner.

(9) "Partnership agreement" means any agreement, written or oral, of the partners as to the affairs of a limited partnership and the conduct of its business.

(10) "Partnership interest" means a partner's interest in a limited partnership, including the right to receive distributions of partnership assets and the right to receive allocations of income, gain, loss, deduction, or credit of the partnership.

(11) "Person" means an individual, partnership, limited partnership, foreign limited partnership, trust, estate, corporation, custodian, trustee, executor, administrator, nominee, or entity in its own or a representative capacity.

(12) "Return of capital" means, unless otherwise provided in a written partnership agreement, any distribution to a partner to the extent that the partner's capital account, immediately after the distribution, is less than the amount of that partner's contribution to the partnership as reduced by prior distributions that were a return of capital.

(13) "State" means the District of Columbia or the Commonwealth of Puerto Rico or any state, territory, possession, or other jurisdiction of the United States.

Sec. 1.03. PARTNERSHIP NAME. The name of a limited partnership as stated in its certificate of limited partnership, a reserved or registered name, or the name under which a foreign limited partnership is permitted to register to do business in Texas as contained in its application for registration as a foreign limited partnership must contain the words "Limited Partnership," "Limited," or the abbreviation "L.P." or "Ltd." as the last words or letters of its name and may not:

- (1) contain the name of a limited partner unless:
  - (A) that name is also the name of a general partner; or
  - (B) the business of the limited partnership or foreign limited partnership had been carried on under that name before the admission of that limited partner;
- (2) contain a word or phrase indicating or implying that it is organized other than for a purpose stated in its partnership agreement;
- (3) be the same as or deceptively similar to the name of a corporation or limited partnership that exists under the laws of Texas, that has a certificate of authority to transact business as a foreign corporation in Texas, or that is registered as a foreign limited partnership in Texas, or a name that has been reserved or registered for a corporation, limited partnership, or foreign limited partnership under the laws of Texas, except that a limited partnership or foreign limited partnership may adopt, reserve, or register, as appropriate, a name that is similar if written consent is obtained from the corporation, limited partnership, or foreign limited partnership having the name considered similar or from the person for whom the name considered similar is reserved or registered in the office of the secretary of state; or
- (4) contain a word or phrase indicating or implying that it is a corporation.

Sec. 1.04. RESERVATION OF NAME. (a) The exclusive right to the use of a name may be reserved by:

- (1) a person intending to organize a limited partnership under this Act and adopt that name;
- (2) a domestic limited partnership or a foreign limited partnership registered in Texas that proposes to change its name to that name;
- (3) a foreign limited partnership intending to register in Texas and adopt that name; or
- (4) a person intending to organize a foreign limited partnership and intending to have it registered in this state and adopt that name.

(b) A specified name may be reserved by filing with the secretary of state an application executed by the applicant or an attorney or agent of the applicant, together with a duplicate copy of the application, which need not be an executed original or a photocopy of an executed original, and paying the applicable filing fee. If the secretary of state finds that the name is available for use by a domestic or foreign limited partnership, the secretary of state shall reserve the name for the exclusive use of the applicant for a period of 120 days. An applicant may reserve the same name for one or more successive 120-day periods by filing a new application and paying the applicable filing fee before the effective 120-day reservation period expires. The right to the exclusive use of a reserved name may be transferred to another person by filing with the

secretary of state a notice of the transfer executed by the applicant for whom the name was reserved that specifies the name and address of the transferee and paying the applicable filing fee.

Sec. 1.05. REGISTERED NAME. (a) A foreign limited partnership not authorized to transact business in Texas may register a name for use in this state if the name complies with Section 1.03 of this Act.

(b) A name may be registered under this section by paying the filing fee and filing with the secretary of state:

(1) an application for registration executed by a general partner of the foreign limited partnership and setting forth:

- (A) the name of the foreign limited partnership;
- (B) the state under the laws of which it is formed;
- (C) the date of its formation;
- (D) a statement that it is carrying on or doing business; and
- (E) a brief statement of the nature of the business in which it is engaged; and

(2) a certificate stating that the foreign limited partnership is in good standing under the laws of the state under which it is formed, executed by the secretary of state of that state or by the state official who has custody of the records pertaining to limited partnerships formed under the laws of that state.

(c) The registration is effective for one year after the date on which the application is filed, unless it is voluntarily withdrawn before expiration by the filing of written notice of withdrawal with the secretary of state.

(d) A foreign limited partnership that has in effect a registration of a name may renew that registration by paying the filing fee and filing an application for renewal with the secretary of state in the manner prescribed for filing an original application during the 90-day period preceding the expiration date of the registration.

Sec. 1.06. REGISTERED OFFICE; REGISTERED AGENT. (a) A limited partnership or foreign limited partnership subject to this Act shall have and maintain in Texas:

- (1) a registered office, which need not be a place of its business in Texas; and
- (2) a registered agent for service of process on the partnership, which may be:

(A) an individual who is a resident of Texas and whose business office is the same as the partnership's registered office; or

(B) a domestic corporation or a foreign corporation that has a certificate of authority to transact business in Texas and a business office the same as the partnership's registered office.

(b) A limited partnership or foreign limited partnership subject to this Act may change its registered office, its registered agent, or both, by paying the filing fee and filing with the secretary of state a statement and a duplicate copy of the statement, which need not be an executed original or a photocopy of an executed original. The statement must contain:

- (1) the name of the limited partnership;
- (2) the street address of its registered office;
- (3) the street address to which its registered office is to be changed, if applicable;
- (4) the name of its registered agent;
- (5) the name of its successor registered agent, if applicable;
- (6) a provision that the street address of its registered office and the street address of the business office of its registered agent, as changed, will be the same; and
- (7) a provision that the change was authorized by the limited partnership.

(c) The statement required by Subsection (b) of this section must be executed on behalf of the limited partnership or foreign limited partnership by a general partner. If the secretary of state finds that the statement conforms to this section, the secretary of

state, on receipt of all applicable filing fees, shall file it in accordance with Subsection (a) of Section 2.07 of this Act as if it were a certificate of amendment.

(d) On the filing of the statement by the secretary of state, the change of address of the registered office, the appointment of a new registered agent, or both, as the case may be, become effective.

(e) Filing of the statement amends the certificate of limited partnership or registration as a foreign limited partnership regarding the information required by Subdivision (2) of Subsection (a) of Section 2.01 or Subdivision (4) of Subsection (a) of Section 9.02 of this Act, as appropriate.

(f) A registered agent of a limited partnership or foreign limited partnership may resign by giving written notice to the limited partnership and to the secretary of state. Notice must be given to the limited partnership at its last known address and to the last known address of the attorney or other individual at whose request the registered agent was appointed for the limited partnership. Notice, together with a duplicate copy, which need not be an executed original or a photocopy of an executed original, must be given to the secretary of state within 10 days after the date of mailing or delivery of the notice to the limited partnership and attorney or other individual. The notice to the secretary of state must include the last known address of the limited partnership, the statement that written notice of resignation has been given to the limited partnership, and the date that the notice was given.

(g) On compliance with the requirements for giving written notice under Subsection (f) of this section, the appointment of an agent terminates on the 31st day after the date of receipt of the notice by the secretary of state. If the secretary of state finds that the written notice conforms to this section, the secretary of state shall file it in accordance with Subsection (a) of Section 2.07 of this Act as if it were a certificate of amendment. A fee is not required for the filing of a resignation under Subsection (f) of this section.

(h) The location of the registered office in Texas for a limited partnership or foreign limited partnership may be changed from one address to another by paying the filing fee to the secretary of state and filing with the secretary of state a statement and a duplicate copy, which need not be an executed original or a photocopy of an executed original. The statement must contain:

- (1) the name of the partnership represented by the registered agent;
  - (2) the address at which the registered agent has maintained the registered office;
  - (3) the new address at which the registered agent will maintain the registered office;
- and
- (4) a statement that written notice of the change has been given to the partnership at least 10 days before the date of the filing.

(i) The statement required by Subsection (h) of this section must be signed and verified by the registered agent or, if the registered agent is a corporation, by an officer of the corporation. If the registered agent is simultaneously filing statements for more than one limited partnership, each statement may contain a facsimile signature in the execution. If the secretary of state finds that the statement conforms to this section, the secretary of state, on receipt of the filing fee, shall file it in accordance with Subsection (a) of Section 2.07 of this Act as if it were a certificate of amendment. The address of the registered office of the limited partnership is changed on the filing of the statement by the secretary of state. Filing of the statement amends the certificate of limited partnership or registration as a foreign limited partnership regarding the information required by Subdivision (2) of Subsection (a) of Section 2.01 or Subdivision (4) of Subsection (a) of Section 9.02 of this Act, as appropriate, and no further action is required under Section 2.02 of this Act.

Sec. 1.07. RECORDS TO BE KEPT; ACCESS TO INFORMATION. (a) A domestic limited partnership shall keep and maintain the following records in its principal office in the United States or make them available in that office within five days after the date of receipt of a written request under Subsection (d) of this section:

- (1) a current list that states:

(A) the name and mailing address of each partner, separately identifying in alphabetical order the general partners and the limited partners;

(B) the last known street address of the business or residence of each general partner;

(C) the percentage or other interest in the partnership owned by each partner; and

(D) if one or more classes or groups are established in or under the partnership agreement, the names of the partners who are members of each specified class or group;

(2) copies of the limited partnership's federal, state, and local information or income tax returns for each of the partnership's six most recent tax years;

(3) a copy of the partnership agreement and certificate of limited partnership, all amendments or restatements, executed copies of any powers of attorney under which the partnership agreement, certificate of limited partnership, and all amendments or restatements to the agreement and certificate have been executed, and copies of any document that creates, in the manner provided by the partnership agreement, classes or groups of partners;

(4) unless contained in the written partnership agreement, a written statement of:

(A) the amount of the cash contribution and a description and statement of the agreed value of any other contribution made by each partner, and the amount of the cash contribution and a description and statement of the agreed value of any other contribution that the partner has agreed to make in the future as an additional contribution;

(B) the times at which additional contributions are to be made or events requiring additional contributions to be made;

(C) events requiring the limited partnership to be dissolved and its affairs wound up; and

(D) the date on which each partner in the limited partnership became a partner; and

(5) correct and complete books and records of account of the limited partnership.

(b) A limited partnership shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

(c) A limited partnership shall keep in its registered office in Texas and make available to partners on reasonable request the street address of its principal United States office in which the records required by this section are maintained or will be available.

(d) A partner or an assignee of a partnership interest, on written request stating the purpose, may examine and copy, in person or by the partner's or assignee's representative, at any reasonable time, for any proper purpose, and at the partner's expense, records required to be kept under this section and other information regarding the business, affairs, and financial condition of the limited partnership as is just and reasonable for the person to examine and copy.

(e) On the written request by any partner or an assignee of a partnership interest made to the person and address designated in the partnership agreement or, if there is no designation, to a general partner at the partnership's principal United States office, the partnership shall provide to the requesting partner or assignee without charge true copies of:

(1) the partnership agreement and certificate of limited partnership and all amendments or restatements; and

(2) any of the tax returns described in Subdivision (2) of Subsection (a) of this section.

Sec. 1.08. SERVICE OF PROCESS ON DOMESTIC LIMITED PARTNERSHIP. (a) Each general partner and the registered agent of a limited partnership are agents of the limited partnership on whom may be served any process, notice, or demand required or permitted by law to be served on the limited partnership.

(b) If a limited partnership fails to appoint or maintain a registered agent in Texas or its registered agent cannot with reasonable diligence be found at the registered office, and if a general partner of the limited partnership cannot with reasonable diligence be found, the secretary of state is an agent of the limited partnership on whom any process, notice, or demand may be served. Service on the secretary of state of any process, notice, or demand may be made by delivering to the secretary of state, assistant secretary of

state, or any clerk having charge of the corporation department of the secretary of state's office duplicate copies of the process, notice, or demand. If the process, notice, or demand is served on the secretary of state, the secretary of state shall immediately forward one of the copies by registered mail, addressed to the address of a general partner as it appears on file with the secretary of state or, if no address appears on file, at the partnership's last registered office. Service on the secretary of state is returnable in not less than 30 days.

(c) The secretary of state shall keep a record of any process, notice, or demand served on the secretary of state under this section and shall record the time of service and the action taken with reference to each.

Sec. 1.09. NATURE OF BUSINESS PERMITTED. (a) A limited partnership formed under this Act may engage in any lawful business unless a more limited purpose is stated in its partnership agreement.

(b) A limited partnership engaging in a business that is subject to regulation by another Texas statute may be formed under this Act only if it is not prohibited by the other statute. The limited partnership is subject to all limitations of the other statute.

Sec. 1.10. BUSINESS TRANSACTIONS OF PARTNER WITH PARTNERSHIP. Except as otherwise provided by the partnership agreement, a partner may lend money to and transact other business with the limited partnership and, subject to other applicable law, has the same rights and obligations with respect to those matters as a person who is not a partner.

## ARTICLE 2. FORMATION; CERTIFICATE OF LIMITED PARTNERSHIP

Sec. 2.01. CERTIFICATE OF LIMITED PARTNERSHIP. (a) To form a limited partnership, the partners must enter into a partnership agreement and one or more partners, including all of the general partners, must execute a certificate of limited partnership. The filing fee and the certificate shall be filed with the secretary of state. The certificate must contain:

- (1) the name of the limited partnership;
- (2) the address of the registered office and the name and address of the registered agent for service of process required to be maintained by Section 1.06 of this Act;
- (3) the address of the principal office in the United States where records are to be kept or made available under Section 1.07 of this Act;
- (4) the name, the mailing address, and the street address of the business or residence of each general partner; and
- (5) other matters that the general partners determine to include.

(b) A limited partnership is formed at the time of the filing of the initial certificate of limited partnership with the secretary of state or at a later date or time specified in the certificate if there has been substantial compliance with the requirements of this section.

Sec. 2.02. AMENDMENT TO CERTIFICATE. (a) A certificate of limited partnership may be amended by paying the filing fee and filing a certificate of amendment with the secretary of state. The certificate of amendment must set forth:

- (1) the name of the limited partnership; and
  - (2) the amendment to the certificate.
- (b) A general partner shall file a certificate of amendment reflecting the occurrence of one or more of the following events not later than the 30th day after the date of the occurrence of the event:
- (1) the admission of a new general partner;
  - (2) the withdrawal of a general partner;
  - (3) a change in the name of the limited partnership; or
  - (4) except as provided by Subsection (b) or (h) of Section 1.06 of this Act, a change in the address of the registered office or a change in the name or address of the registered agent of the limited partnership.

(c) A general partner who becomes aware that a statement in a certificate of limited partnership was false when made or that a matter described in the certificate has changed, making the certificate false in any material respect, shall promptly amend the certificate to make it accurate.

(d) A certificate of limited partnership may be amended at any time for any other proper purpose determined by the general partners.

(e) Unless otherwise provided by this Act, a certificate of amendment is effective when filed with the secretary of state or at a later date or time specified in the certificate if there has been substantial compliance with the requirements of this section.

Sec. 2.03. CERTIFICATE OF CANCELLATION. (a) A certificate of limited partnership shall be canceled by paying the filing fee and filing a certificate of cancellation with the secretary of state:

- (1) on the completion of the winding up of the partnership;
- (2) when there are no limited partners; or
- (3) subject to Subsection (c) of this section, on a merger or consolidation as provided by Subsection (b) of Section 2.11 of this Act.

(b) A certificate of cancellation must contain:

- (1) the name of the limited partnership;
- (2) the date of the filing of its certificate of limited partnership;
- (3) the reason for filing the certificate of cancellation;
- (4) the future effective date or time, which shall be a date or time certain, of cancellation if it is not to be effective on the filing of the certificate; and
- (5) any other information determined proper by the person filing the certificate of cancellation.

(c) If, in the case of merger or consolidation, one or more limited partnerships formed or registered under this Act are not the surviving partnership or partnerships, the certificate of merger filed under Subsection (b) of Section 2.11 of this Act is sufficient, without a filing under this section, to cancel the certificate of limited partnership of those nonsurviving partnerships.

Sec. 2.04. EXECUTION. (a) Each certificate required by this article to be filed with the secretary of state shall be executed in the following manner:

(1) an initial certificate of limited partnership must be signed by all general partners, unless signed and filed by a person under Subdivision (1) of Subsection (a) of Section 3.04 of this Act;

(2) a certificate of amendment or restated certificate must be signed by at least one general partner and by each other general partner designated in the certificate of amendment as a withdrawing or a new general partner, unless signed and filed by a person under Subdivision (1) of Subsection (a) of Section 3.04 of this Act;

(3) a certificate of cancellation must be signed by all general partners or, if there is no general partner, by a majority in interest of the limited partners;

(4) a certificate of merger must be signed by all general partners of each limited partnership affected by the merger or consolidation; and

(5) a certificate filed under Section 2.06 of this Act must be signed by the person designated by the court.

(b) Any person may sign a certificate or partnership agreement or amendment or restated certificate by an attorney in fact. A power of attorney relating to the signing of a certificate or partnership agreement or amendment or restated certificate by an attorney in fact need not be sworn to, verified, or acknowledged, and need not be filed with the secretary of state, but shall be retained with the partnership records under Section 1.07 of this Act.

(c) The execution of a certificate by a general partner or the execution of a written statement by a person under Subdivision (2) of Subsection (a) of Section 3.04 of this Act constitutes an oath or affirmation, under the penalties for perjury, that, to the best of the

executing party's knowledge and belief, the facts stated in the certificate or statement are true.

Sec. 2.05. EXECUTION, AMENDMENT, OR CANCELLATION BY JUDICIAL ORDER. (a) If a person required by this Act to execute or file a certificate fails or refuses to do so, another person adversely affected by that failure or refusal may petition a court of competent jurisdiction to direct the execution or filing of the certificate. If the court finds that the execution or filing of the certificate is proper and that a person required to execute or file the certificate has failed or refused to do so, the court shall order the secretary of state to record an appropriate certificate. This judicial remedy is not a limit on the rights of a person to file a written statement under Subdivision (2) of Subsection (a) of Section 3.04 of this Act.

(b) If a person required to execute a partnership agreement fails or refuses to do so, another person adversely affected by that failure or refusal may petition a court of competent jurisdiction to direct the execution of the partnership agreement. If the court finds that the partnership agreement should be executed and that a person required to do so has failed or refused to do so, the court shall enter an order granting appropriate relief.

(c) If a court enters an order in favor of the adversely affected person requesting relief under this section, the court shall award to that person reasonable expenses, including reasonable attorney's fees.

Sec. 2.06. AMENDMENTS, MERGERS, OR CANCELLATION UNDER FEDERAL REORGANIZATION PROCEEDINGS. (a) To carry out a plan of reorganization ordered or decreed by a court of competent jurisdiction under federal statute, a limited partnership being reorganized under a federal statute may without action by or notice to its partners:

(1) amend or restate its certificate if the certificate after amendment or restatement contains only provisions of the type required or permitted in the certificate;

(2) merge or consolidate with one or more other partnerships; or

(3) cancel its certificate on completion of winding up of the limited partnership.

(b) The individual or individuals designated by the court, on behalf of a limited partnership that is being reorganized, shall execute:

(1) an amendment or restatement of the certificate containing:

(A) the name of the limited partnership;

(B) the text of each amendment or restatement approved by the court;

(C) the date of the court's order or decree approving the amendment or restatement; and

(D) the court, file name, and case number of the reorganization proceeding in which the order or decree was entered;

(2) a certificate of merger containing:

(A) the name of the limited partnership;

(B) the information required by Subsection (b) of Section 2.11 of this Act;

(C) the date of the court's order or decree approving the merger or consolidation; and

(D) the court, file name, and case number of the reorganization proceeding in which the order or decree was entered; or

(3) a certificate of cancellation containing:

(A) the name of the limited partnership;

(B) the information required by Section 2.03 of this Act;

(C) the date of the court's order or decree approving the certificate of cancellation; and

(D) the court, file name, and case number of the reorganization proceeding in which the order or decree was entered.



(c) If a limited partnership that is not being reorganized merges or consolidates pursuant to a plan of reorganization with a limited partnership that is being reorganized, Section 2.11 of this Act applies to the partnership that is not being reorganized to the same extent that that section would apply if the partnership were merging or consolidating with a partnership that is not being reorganized.

(d) On endorsement of the certificate by the secretary of state under Section 2.07 of this Act, the certificate of amendment, merger, or cancellation or restated certificate becomes effective and has the same effect as if it had been adopted by unanimous action of the general and limited partners of the limited partnership being reorganized except as otherwise provided by this section or by the plan of reorganization ordered or decreed by a court of competent jurisdiction under federal statute.

(e) This section does not apply after entry of a final decree in the reorganization proceeding even though the court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the reorganization plan.

(f) This section does not preclude other changes in a limited partnership or its securities by a plan of reorganization ordered or decreed by a court of competent jurisdiction under federal statute.

Sec. 2.07. FILING. (a) The original signed copy and one duplicate copy, which need not be an executed original or a photocopy of an executed original, of a certificate of limited partnership, a certificate of amendment or cancellation, a judicial decree of amendment or cancellation, a certificate of merger, or a restated certificate shall be delivered to the secretary of state. A person who executed a certificate as an agent or fiduciary need not exhibit evidence of that person's authority as a prerequisite to filing. Unless the secretary of state finds that a certificate does not conform to law, on receipt of all applicable filing fees required by law the secretary of state shall certify that the certificate or decree has been filed in the secretary of state's office by endorsing on the original the word "Filed" and the date of the filing, file and index the endorsed certificate or decree, and return the duplicate copy, similarly endorsed, to the person who filed it or to the person's designated representative. The secretary of state's endorsement is conclusive of the date of the filing in the absence of actual fraud.

(b) On the filing of a certificate of amendment, judicial decree of amendment, or restated certificate with the secretary of state, or on the future effective date or time of the certificate or decree provided in the certificate or decree, the certificate of limited partnership is amended or restated. The certificate of limited partnership is canceled on:

- (1) the filing of a certificate of cancellation or a judicial decree of cancellation;
- (2) the future effective date or time of the certificate or decree provided in the certificate or decree; or
- (3) as specified by Subsection (d) of Section 1.06 of this Act. A merger takes effect on the filing of a certificate of merger.

Sec. 2.08. LIABILITY FOR FALSE STATEMENT. (a) If a certificate of limited partnership or a certificate of amendment, merger, or cancellation contains a materially false statement or fails to state any material fact required to be included in the certificate by this Act, a person who suffers loss by reasonable reliance on the statement or from an omission may recover damages for the loss from:

- (1) any partner or other person who executed the certificate and knew or, in the case of a general partner, should have known of the false statement or of the omission when the certificate was executed; and
- (2) any general partner who after execution of the certificate knows that any arrangement or other fact described in the certificate is false in a material respect or has changed, making the statement false in a material respect, or that the certificate fails to state a material fact required to be included in the certificate by this Act, if that general partner had sufficient time to amend or cancel the certificate or to file a petition for its amendment or cancellation before the statement was reasonably relied on.

(b) A general partner is not subject to liability for failing to file the amendment or cancellation of a certificate or failing to file a petition for its amendment or cancellation under Subdivision (2) of Subsection (a) of this section if the certificate of amendment,

certificate of cancellation, or petition is filed within 30 days after the date that the general partner first had or should have had the knowledge that a statement in the certificate was false in a material respect or that the certificate failed to state a material fact required to be stated by this Act.

Sec. 2.09. NOTICE. The fact that a certificate of limited partnership is on file with the secretary of state is notice that the partnership is a limited partnership and of all other facts contained in the certificate as required by Subdivision (1), (2), or (3) of Subsection (a) of Section 2.01 of this Act.

Sec. 2.10. RESTATED CERTIFICATE. (a) A limited partnership may integrate into a single instrument all of the provisions of its certificate of limited partnership that are then in effect as a result of a previous filing with the secretary of state of one or more certificates or other instruments under this article, and it may also further amend its certificate of limited partnership by adopting a restated certificate of limited partnership, paying the filing fee, and filing the restated certificate with the secretary of state.

(b) If the restated certificate of limited partnership only restates and integrates provisions but does not amend the initial certificate of limited partnership, as previously amended or supplemented under this article, it must be specifically designated in its heading as a "Restated Certificate of Limited Partnership," together with any other words that the partnership considers appropriate, and must be executed by a general partner and filed with the secretary of state as provided by Section 2.07 of this Act. If the restated certificate restates and integrates and amends the certificate of limited partnership, as previously amended or supplemented, it must:

(1) be specifically designated in its heading as an "Amended and Restated Certificate of Limited Partnership," together with any other words that the partnership considers appropriate;

(2) set forth the amendments made by the amended and restated certificate;

(3) be executed by at least one general partner and by each other general partner designated in the restated certificate of limited partnership as a new general partner; and

(4) be filed with the secretary of state as provided by Section 2.07 of this Act.

(c) A restated certificate of limited partnership must state, either in its heading or in an introductory paragraph, the limited partnership's present name and, if it has been changed, the name under which the limited partnership was originally formed, the date of filing of its original certificate of limited partnership with the secretary of state, and the future effective date or time, which must be a date or time certain, of the restated certificate if it is not to be effective on the filing of the restated certificate. A restated certificate must also state that it was duly executed and is being filed in accordance with this section. If the restated certificate only restates and integrates and does not amend the limited partnership's certificate of limited partnership, as previously amended or supplemented, and there is no discrepancy between those provisions and the restated certificate, it must also state that fact.

(d) On the filing of the restated certificate of limited partnership with the secretary of state, or on the future effective date or time of a restated certificate of limited partnership as provided by the certificate, the initial certificate of limited partnership, as previously amended or supplemented, is superseded, and the restated certificate of limited partnership, including any further amendment or changes made by it, is the certificate of limited partnership of the limited partnership. The original effective date of formation, however, is not changed.

(e) Any amendment or change made in connection with the restatement and integration of the certificate of limited partnership is subject to other provisions of this article that are not inconsistent with this article, that would apply if a separate certificate of amendment were filed to effect the amendment or change.

Sec. 2.11. MERGER AND CONSOLIDATION OF LIMITED PARTNERSHIPS. (a) Pursuant to a written agreement, a domestic limited partnership may merge or consolidate with one or more domestic or foreign limited partnerships. The surviving or resulting partnership is the partnership designated as the surviving or resulting partnership by the agreement.

(b) The surviving or resulting partnership in the merger or consolidation shall file a certificate of merger with the secretary of state on behalf of each domestic limited partnership that is a party to the merger or consolidation. The certificate of merger must state:

- (1) the name and state of domicile of each of the constituent partnerships;
- (2) that an agreement of merger or consolidation has been executed and approved by the requisite action by each of the constituent partnerships in accordance with their respective partnership agreements;
- (3) the name and state of domicile of the surviving or resulting partnership;
- (4) the future effective date or time, which must be a date or time certain, of the merger or consolidation if not effective on the date of filing of the certificate of merger;
- (5) that the executed agreement of merger or consolidation is on file at the principal office in the United States of the surviving or resulting partnership, and the street address of that office;
- (6) that a copy of the agreement of merger or consolidation will be furnished by the surviving or resulting partnership, on request and without cost, to any partner of any constituent partnership; and
- (7) if the surviving or resulting partnership is a foreign limited partnership not registered in Texas, that the secretary of state is appointed agent of the surviving or resulting partnership on whom process may be served in Texas in any action, suit, or proceeding for the enforcement of an obligation of a domestic limited partnership constituent to the merger or consolidation, and the address to which a copy of the process is to be mailed.

(c) The effective date of the certificate of merger is the effective date of the merger or consolidation. The certificate of merger must be executed by at least one general partner of each of the constituent partnerships. On the effective date of the merger or consolidation, each partnership that is not the surviving or resulting partnership in the merger or consolidation is considered terminated.

(d) The certificate of merger acts as a certificate of cancellation for a domestic or registered foreign limited partnership that is not the surviving or resulting partnership in the merger or consolidation.

(e) On service on the secretary of state under an appointment under Subdivision (7) of Subsection (b) of this section, Subsection (b) of Section 9.10 of this Act is applicable, except that the plaintiff in the action, suit, or proceeding shall furnish to the secretary of state the address specified in the certificate of merger as required by Subdivision (7) of Subsection (b) of this section and any other address that the plaintiff elects to furnish, and the secretary of state shall notify the surviving or resulting foreign limited partnership at all addresses furnished by the plaintiff in accordance with the procedures contained in Subsection (b) of Section 9.10 of this Act.

(f) If the certificate of merger required by Subsection (b) of this section is effective, for all purposes of Texas law:

- (1) all of the rights, privileges, and powers of each partnership that has merged or consolidated, all property, real, personal and mixed, all debts due to any of those partnerships, and all other things and causes of action belonging to each of those partnerships are vested in the surviving or resulting partnership and after the merger or consolidation are the property of the surviving or resulting partnership to the extent they were of each constituent partnership;
- (2) the title to any real property vested by deed or otherwise under Texas law in any of those partnerships does not revert and is not in any way impaired because of this article;
- (3) all rights of creditors and all liens on or security interests in property of any of those partnerships is preserved unimpaired; and
- (4) all debts, liabilities, and duties of those partnerships attach to the surviving or resulting partnership, and may be enforced against it to the same extent as if the debts, liabilities, and duties had been incurred or contracted by it.

## ARTICLE 3. LIMITED PARTNERS

Sec. 3.01. ADMISSION OF LIMITED PARTNERS. (a) In connection with the formation of a limited partnership, a person acquiring a limited partnership interest becomes a limited partner on the latter of:

- (1) the date of formation of the limited partnership; or
- (2) the date stated in the records of the limited partnership as the date that the person becomes a limited partner or, if no date is stated in those records, on the date that the person's admission is first reflected in the records of the limited partnership.

(b) After the formation of a limited partnership, a person becomes a new limited partner:

(1) in the case of a person acquiring a partnership interest directly from the limited partnership, on compliance with the provisions of the partnership agreement governing admission of new limited partners or, if the partnership agreement contains no relevant admission provisions, on the written consent of all partners; and

(2) in the case of an assignee of a partnership interest, as provided by Subsection (a) of Section 7.04 of this Act.

(c) Any person may be a limited partner unless the person lacks capacity apart from this Act.

Sec. 3.02. CLASSES AND VOTING. (a) A written partnership agreement may establish classes or groups of one or more limited partners having certain expressed relative rights, powers, and duties, including voting rights, and may provide for the future creation, in the manner provided in the partnership agreement, of additional classes or groups of limited partners having certain relative rights, powers, or duties, including voting rights, expressed either in the partnership agreement or at the time of creation. The rights, powers, or duties of a class or group may be senior to those of one or more existing classes or groups of limited partners.

(b) A written partnership agreement that grants or makes provision for granting to any of its limited partners a right to vote may contain provisions relating to:

- (1) notice of the time, place, or purpose of a meeting at which a matter is to be voted on by any limited partners;
- (2) waiver of a notice;
- (3) action by consent without a meeting;
- (4) the establishment of a record date;
- (5) quorum requirements;
- (6) voting in person or by proxy; or
- (7) any other matter relating to the exercise of the right to vote.

(c) Prompt notice of the taking of an action under an agreement that requires less than unanimous written consent of the limited partners and that may be taken without a meeting shall be given to the limited partners who have not consented in writing to the taking of the action.

(d) For the purposes of this section, the taking of an action includes amending the limited partnership agreement or creating, under provisions of the partnership agreement, a class of limited partnership interests that was not previously outstanding.

Sec. 3.03. LIABILITY TO THIRD PARTIES. (a) Except as provided by Subsection (d) of this section, a limited partner is not liable for the obligations of a limited partnership unless the limited partner is also a general partner or, in addition to the exercise of the limited partner's rights and powers as a limited partner, the limited partner participates in the control of the business. However, if the limited partner does participate in the control of the business, the limited partner is liable only to persons who transact business with the limited partnership reasonably believing, based on the limited partner's conduct, that the limited partner is a general partner.

(b) For the purposes of this section, a limited partner does not participate in the control of the business by virtue of the limited partner's having or acting in one or more

of the following capacities or possessing or exercising one or more of the following powers:

(1) acting as a contractor for or an agent or employee of the limited partnership or of a general partner, an officer, director, or stockholder of a corporate general partner, or a partner of a partnership that is a general partner of the limited partnership;

(2) consulting with or advising a general partner on any matter, including the business of the limited partnership;

(3) acting as surety, guarantor, or endorser for the limited partnership, to guarantee or assume one or more specific obligations of the limited partnership, or to provide collateral for borrowings of the limited partnership;

(4) calling, requesting, attending, or participating in a meeting of the partners or the limited partners;

(5) winding up a limited partnership under Section 8.04 of this Act;

(6) taking any action required or permitted by law to bring or pursue a derivative action in the right of the limited partnership;

(7) serving on a committee of the limited partnership or the limited partners; or

(8) proposing, approving, or disapproving, by vote or otherwise, one or more of the following matters:

(A) the dissolution and winding up of the limited partnership;

(B) the sale, exchange, lease, mortgage, assignment, pledge, or other transfer of, or granting of a security interest in, an asset or assets of the limited partnership;

(C) the incurring, renewal, refinancing, or payment or other discharge of indebtedness by the limited partnership;

(D) a change in the nature of the business of the limited partnership;

(E) the admission, removal, or retention of a general partner;

(F) the admission, removal, or retention of a limited partner;

(G) a transaction or other matter involving an actual or potential conflict of interest;

(H) an amendment to the partnership agreement or certificate of limited partnership;

(I) if the limited partnership is qualified as an investment company under the federal Investment Company Act of 1940 (15 U.S.C. Section 80a-1 et seq.):

(i) electing directors or trustees of the investment company;

(ii) approving or terminating investment advisory or underwriting contracts;

(iii) approving auditors; and

(iv) acting on any other matters that the Investment Company Act of 1940 (15 U.S.C. Section 80a-1 et seq.) requires to be approved by the holders of beneficial interests in the investment company;

(J) indemnification of a general partner under Article 11 of this Act;

(K) any other matter stated in the partnership agreement; or

(L) exercising a right or power granted or permitted to limited partners under this Act and not specifically enumerated in this subsection.

(c) The enumeration in Subsection (b) of this section does not mean that having or acting in other capacities or possessing or exercising other powers by a limited partner constitutes participation by that limited partner in the control of the business of the limited partnership.

(d) A limited partner who knowingly permits that limited partner's name to be used in the name of the limited partnership, except under circumstances permitted by Subdivision (1) of Section 1.03 of this Act is liable to creditors who extend credit to the limited partnership without actual knowledge that the limited partner is not a general partner.

(e) This section does not create rights of limited partners. Those rights may be created only by the certificate, partnership agreement, or other sections of this Act.

Sec. 3.04. PERSON ERRONEOUSLY BELIEVING HIMSELF A LIMITED PARTNER. (a) Except as provided by Subsection (c) of this section, a person who erroneously but in good faith believes that the person has made a contribution to and has become a limited partner in a limited partnership is not liable as a general partner or otherwise obligated by reason of making or attempting to make the contribution, receiving distributions from the partnership, or exercising the rights of a limited partner if, within a reasonable time after ascertaining the mistake, the person:

(1) causes an appropriate certificate of limited partnership or certificate of amendment to be executed and filed;

(2) files or causes to be filed with the secretary of state in accordance with Subsection (a) of Section 2.07 of this Act a written statement entitled "Filing Pursuant to Subdivision (2) of Subsection (a) of Section 3.04, Texas Revised Limited Partnership Act" containing:

(A) the name of the partnership;

(B) the name and mailing address of the person signing the written statement;

(C) a statement that the person signing the written statement acquired a limited partnership interest in the partnership;

(D) a statement that the person signing the written statement has made an effort to cause a general partner of the partnership to file an accurate certificate of limited partnership required by this Act and that the general partner has failed or refused to do so; and

(E) a statement that the written statement is being filed pursuant to this subdivision and that the person signing the written statement is claiming status as a limited partner of the partnership named in the writing; or

(3) withdraws from participation in future profits of the enterprise by executing and filing with the secretary of state a certificate declaring the person's withdrawal under this section.

(b) A written statement filed under Subdivision (2) of Subsection (a) of this section is effective for 180 days. If a certificate described by Subdivision (1) of Subsection (a) of this section has not been filed on or before the expiration of the 180-day period, the person filing the statement has no further protection from liability under Subdivision (2) of Subsection (a) and to be protected under this section must, within 10 days after the date of expiration of the 180-day period, withdraw under Subdivision (3) of Subsection (a) of this section or bring an action under Section 2.05 of this Act to compel the execution and filing of a certificate of limited partnership or amendment. If an action is brought within the applicable period and is diligently prosecuted to conclusion, the person bringing it continues to be protected from liability under Subdivision (2) of Subsection (a) until the action is finally decided adversely to that person. This section does not protect a person from liability that arises under Section 3.03 of this Act.

(c) A person who makes a contribution in the circumstances described by Subsection (a) of this section is liable as a general partner, whether or not Subsection (a) or (b) of this section would otherwise apply, to any third party who transacts business with the partnership before the taking of an action under Subsection (a) if:

(1) the contributor knew or should have known that no certificate has been filed or that the certificate inaccurately referred to the contributor as a general partner; and

(2) the third party reasonably believed, based on the contributor's conduct, that the contributor was a general partner at the time of the transaction and extended credit to the partnership in reasonable reliance on the credit of the contributor.

(d) This section does not protect a person from liability that arises under Section 3.03 of this Act.

(e) More than one person claiming limited partnership status under this section may sign a written statement filed under Subdivision (2) of Subsection (a) of this section.

## ARTICLE 4. GENERAL PARTNERS

Sec. 4.01. ADMISSION OF ADDITIONAL GENERAL PARTNERS. (a) After the formation of a limited partnership, additional general partners may be admitted as provided in a written partnership agreement or, if a written partnership agreement does not provide for the admission of additional general partners, with the written consent of all partners.

(b) Any person may be a general partner unless the person lacks capacity apart from this Act.

Sec. 4.02. EVENTS OF WITHDRAWAL. (a) A person ceases to be a general partner of a limited partnership on the occurrence of any of the following events of withdrawal:

(1) the general partner withdraws as a general partner from the limited partnership as provided by Section 6.02 of this Act;

(2) the general partner ceases to be a general partner of the limited partnership as provided by Section 7.02 of this Act;

(3) the general partner is removed as a general partner in accordance with the partnership agreement;

(4) unless otherwise provided in a written partnership agreement, or with the written consent of all partners, the general partner:

(A) makes a general assignment for the benefit of creditors;

(B) files a voluntary bankruptcy petition;

(C) becomes the subject of an order for relief or is declared insolvent in any federal or state bankruptcy or insolvency proceeding;

(D) files a petition or answer seeking for the general partner a reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any law;

(E) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the general partner in a proceeding of the type described in Paragraphs (A) through (D) of this subdivision; or

(F) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the general partner or of all or any substantial part of the general partner's properties;

(5) unless otherwise provided in a written partnership agreement or with the written consent of all partners, 120 days expire after the date of the commencement of a proceeding against the general partner seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any law if the proceeding has not been previously dismissed, or 90 days expire after the date of the appointment, without the general partner's consent or acquiescence, of a trustee, receiver, or liquidator of the general partner or of all or any substantial part of the general partner's properties if the appointment has not previously been vacated or stayed, or 90 days expire after the date of expiration of a stay, if the appointment has not previously been vacated;

(6) in the case of a general partner who is a natural person:

(A) the general partner's death; or

(B) the entry by a court of competent jurisdiction adjudicating the general partner mentally incompetent to manage the general partner's person or property;

(7) unless otherwise provided in a written partnership agreement or with the written consent of all partners in the case of a general partner that is a trust, the commencement of winding up activities intended to conclude in the termination of the trust, but not merely the substitution of a new trustee;

(8) unless otherwise provided in a written partnership agreement or with the written consent of all partners in the case of a general partner that is a separate partnership, the dissolution and commencement of winding up of the separate partnership;

(9) unless otherwise provided in a written partnership agreement or with the written consent of all partners in the case of a general partner that is a corporation, the filing of a

certificate of dissolution or its equivalent for the corporation or the revocation of its charter and the expiration of 90 days after the date of notice to the corporation of revocation without a reinstatement of its charter; or

(10) in the case of a general partner that is an estate, the distribution by the fiduciary of the estate's entire interest in the limited partnership.

(b) A general partner who suffers an event that with the passage of the specified period becomes an event of withdrawal under Subdivision (4) or (5) of Subsection (a) of this section shall notify the other partners of the event within 30 days after the date of occurrence of the event of withdrawal.

Sec. 4.03. GENERAL POWERS AND LIABILITIES. (a) Except as provided by this Act or a partnership agreement, a general partner of a limited partnership has the rights and powers and is subject to the restrictions of a partner in a partnership without limited partners.

(b) Except as provided by this Act, a general partner of a limited partnership has the liabilities of a partner in a partnership without limited partners to persons other than the partnership and the other partners. Except as provided by this Act or in the partnership agreement, a general partner of a limited partnership has the liabilities of a partner in a partnership without limited partners to the partnership and to the other partners.

Sec. 4.04. CONTRIBUTIONS BY AND DISTRIBUTIONS TO A GENERAL PARTNER. A general partner of a limited partnership may make contributions to, be allocated profits and losses of, and receive distributions from the limited partnership as a general partner, a limited partner, or both. A person who is both a general partner and a limited partner has the rights and powers and is subject to the restrictions and liabilities, of a general partner and, except as otherwise provided by the partnership agreement or this Act, has the rights and powers, and is subject to the restrictions and liabilities, if any, of a limited partner to the extent of the general partner's participation in the partnership as a limited partner.

Sec. 4.05. CLASSES AND VOTING. (a) A written partnership agreement may establish classes or groups of one or more general partners having certain expressed relative rights, powers, and duties, including voting rights, and may provide for the future creation of additional classes or groups of general partners having certain relative rights, powers, and duties, including voting rights, expressed in the partnership agreement or at the time of creation of the class or group. The rights, powers, or duties may be senior to those of one or more existing classes or groups of general partners.

(b) A written partnership agreement that grants or makes provision for granting to any of its general partners a right to vote may contain provisions relating to giving notice of the time, place, or purpose of a meeting at which a matter is to be voted on by any general partners, waiver of notice, action by consent without a meeting, the establishment of a record date, quorum requirements, voting in person or by proxy, or any other matter relating to the exercise of the right to vote.

#### ARTICLE 5. FINANCE

Sec. 5.01. FORM OF CONTRIBUTION. The contribution of a limited partner may be in cash, property, or services rendered, or a promissory note or other obligation to pay cash or transfer property to the limited partnership.

Sec. 5.02. LIABILITY FOR CONTRIBUTION OBLIGATIONS. (a) A promise by a limited partner to make a contribution to, or otherwise pay cash or transfer property to, a limited partnership is not enforceable unless set out in writing and signed by the limited partner.

(b) Except as otherwise provided by the partnership agreement, a partner or the partner's legal representative or successor is obligated to the limited partnership to perform an enforceable promise to make a contribution to or otherwise pay cash or transfer property to a limited partnership, notwithstanding the partner's death, disability, or other change in circumstances. If a partner or a partner's legal representative or successor does not make a contribution or other payment of cash or transfer of property required by the enforceable promise, whether as a contribution or with respect to a



contribution previously made, that partner or the partner's legal representative or successor is obligated, at the option of the limited partnership, to pay to the partnership an amount of cash equal to that portion of the agreed value, as stated in the partnership agreement or in the partnership records required to be kept under Section 1.07 of this Act, of the contribution represented by the amount of cash that has not been paid or the value of the property that has not been transferred.

(c) A partnership agreement may provide that the partnership interest of a partner who fails to make a payment of cash or transfer of property to the partnership, whether as a contribution or with respect to a contribution previously made, required by an enforceable promise is subject to specified consequences. A consequence may take the form of a reduction of the defaulting partner's percentage or other interest in the limited partnership, subordination of the partner's partnership interest to that of nondefaulting partners, a forced sale of the partner's partnership interest, forfeiture of the partner's partnership interest, the lending of money to the defaulting partner by other partners of the amount necessary to meet the defaulting partner's commitment, a determination of the value of the defaulting partner's partnership interest by appraisal or by formula and redemption or sale of the partnership interest at that value, or other penalty or consequence.

(d) Unless otherwise provided by the partnership agreement, the obligation of a partner or a partner's legal representative or successor to make a contribution or otherwise pay cash or transfer property or to return cash or property paid or distributed to the partner in violation of this Act or the partnership agreement may be compromised or released only by consent of all of the partners. Notwithstanding the compromise or release, a creditor of a limited partnership who extends credit or otherwise acts in reasonable reliance on that obligation, after the partner signs a writing that reflects the obligation and before the writing is amended or canceled to reflect the compromise or release, may enforce the original obligation. A general partner, however, remains liable to persons other than the partnership and the other partners, as provided by Subsection (b) of Section 4.03 of this Act, notwithstanding the compromise or release.

Sec. 5.03. ALLOCATION OF PROFITS AND LOSSES. The profits and losses of a limited partnership shall be allocated among the partners in the manner provided by a written partnership agreement. If a written partnership agreement does not otherwise provide, the profits and losses shall be allocated in accordance with the then current percentage or other interest in the partnership stated in partnership records of the kind described in Subsection (a) of Section 1.07 of this Act. If the allocation of profits and losses is not provided by a written partnership agreement or in partnership records of the kind described in Subsection (a) of Section 1.07, profits and losses shall be allocated in proportion to capital accounts.

Sec. 5.04. SHARING OF DISTRIBUTIONS. Distributions of cash or other assets of a limited partnership shall be made to the partners in the manner provided by a written partnership agreement. If a written partnership agreement does not otherwise provide, distributions that are a return of capital shall be made on the basis of the agreed value, as stated in the partnership records required to be kept under Subsection (a) of Section 1.07 of this Act, of the contributions made by each partner to the extent that the contributions have not been returned, and distributions that are not a return of capital shall be made in proportion to the allocation of profits as determined under Section 5.03 of this Act.

## ARTICLE 6. DISTRIBUTIONS AND WITHDRAWALS

Sec. 6.01. INTERIM DISTRIBUTIONS. Except as otherwise provided by this article, a partner is entitled to receive distributions from a limited partnership before the partner's withdrawal from the limited partnership and before the winding up of the partnership to the extent and at the times or on the occurrence of the events specified in the partnership agreement.

Sec. 6.02. WITHDRAWAL OF GENERAL PARTNER. (a) A general partner may withdraw at any time from a limited partnership and cease to be a general partner under the provisions of Subsection (a) of Section 4.02 of this Act, by giving written notice to the other partners. If the general partner's withdrawal violates the partnership agreement,

the partnership may recover damages from the withdrawing general partner, including the reasonable cost of obtaining replacement of the services the withdrawn partner was obligated to perform, for breach of the partnership agreement. The partnership may, in addition to pursuing any remedies otherwise available under applicable law, effect that recovery by offsetting those damages against the amount otherwise distributable to the withdrawing general partner, reducing the limited partner interest into which the withdrawing general partner's interest may be converted under Subdivision (1) of Subsection (b) of this section, or both. Unless otherwise provided by the partnership agreement, in the case of a partnership for a definite term or particular undertaking, a withdrawal by a general partner before the expiration of that term or completion of that undertaking is a breach of the partnership agreement.

(b) Unless otherwise provided by a written partnership agreement and subject to the liability created under Subsection (a) of this section, a general partner who ceases to be a general partner under Section 4.02 of this Act shall, at the option of the remaining general partner or partners or, if there are no remaining general partners, at the option of a majority in interest of the limited partners in a vote that excludes any limited partnership interest held by the withdrawing general partner:

(1) convert the interest in that general partner's capital account, profits, losses, and distributions to that of a limited partner; or

(2) pay to the withdrawn general partner in cash, or secure by bond approved by a court of competent jurisdiction, the value of that partner's partnership interest less the damages caused if the withdrawal constituted a breach of the partnership agreement.

(c) If the partners act under Subdivision (1) of Subsection (b) of this section, the limited partnership interest may be reduced pro rata with all other partners to provide compensation or an interest in the partnership, or both, to a replacement general partner, and after the filing of an amendment to the certificate under Section 2.02 of this Act reflecting the general partner's withdrawal as a general partner, the withdrawing general partner is entitled to vote as a limited partner in all matters, to the same extent as the members of the class of limited partners having the least voting rights with respect to the matter on which the vote is taken, but may not vote on the admission and compensation of any general partner replacing the withdrawing general partner. If the general partner's withdrawal violates the partnership agreement, the general partner has no voting rights.

(d) Unless otherwise provided by a written partnership agreement and subject to the liability created under Subsection (a) of this section, a general partner who ceases to be a general partner under Section 4.02 of this Act is not personally liable as a general partner for any partnership debt incurred after that partner ceases to be a general partner unless the applicable creditor at the time the partnership debt is incurred reasonably believed that the partner remained a general partner. A creditor of the partnership has a reasonable basis for believing that a partner remains a general partner if:

(1) the creditor was a creditor of the partnership at the time of the general partner's withdrawal or had extended credit to the partnership within two years before the withdrawal and had no knowledge or notice of the general partner's withdrawal; or

(2) the creditor had known that the general partner was a general partner in the partnership before withdrawal and had no knowledge or notice of the withdrawal, and the fact of withdrawal had not been advertised in a newspaper of general circulation in each place at which the partnership business was regularly conducted.

(e) If there are no remaining general partners following the withdrawal of a general partner, the partnership may be reconstituted under Section 8.03 of this Act.

Sec. 6.03. **WITHDRAWAL OF LIMITED PARTNER.** A limited partner may withdraw from a limited partnership at the time or on the occurrence of events specified in a written partnership agreement and in accordance with that written partnership agreement. If the partnership agreement does not specify such a time or event or a definite time for the dissolution and winding up of the limited partnership, a limited partner may withdraw on giving written notice not less than six months before the date of withdrawal to each general partner at that general partner's address as set forth in the certificate of limited partnership.

Sec. 6.04. **DISTRIBUTION ON WITHDRAWAL.** Except as otherwise provided by this article or the partnership agreement, on withdrawal any withdrawing limited partner is entitled to receive, within a reasonable time after withdrawal, the fair value of that limited partner's interest in the limited partnership as of the date of withdrawal.

Sec. 6.05. **DISTRIBUTION IN KIND.** Except as provided by the partnership agreement, a partner, regardless of the nature of the partner's contribution, may not demand or receive a distribution from a limited partnership in any form other than cash. Except as otherwise provided by the partnership agreement, a partner may not be compelled to accept a disproportionate distribution of an asset in kind from a limited partnership to the extent that the percentage portion of any assets distributed to the partner exceeds the percentage of those assets that equals the percentage in which the partner shares in distributions from the limited partnership.

Sec. 6.06. **RIGHT TO DISTRIBUTION.** Subject to Sections 6.07 and 8.05 of this Act, at the time that a partner becomes entitled to receive a distribution, with respect to the distribution, that partner has the status of and is entitled to all remedies available to a creditor of the limited partnership.

Sec. 6.07. **LIMITATION ON DISTRIBUTION.** (a) A limited partnership may not make a distribution to its partners to the extent that, immediately after giving effect to the distribution and despite any compromise of a claim referred to in Subsection (d) of Section 5.02 of this Act, all liabilities of the limited partnership, other than liabilities to partners with respect to their partnership interests and liabilities for which the recourse of creditors is limited to specified property of the limited partnership, exceed the fair value of the partnership assets, except that the fair value of property that is subject to a liability for which recourse of creditors is limited shall be included in the partnership assets only to the extent that the fair value of that property exceeds that liability.

(b) A limited partner who receives a distribution that is not permitted under Subsection (a) of this section has no liability under this Act to return the distribution unless the limited partner knew that the distribution violated the prohibition of Subsection (a). This subsection does not affect any obligation of the limited partner under the partnership agreement or other applicable law to return the distribution.

#### ARTICLE 7. ASSIGNMENT OF PARTNERSHIP INTERESTS

Sec. 7.01. **NATURE OF PARTNERSHIP INTEREST.** A partnership interest is personal property. A partner has no interest in specific limited partnership property.

Sec. 7.02. **ASSIGNMENT OF PARTNERSHIP INTEREST.** (a) Unless otherwise provided by the partnership agreement:

- (1) a partnership interest is assignable in whole or in part;
- (2) an assignment of a partnership interest does not dissolve a limited partnership or entitle the assignee to become, or to exercise rights or powers of, a partner;
- (3) an assignment entitles the assignee to be allocated income, gain, loss, deduction, credit, or similar items, and to receive distributions, to which the assignor was entitled, to the extent those items are assigned; and
- (4) until the assignee becomes a partner, the assignor partner continues to be a partner and to have the power to exercise any rights or powers of a partner, except to the extent those rights or powers are assigned; however, on the assignment by a general partner of all of the general partner's rights as a general partner, the general partner's status as a general partner may be terminated by the affirmative vote of a majority in interest of the limited partners.

(b) Until an assignee of the partnership interest in a limited partnership becomes a partner, the assignee has no liability as a partner solely as a result of the assignment.

(c) A written partnership agreement may provide that a partner's partnership interest may be evidenced by a certificate of partnership interest issued by the limited partnership, may provide for the assignment or transfer of partnership interest represented by a certificate, and may make other provisions with respect to the certificate.

Sec. 7.03. RIGHTS OF JUDGMENT CREDITOR. (a) On application to a court of competent jurisdiction by a judgment creditor of a partner or of any other owner of a partnership interest, the court may charge the partnership interest of the partner or other owner with payment of the unsatisfied amount of the judgment, with interest, may then or later appoint a receiver of the debtor partner's share of the partnership's profits and of any other money payable or that becomes payable to the debtor partner with respect to the partnership, and may make all other orders, directions, and inquiries that the circumstances of the case require. To the extent that the partnership interest is charged in this manner, the judgment creditor has only the rights of an assignee of the partnership interest.

(b) The partnership interest charged may be redeemed at any time before foreclosure or, in case of a sale directed by the court, may be purchased without a dissolution being caused:

- (1) with separate property of any general partner, by any one or more of the general partners; or
- (2) with respect to partnership property, by any one or more of the general partners whose interests are not charged, on the consent of all general partners whose interests are not charged and a majority in interest of the limited partners, excluding limited partnership interests held by any general partner whose interest is charged.

(c) The remedies provided by Subsection (a) of this section are exclusive of others that may exist, including remedies under laws of this state applicable to partnerships without limited partners.

(d) This section does not deprive any partner of the benefit of any exemption laws applicable to that partner's partnership interest.

Sec. 7.04. RIGHT OF ASSIGNEE TO BECOME LIMITED PARTNER. (a) An assignee of a partnership interest, including an assignee of the partnership interest of a general partner, may become a limited partner if and to the extent that:

- (1) the partnership agreement provides; or
- (2) all partners consent.

(b) An assignee who becomes a limited partner has, to the extent assigned, the rights and powers and is subject to the restrictions and liabilities of a limited partner under a partnership agreement and this Act. Unless otherwise provided by a written partnership agreement, an assignee who becomes a limited partner also is liable for the obligations of the assignor to make contributions as provided by Section 5.02 of this Act, but is not obligated for liabilities unknown to the assignee at the time the assignee became a limited partner and which could not be ascertained from a written partnership agreement.

(c) Whether or not an assignee of a partnership interest becomes a limited partner, the assignor is not released from the assignor's liability to the limited partnership under Articles 5 and 6 of this Act.

Sec. 7.05. POWERS OF ESTATE OF DECEASED OR INCOMPETENT LIMITED PARTNER. If a limited partner who is an individual dies or a court of competent jurisdiction adjudges the limited partner to be incompetent to manage that limited partner's person or property, the limited partner's executor, administrator, guardian, conservator, or other legal representative may exercise all of the limited partner's rights and powers to settle the limited partner's estate or administer the limited partner's property, including the power under the partnership agreement of an assignee to become a limited partner.

## ARTICLE 8. DISSOLUTION

Sec. 8.01. DISSOLUTION. A limited partnership is dissolved on the first of the following to occur:

- (1) on the occurrence of events specified in the partnership agreement to cause dissolution;
- (2) written consent of all partners to dissolution;

- (3) an event of withdrawal of a general partner; or
- (4) entry of a decree of judicial dissolution under Section 8.02 of this Act.

Sec. 8.02. JUDICIAL DISSOLUTION. On application by or for a partner, a court of competent jurisdiction may decree dissolution of a limited partnership if it is not reasonably practicable to carry on the business of the limited partnership in conformity with the partnership agreement.

Sec. 8.03. CONTINUATION OF BUSINESS AND RECONSTITUTION OF PARTNERSHIP. On the dissolution of a limited partnership as provided by Subdivision (1) or (3) of Section 8.01 of this Act, the partnership may be reconstituted and its business continued without being wound up if:

- (1) there remains at least one general partner and the partnership agreement permits the business of the limited partnership to be carried on by the remaining general partner or general partners, and that general partner or those general partners do so; or
- (2) within 90 days after the occurrence of the event of dissolution, if dissolution is under Subdivision (1) of Section 8.01 of this Act, or the date of the withdrawal of the general partner, if dissolution is under Subdivision (3) of Section 8.01 of this Act, all remaining partners agree in writing to continue the business of the limited partnership and, to the extent that they desire or if there are no remaining general partners, agree to the appointment, effective as of the date of withdrawal, of one or more new general partners.

Sec. 8.04. WINDING UP. (a) On the dissolution of a limited partnership, unless it is reconstituted in accordance with Section 8.03 of this Act, the partnership's affairs shall be wound up as soon as reasonably practicable. The winding up shall be accomplished by the general partners who have not wrongfully dissolved a limited partnership or, if there are none who have not wrongfully dissolved the partnership, by the limited partners or a person chosen by the limited partners. In addition, a court of competent jurisdiction, on cause shown, may wind up the limited partnership's affairs on application of any partner or the partner's legal representative or assignee and, in connection with the winding up, may appoint a person to carry out the liquidation and may make all other orders, directions, and inquiries that the circumstances require.

(b) On the dissolution of a limited partnership and until the filing of a certificate of cancellation as provided by Section 2.03 of this Act, unless a written partnership agreement provides otherwise, the persons winding up the limited partnership's affairs may, in the name of and for and on behalf of the limited partnership:

- (1) prosecute and defend civil, criminal, or administrative suits;
- (2) settle and close the limited partnership's business;
- (3) dispose of and convey the limited partnership's property for cash, unless a written partnership agreement permits a transfer on noncash terms;
- (4) discharge the limited partnership's liabilities; and
- (5) distribute to the partners any remaining assets of the limited partnership.

(c) The acts described in Subsection (b) of this section do not create liability of limited partners that did not exist before the actions to wind up the affairs of the partnership were taken.

Sec. 8.05. DISPOSITION OF ASSETS. On the winding up of a limited partnership, its assets shall be paid or transferred as follows:

- (1) to the extent otherwise permitted by law, to creditors, including partners who are creditors other than solely as a result of the application of Section 6.06 of this Act, in satisfaction of liabilities of the limited partnership, whether by payment or by establishment of reserves;
- (2) unless otherwise provided by the partnership agreement, to partners and former partners in satisfaction of the partnership's liability for distributions under Section 6.01 of this Act or payments under Section 6.04 of this Act; and

(3) unless otherwise provided by the partnership agreement, to partners first for the return of their capital and second with respect to their partnership interests, in the proportions provided by Section 5.04 of this Act.

#### ARTICLE 9. FOREIGN LIMITED PARTNERSHIPS

Sec. 9.01. LAW GOVERNING. (a) The laws of the state under which a foreign limited partnership is formed govern its organization and internal affairs and the liability of its partners.

(b) A foreign limited partnership may not be denied registration by reason of any difference between the laws of the state under which it is formed and the laws of Texas.

(c) With respect to its activities in Texas, a foreign limited partnership is subject to Section 1.09 of this Act as if it were a domestic limited partnership.

Sec. 9.02. REGISTRATION REQUIRED; APPLICATION. (a) Before transacting business in Texas, a foreign limited partnership must register by delivering to the secretary of state the filing fee and one original application for registration as a foreign limited partnership executed by a general partner and a duplicate copy, which need not be an executed original or a photocopy of an executed original. The application must state:

(1) the name of the foreign limited partnership and, if different, the name under which it proposes to register and transact business in Texas;

(2) the state where it is formed, the date of its formation, and a statement from a general partner that, as of the date of filing, the foreign limited partnership validly exists as a limited partnership under the laws of the state of its formation;

(3) the nature of the business or purposes to be conducted or promoted in Texas;

(4) the address of the registered office and the name and address of the registered agent for service of process required to be maintained by Section 1.06 of this Act;

(5) that the secretary of state is appointed the agent of the foreign limited partnership for service of process under the circumstances set forth in Subsection (b) of Section 9.10 of this Act;

(6) the name, the mailing address, and the street address of the business or residence of each general partner; and

(7) the date on which the foreign limited partnership first transacted, or intends to transact, business in Texas.

(b) Without excluding other activities that do not constitute transacting business in Texas, a foreign limited partnership is not considered to be transacting business in Texas for purposes of this Act because it carries on in Texas any one or more of the following activities:

(1) maintaining or defending any action, suit, or administrative or arbitration proceeding, effecting the settlement of the action, suit, or proceeding, or settling claims or disputes to which it is a party;

(2) holding meetings of its partners or carrying on other activities concerning its internal affairs;

(3) maintaining bank accounts;

(4) maintaining offices or agencies for the transfer, exchange, and registration of partnership interests issued by it, or appointing or maintaining trustees or depositories with relation to ownership interests in it;

(5) effecting sales through independent contractors;

(6) creating as borrower or lender or acquiring indebtedness or mortgages or other security interests in real or personal property;

(7) securing or collecting debts due to it or enforcing rights in property securing those debts;

(8) transacting any business in interstate commerce;

(9) conducting an isolated transaction completed within 30 days of the date of initiation of the transaction and not in the course of a number of repeated similar transactions;

(10) exercising the powers of executor or administrator of the estate of a nonresident decedent under ancillary letters issued by a Texas court, or exercising the powers of the trustee under the will of a nonresident decedent, or under a trust created by one or more nonresidents of Texas or by one or more foreign corporations or limited partnerships, if the exercise of those powers in any of these cases will not involve activities that would be considered to constitute the transacting of business in Texas in the case of a foreign corporation or foreign limited partnership acting in its own right;

(11) acquiring, in transactions outside Texas or in interstate commerce, debts secured by mortgages or liens on real or personal property in Texas, collecting or adjusting principal and interest payments on those debts, enforcing or adjusting rights in property securing those debts, taking any actions necessary to preserve and protect the interest of the mortgagee in that security, or a combination of these transactions; or

(12) investing in or acquiring, in transactions outside Texas, royalties and other nonoperating mineral interests, and the execution of division orders, contracts of sale, and other instruments incidental to the ownership of nonoperating mineral interests.

Sec. 9.03. ISSUANCE OF REGISTRATION. (a) If the secretary of state finds that an application for registration conforms to law and all requisite fees have been paid, the secretary of state shall accept the application in accordance with Subsection (a) of Section 2.07 of this Act.

(b) Unless the partnership conducts business under another name, filing the application with the secretary of state makes it unnecessary to file any other documents under the Assumed Business or Professional Name Act (Chapter 36, Business & Commerce Code).

Sec. 9.04. REGISTERED OFFICE; REGISTERED AGENT. Each foreign limited partnership is subject to Section 1.06 of this Act.

Sec. 9.05. AMENDMENTS TO APPLICATION. If any statement in the application for registration of a foreign limited partnership was false when made or if any arrangements or other facts described in the application have changed, making the application false in any respect, the foreign limited partnership shall promptly pay the filing fee and file with the secretary of state a certificate executed by a general partner correcting the false statement.

Sec. 9.06. CANCELLATION OF REGISTRATION. A foreign limited partnership may cancel its registration by paying the application fee and filing with the secretary of state a certificate of cancellation executed by a general partner, conforming to the requirements of Section 2.03 of this Act as if it were a domestic limited partnership. A cancellation does not terminate the authority of the secretary of state to accept service of process on the foreign limited partnership with respect to causes of action arising out of the transaction of business in Texas.

Sec. 9.07. TRANSACTING BUSINESS WITHOUT REGISTRATION. (a) A foreign limited partnership transacting business in Texas may not maintain an action, suit, or proceeding in Texas until it has registered in Texas and paid to the secretary of state all amounts owing under Subsection (d) of this section.

(b) The failure of a foreign limited partnership to register in Texas does not impair:

(1) the validity of any contract or act of the foreign limited partnership;

(2) the right of any other party to the contract to maintain any action, suit, or proceeding on the contract; or

(3) defense by the foreign limited partnership of any action, suit, or proceeding in any Texas court.

(c) A limited partner of a foreign limited partnership is not liable as a general partner of the foreign limited partnership solely because the limited partnership transacted business in Texas without registration.

(d) A foreign limited partnership transacting business in Texas without first having registered shall pay to the secretary of state an amount equal to the fee for registration that would have been imposed on the foreign limited partnership had it registered as required by Section 9.02 of this Act, plus \$750 for each year or part of a year during which it transacted business in Texas without having registered.

Sec. 9.08. FOREIGN LIMITED PARTNERSHIPS DOING BUSINESS WITHOUT VALID REGISTRATION; INJUNCTIONS. A court of competent jurisdiction may enjoin a foreign limited partnership or an agent of a foreign limited partnership from transacting any business in Texas if the foreign limited partnership has failed to register under this article or if the foreign limited partnership has secured a certification of the secretary of state under Section 9.03 of this Act on the basis of false or misleading representations. The attorney general may proceed for this purpose by complaint in any county in which the unregistered foreign limited partnership is transacting or has transacted business.

Sec. 9.09. EXECUTION; LIABILITY. Subsection (c) of Section 2.04 and Section 2.07 of this Act are applicable to foreign limited partnerships as if they were domestic limited partnerships.

Sec. 9.10. SERVICE OF PROCESS ON FOREIGN LIMITED PARTNERSHIPS. (a) Each general partner and the registered agent of a foreign limited partnership registered in Texas are agents of the foreign limited partnership on whom may be served any process, notice, or demand required or permitted by law to be served on the foreign limited partnership.

(b) If a foreign limited partnership registered in Texas fails to appoint or maintain a registered agent in Texas, if its registered agent cannot with reasonable diligence be found at the registered office, if its registration is canceled, or if a foreign limited partnership transacts business in Texas without having registered under Section 9.02 of this Act, the secretary of state is an agent of the foreign limited partnership on whom any process, notice, or demand may be served. Service on the secretary of state of any process, notice, or demand shall be made by delivering to the secretary of state, assistant secretary of state, or any clerk having charge of the corporation department of the secretary of state's office duplicate copies of the process, notice, or demand. If any process, notice, or demand is served on the secretary of state, the secretary of state shall immediately forward one of the copies by registered mail addressed to the foreign limited partnership at its principal office in the state under which the foreign limited partnership is formed as shown on the registration application. Service had in this manner on the secretary of state is returnable in not less than 30 days.

(c) The secretary of state shall keep a record of all processes, notices, and demands served on the secretary of state under this section and shall record the time of the service and the action taken with reference to each.

(d) This section does not limit or affect the right to serve any process, notice, or demand required or permitted by law to be served on a foreign limited partnership in another manner permitted by law.

#### ARTICLE 10. DERIVATIVE ACTIONS

Sec. 10.01. RIGHT TO BRING ACTION. A limited partner may bring an action in a court of competent jurisdiction in the right of the limited partnership to recover a judgment in the limited partnership's favor if all general partners with authority to do so have refused to bring the action or if an effort to cause those general partners to bring the action is not likely to succeed.

Sec. 10.02. PROPER PLAINTIFF. In a derivative action, the plaintiff must be a limited partner at the time of bringing the action and:

(1) must have been a limited partner at the time of the transaction that is the subject of the action; or

(2) must have had status as a limited partner arise by operation of law or under the terms of the partnership agreement from a person who was a limited partner at the time of the transaction.



Sec. 10.03. PLEADING. In a derivative action, the complaint shall set forth with particularity the effort, if any, of the plaintiff to secure initiation of the action by a general partner or the reasons for not making the effort.

Sec. 10.04. SECURITY FOR EXPENSES OF DEFENDANTS. In a derivative action, the court having jurisdiction may, in its discretion, require the plaintiff or plaintiffs to give security for the reasonable expenses, including reasonable attorney's fees, incurred or expected to be incurred by one or more of the defendants in defense of the action. The court may, in its discretion at any time, increase or decrease the amount of the security on a showing that the security provided is inadequate or excessive. If the plaintiff is unable to give security, the plaintiff may file an affidavit in accordance with the Texas Rules of Civil Procedure, and those rules control. If the plaintiff fails to give the security within a reasonable time set by the court, the court, except as provided by the immediately preceding sentence, shall dismiss the suit without prejudice. The court may, on final judgment for one or more defendants and a finding that the suit was brought without reasonable cause against those defendants, require the plaintiff to pay reasonable expenses, including reasonable attorney's fees, to those defendants, whether or not security has been required.

Sec. 10.05. EXPENSES OF PLAINTIFF. If a derivative action is successful, in whole or part, or if anything is received by the plaintiff as a result of a judgment, compromise, or settlement of the action or claim constituting a portion of the action, the court may award the plaintiff reasonable expenses, including reasonable attorney's fees, and shall direct the plaintiff to remit to the parties identified by the court the remainder of the proceeds received by the plaintiff.

#### ARTICLE 11. INDEMNIFICATION

Sec. 11.01. DEFINITIONS. In this article:

(1) "Limited partnership" includes a domestic or foreign predecessor entity of the limited partnership in a merger, consolidation, or other transaction in which the liabilities of the predecessor are transferred to the limited partnership by operation of law and in any other transaction in which the limited partnership assumes the liabilities of the predecessor but does not specifically exclude liabilities that are governed by this article.

(2) "Enterprise" means a foreign or domestic limited partnership, corporation, general partnership, joint venture, sole proprietorship, trust, employee benefit plan, or similar entity.

(3) "Expenses" includes court costs and attorney's fees.

(4) "General partner" includes:

(A) any person who, while a general partner of a limited partnership, is or was serving at the request of the limited partnership as a representative of an enterprise; and

(B) a representative of an enterprise that is a general partner of the limited partnership.

(5) "Official capacity" means:

(A) if used with respect to a general partner, the exercise of authority by or on behalf of a general partner under this Act or the partnership agreement, other than service for another enterprise; and

(B) if used with respect to a limited partner, employee, or agent, the relationship undertaken by the limited partner, employee, or agent on behalf of the limited partnership, other than service for another enterprise.

(6) "Limited partner" does not include a limited partner who is also a general partner of the limited partnership.

(7) "Proceeding" means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, arbitral, or investigative, any appeal in such an action, suit, or proceeding, and any inquiry or investigation that could lead to such an action, suit, or proceeding.

(8) "Representative" means a person serving as a partner, director, officer, venturer, proprietor, trustee, employee, or agent of an enterprise or serving a similar function for an enterprise.

Sec. 11.02. GENERAL POWER AND STANDARD FOR INDEMNIFICATION. If provided in a written partnership agreement, a limited partnership may indemnify a person who was, is, or is threatened to be made a named defendant or respondent in a proceeding because the person is or was a general partner only if it is determined in accordance with Section 11.06 of this Act that the person:

- (1) acted in good faith;
- (2) reasonably believed:

(A) in the case of conduct in the person's official capacity as a general partner of the limited partnership, that the person's conduct was in the limited partnership's best interests; and

(B) in all other cases, that the person's conduct was at least not opposed to the limited partnership's best interests; and

(3) in the case of a criminal proceeding, had no reasonable cause to believe that the person's conduct was unlawful.

Sec. 11.03. LIMITATIONS ON GENERAL POWER OF INDEMNIFICATION. Except to the extent permitted by Section 11.05 of this Act, a general partner may not be indemnified under Section 11.02 of this Act with respect to a proceeding in which:

(1) the person is found liable on the basis that the person improperly received personal benefit, whether or not the benefit resulted from an action taken in the person's official capacity; or

(2) the person is found liable to the limited partnership or the limited partners.

Sec. 11.04. EFFECT OF SETTLEMENT OR OTHER TERMINATION OF PROCEEDING. The termination of a proceeding by judgment, order, settlement, conviction, or on a plea of nolo contendere or its equivalent does not alone determine that the person did not meet the requirements provided by Section 11.02 of this Act. A person is considered to have been found liable in relation to any claim, issue, or matter only if the person has been adjudged liable by a court of competent jurisdiction and all appeals have been exhausted.

Sec. 11.05. LIABILITIES FOR WHICH INDEMNIFICATION ALLOWED UNDER GENERAL POWER. A general partner may be indemnified under Section 11.02 of this Act against judgments, penalties, including excise and similar taxes, fines, settlements, and reasonable expenses actually incurred by the person in connection with the proceeding, except that if the person is found liable to the limited partnership or the limited partners or is found liable on the basis that the person improperly received personal benefit, the indemnification:

(1) is limited to reasonable expenses actually incurred by the person in connection with the proceeding; and

(2) shall not be made in relation to a proceeding in which the person has been found liable for wilful or intentional misconduct in the performance of the person's duty to the limited partnership or the limited partners.

Sec. 11.06. DETERMINATION THAT STANDARD HAS BEEN MET. A determination that indemnification is permissible under Section 11.02 of this Act must be made:

(1) by a majority vote of a quorum consisting of general partners who at the time of the vote are not named defendants or respondents in the proceeding;

(2) by special legal counsel selected by the general partners by vote as provided by Subdivision (1) of this section or, if such a quorum cannot be obtained, by a majority vote of all general partners; or

(3) by a majority in interest of the limited partners.

Sec. 11.07. AUTHORIZATION OF PAYMENT AND DETERMINATION OF REASONABLENESS OF AMOUNT. Authorization of indemnification and determination of reasonableness of expenses must be made in the same manner as the determination that

indemnification is permissible, except that if the determination that indemnification is permissible is made by special legal counsel, authorization of indemnification and determination of reasonableness of expenses must be made in the manner specified by Subdivision (2) of Section 11.06 of this Act governing the selection of special legal counsel. A provision contained in a written partnership agreement, a resolution of a majority in interest of the limited partners, or an agreement that makes mandatory the indemnification permitted under Section 11.02 of this Act constitutes authorization of indemnification in the manner required by this section even though the provision may not have been adopted or authorized in the same manner as the determination that indemnification is permissible.

**Sec. 11.08. MANDATORY INDEMNIFICATION OF SUCCESSFUL GENERAL PARTNER.** A limited partnership shall indemnify a general partner against reasonable expenses incurred by the general partner in connection with a proceeding in which the general partner is a named defendant or respondent because the general partner is or was a general partner if the general partner has been wholly successful, on the merits or otherwise, in the defense of the proceeding.

**Sec. 11.09. EXPENSES OF SUIT FOR MANDATORY INDEMNIFICATION.** If, in a suit for the indemnification required by Section 11.08 of this Act, a court of competent jurisdiction determines that the general partner is entitled to indemnification under that section, the court shall order indemnification and shall award to the general partner the expenses incurred in securing the indemnification.

**Sec. 11.10. COURT AUTHORIZATION OF INDEMNIFICATION WHEN NOT OTHERWISE AUTHORIZED.** If, on application of a general partner, a court of competent jurisdiction determines, after giving notice that the court considers necessary, that the general partner is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether the general partner has met the requirements set forth in Section 11.02 of this Act or has been adjudged liable in the circumstances described by Section 11.03 of this Act, the court may order the indemnification that the court determines is proper and equitable. The court shall limit indemnification to reasonable expenses if the proceeding is brought by or on behalf of the limited partnership or if the general partner is found liable on the basis that personal benefit was improperly received by the general partner, whether or not the benefit resulted from an action taken in the general partner's official capacity.

**Sec. 11.11. ADVANCE PAYMENT OF EXPENSES.** The limited partnership may pay or reimburse, in advance of the final disposition of the proceeding, reasonable expenses incurred by a general partner who was, is, or is threatened to be made a named defendant or respondent in a proceeding after:

(1) the limited partnership receives a written affirmation by the general partner of the general partner's good faith belief that the general partner has met the standard of conduct necessary for indemnification under this article, and a written undertaking by or on behalf of the general partner to repay the amount paid or reimbursed if it is ultimately determined that the general partner has not met those requirements; and

(2) a determination, made in the manner provided by Section 11.06 of this Act for determining that indemnification is permissible, that the facts then known to those making the determination would not preclude indemnification under this article.

**Sec. 11.12. TYPE OF UNDERTAKING REQUIRED FOR ADVANCE PAYMENT OF EXPENSES.** The written undertaking required by Section 11.11 of this Act must be an unlimited general obligation of the general partner, but need not be secured and may be accepted without reference to financial ability to make repayment. Determinations and authorizations of payments under Section 11.11 must be made in the manner specified by Section 11.06 of this Act for determining that indemnification is permissible.

**Sec. 11.13. LIMITS ON CONTRACTUAL INDEMNIFICATION.** A provision for a limited partnership to indemnify or to advance expenses to a general partner who was, is, or is threatened to be made a named defendant or respondent in a proceeding, whether contained in the limited partnership agreement, a resolution of limited partners, an agreement, or otherwise, except in accordance with Section 11.18 of this Act, is valid only to the extent that it is consistent with this article or with the reimbursement provisions of

the Texas Uniform Partnership Act (Article 6132b, Vernon's Texas Civil Statutes), as limited by the limited partnership agreement, if such a limitation exists.

Sec. 11.14. REIMBURSEMENT OF EXPENSES AS WITNESS. Notwithstanding any other provision of this article, a limited partnership may pay or reimburse expenses incurred by a general partner in connection with the general partner's appearance as a witness or other participation in a proceeding involving or affecting the limited partnership at a time when the general partner is not a named defendant or respondent in the proceeding.

Sec. 11.15. INDEMNIFICATION AND ADVANCES TO LIMITED PARTNERS, EMPLOYEES, AND AGENTS. A limited partnership may indemnify and advance expenses to a limited partner, employee, or agent of the limited partnership to the same extent that it may indemnify and advance expenses to a general partner under this article.

Sec. 11.16. INDEMNIFICATION AND ADVANCES TO PERSONS SERVING PARTNERSHIP IN OTHER ENTERPRISES. A limited partnership may indemnify and advance expenses to persons who are not or were not limited partners, employees, or agents of the limited partnership but who are or were serving at the request of the limited partnership as a representative of another enterprise to the same extent that it may indemnify and advance expenses to a general partner under this article.

Sec. 11.17. INDEMNIFICATION OF PERSONS OTHER THAN GENERAL PARTNERS. A limited partnership may further indemnify and advance expenses to a limited partner, employee, agent, or person identified in Section 11.16 of this Act and who is not a general partner, to the extent, consistent with law, provided by its partnership agreement, by general or specific action of its general partner, by contract, or as permitted or required by common law.

Sec. 11.18. INSURANCE AND OTHER ARRANGEMENTS FOR PAYMENT. Except as otherwise provided by this article, and unless otherwise provided by the partnership agreement, a limited partnership may purchase and maintain insurance or another arrangement on behalf of any person who is or was a general partner, limited partner, employee, or agent of the limited partnership, or who is or was serving at the request of the limited partnership as a representative of another enterprise, against any liability asserted against the person and incurred by the person in that capacity or arising out of the person's status in that capacity, regardless of whether the limited partnership would have the power to indemnify the person against that liability under this article. However, if the insurance or other arrangement is with a person or entity that is not regularly engaged in the business of providing insurance coverage, the insurance or other arrangement may provide for payment of a liability with respect to which the limited partnership would not have the power to indemnify the person only if it includes coverage for the additional liability that has been approved by a majority in interest of the limited partners of the limited partnership. Without limiting the power of the limited partnership to procure or maintain any kind of insurance or other arrangement, a limited partnership may, for the benefit of persons indemnified by the limited partnership, create a trust fund, establish any form of self-insurance, secure its indemnity obligation by grant of a security interest or other lien on the assets of the limited partnership, or establish a letter of credit, guaranty, or surety arrangement. The insurance or other arrangement may be procured, maintained, or established within the limited partnership or with an insurer or other person considered appropriate by the general partner regardless of whether all or part of the stock or other securities of the insurer or other person are owned in whole or part by the limited partnership. In the absence of actual fraud, the judgment of the general partners as to the terms and conditions of the insurance or other arrangement and the identity of the insurer or other person participating in an arrangement is conclusive, and the insurance or other arrangement is not voidable and does not subject the general partners approving the insurance or other arrangement to liability, on any ground, regardless of whether general partners participating in approving the insurance or other arrangement will be beneficiaries.

Sec. 11.19. REPORTS OF INDEMNIFICATION AND ADVANCES. Any indemnification of or advance of expenses to a general partner in accordance with this article shall

be reported promptly in writing to the limited partners. The report must be made no later than six months after the date that the indemnification occurs.

Sec. 11.20. SERVICE TO EMPLOYEE BENEFIT PLAN. For purposes of this article the limited partnership is considered to have requested a general partner to serve an employee benefit plan if the performance by a general partner of the general partner's duties to the limited partnership also imposes duties on or otherwise involves services by the general partner to the plan or participants in or beneficiaries of the plan. Action taken or omitted by a general partner with respect to an employee benefit plan in the performance of the general partner's duties for a purpose reasonably believed by the general partner to be in the interest of the participants and beneficiaries of the plan is considered to be for a purpose that is not opposed to the best interests of the limited partnership.

ARTICLE 12. FEES

Sec. 12.01. FEES. The secretary of state shall collect for the use of the state

(1) for filing a certificate of limited partnership under Section 2.01 of this Act, or an application for registration as a foreign limited partnership under Section 9.02 of this Act a fee of \$750;

(2) for filing a certificate of amendment under Section 2.02 of this Act, a certificate of cancellation under Section 2.03 of this Act, a restated certificate of limited partnership under Section 2.10 of this Act, a correction certificate under Section 9.05 of this Act, or certificate of cancellation under Section 9.06 of this Act, a fee of \$200;

(3) for filing an application for reservation of name, an application for renewal of reservation, a notice of transfer of reservation under Subsection (b) of Section 1.04 of this Act, or an application for registration of name or an application for renewal of registration of name under Section 1.05 of this Act, a fee of \$75;

(4) for filing a statement for change of registered office, registered agent, or both under Subsection (b) of Section 1.06 of this Act, or a statement for change of location of registered office under Subsection (h) of Section 1.06 of this Act, a fee of \$50, except that the maximum fee for simultaneous filings by a registered agent for more than one limited partnership may not exceed \$2,500;

(5) for preclearance of any document for filing, a fee of \$50; and

(6) for filing any instrument under this Act not expressly provided for above, a fee of \$25.

ARTICLE 13. MISCELLANEOUS PROVISIONS

Sec. 13.01. CONSTRUCTION. (a) This Act shall be applied and construed to effect its general purpose to make uniform the law with respect to limited partnerships among states that have similar laws.

(b) The rule that statutes in derogation of the common law are to be strictly construed has no application to this Act.

Sec. 13.02. APPLICATION. (a) Before September 1, 1992, this Act applies only to

(1) a domestic limited partnership formed on or after the effective date of this Act

(2) a foreign limited partnership transacting business in the state that has not qualified to transact business in Texas before the effective date of this Act; and

(3) a domestic limited partnership formed before the effective date of this Act, or foreign limited partnership that has qualified to transact business in Texas before the effective date of this Act, that elects, as provided by this section, to be governed by this Act.

(b) After August 31, 1992, this Act applies to all domestic limited partnerships and all foreign limited partnerships transacting business in Texas.

(c) Before September 1, 1992, a domestic limited partnership formed before the effective date of this Act and a foreign limited partnership qualified before the effective date of this Act to transact business in Texas may voluntarily elect, by complying with

the procedures provided in its partnership agreement for amending the partnership agreement, to adopt this Act and may become subject to its provisions by filing with the secretary of state a certificate of limited partnership or an application for registration as a foreign limited partnership that complies with this Act or a certificate of amendment that would cause its certificate of limited partnership to comply with this Act and that specifically states that the partnership is electing to adopt this Act. On the filing of a document complying with this subsection, this Act applies to that partnership.

(d) If, after August 31, 1992, a domestic limited partnership formed before the effective date of this Act or a foreign limited partnership qualified to transact business in Texas before the effective date of this Act has not amended its certificate of limited partnership or application for registration as a foreign corporation in accordance with Subsection (c) of this section, the partnership is not considered to have failed to comply with this Act solely because the name of the partnership does not conform with Section 1.02 of this Act, if the name conforms with the other provisions of this Act and all other laws of Texas, or solely because its certificate of limited partnership or application for registration as a foreign limited partnership does not state the address of its registered office and the name and address of its registered agent for service of process, in which case service of process on that limited partnership may be made as provided by Section 9.10 of this Act. If such a partnership amends its certificate of limited partnership or application for registration as a foreign limited partnership, as the case may be, after August 31, 1992, the limited partnership must, at the time of or before filing the amendment with the secretary of state, take any action that is necessary to cause the limited partnership to conform to the provisions of this Act.

Sec. 13.03. CASES NOT PROVIDED FOR BY THIS ACT. In any case not provided for by this Act, the Texas Uniform Partnership Act (Article 6132b, Vernon's Texas Civil Statutes) and the rules of law and equity, including the law merchant, govern.

SECTION 2. The Texas Uniform Limited Partnership Act (Article 6132a, Vernon's Texas Civil Statutes) is amended by adding Section 34 to read as follows:

*Sec. 34. APPLICATION; EXPIRATION. (a) This Act does not apply to a domestic limited partnership or a foreign limited partnership to which the Texas Revised Limited Partnership Act applies, as provided by Section 13.02 of that Act.*

*(b) This Act expires September 1, 1992.*

SECTION 3. This Act takes effect September 1, 1987.

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed the Senate on March 25, 1987, by a viva-voce vote; and that the Senate concurred in House Amendment on April 15, 1987, by a viva-voce vote. Passed the House, with amendment, on April 14, 1987, by a non-record vote.

Approved April 30, 1987.

Effective Sept. 1, 1987.