

No. 1994-106

AN ACT

SB 1059

Amending Titles 1 (General Provisions), 13 (Commercial Code), 15 (Corporations and Unincorporated Associations), 42 (Judiciary and Judicial Procedure) and 54 (Names) of the Pennsylvania Consolidated Statutes, relating to associations; providing for definitions; further providing for registered limited liability partnerships and for limited liability companies; making conforming changes to existing provisions of law; and making a repeal.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Short title.

This act shall be known and may be cited as the Limited Liability Company Act.

Section 2. Amendment of Title 1.

The definitions of "association" and "person" in section 1991 of Title 1 of the Pennsylvania Consolidated Statutes are amended to read:

§ 1991. Definitions.

The following words and phrases, when used in any statute finally enacted on or after September 1, 1937, unless the context clearly indicates otherwise, shall have the meanings given to them in this section:

* * *

"Association." [Any]

(1) *When used in any statute finally enacted before December 7, 1994, any form of unincorporated enterprise owned by two or more persons other than a partnership or limited partnership.*

(2) *When used in any statute finally enacted on or after December 7, 1994, an association as defined in 15 Pa.C.S. § 102 (relating to definitions).*

* * *

"Person." Includes a corporation, partnership, *limited liability company*, business trust, other association, government entity (other than the Commonwealth), estate, trust, foundation or natural person.

* * *

Section 3. Amendment of Title 13.

The definitions of "certificated security" and "uncertificated security" in section 8102(a) of Title 13 are amended to read:

§ 8102. Definitions and index of definitions.

(a) Definitions.—The following words and phrases when used in this division shall have, unless the context clearly indicates otherwise, the meanings given to them in this subsection:

"Certificated security."

(1) A share, participation or other interest in property of or an enterprise of the issuer or an obligation of the issuer which is:

- (i) represented by an instrument issued in bearer or registered form;
- (ii) of a type commonly dealt in on securities exchanges or markets or commonly recognized in any area in which it is issued or dealt in as a medium for investment; and

(iii) either one of a class or series or by its terms divisible into a class or series of shares, participations, interests or obligations.

(2) If a partnership interest in a limited partnership *or a membership interest in a limited liability company* is evidenced by a certificate of partnership interest *or a certificate of membership interest, as the case may be*, the certificate is a certificated security.

* * *

“Uncertificated security.”

(1) A share, participation or other interest in property or an enterprise of the issuer or an obligation of the issuer which is:

- (i) not represented by an instrument and the transfer of which is registered upon books maintained for that purpose by or on behalf of the issuer;
- (ii) of a type commonly dealt in on securities exchanges or markets;

and

(iii) either one of a class or series or by its terms divisible into a class or series of shares, participations, interests or obligations.

(2) Any partnership interest in a limited partnership *or membership interest in a limited liability company* which is not evidenced by a certificated security is an uncertificated security only if the partnership interest *or membership interest, as the case may be*, is approved for trading on a national securities exchange registered under the Federal securities laws or for quotation in the automated quotation system of a national securities association registered under the Federal securities laws.

* * *

Section 4. Amendment of Title 15.

As much of Title 15 as is hereinafter set forth is amended or added to read:

§ 102. Definitions.

Subject to additional or inconsistent definitions contained in subsequent provisions of this title that are applicable to specific provisions of this title, the following words and phrases when used in this title shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

* * *

“Association.” A corporation, a partnership, *a limited liability company*, a business trust or two or more persons associated in a common enterprise or undertaking. The term does not include a testamentary trust or an inter

vivos trust as defined in 20 Pa.C.S. § 711(3) (relating to mandatory exercise of jurisdiction through orphans' court division in general).

* * *

“Licensed person.” A natural person who is duly licensed or admitted to practice his profession by a court, department, board, commission or other agency of the Commonwealth or another jurisdiction to render a professional service that is or will be rendered by the association of which he is, or intends to become, a shareholder, partner, owner, director, officer, manager, member, employee or agent.

“Limited liability company.” A limited liability company as defined in section [8902] 8903 (relating to definitions).

* * *

§ 133. Powers of Department of State.

(a) General rule.—The Department of State shall have the power and authority reasonably necessary to enable it to administer this subchapter efficiently and to perform the functions specified in section 132 (relating to functions of Department of State), in 13 Pa.C.S. (relating to commercial code) and in 17 Pa.C.S. (relating to credit unions). The following shall not be agency regulations for the purposes of section 612 of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929, the act of October 15, 1980 (P.L.950, No.164), known as the Commonwealth Attorneys Act, the act of June 25, 1982 (P.L.633, No.181), known as the Regulatory Review Act, or any similar provision of law, but shall be subject to the opportunity of public comment requirement under section 201 of the act of July 31, 1968 (P.L.769, No.240), referred to as the Commonwealth Documents Law:

* * *

(3) Regulations, which the department is hereby authorized to promulgate, that:

(i) Authorize payment of fees and other remittances through or by a credit card issuer or other financial intermediary.

(ii) Authorize contracts with credit card issuers and other financial intermediaries relating to the collection, transmission and payment of fees and other remittances.

(iii) Adjust the level of fees and other remittances as otherwise fixed by law so as to facilitate their transmission through or by a credit card issuer or other financial intermediary pursuant to such regulations without net cost to the department.

* * *

§ 139. Tax clearance of certain fundamental transactions.

A domestic association shall not file articles or a certificate of merger or consolidation effecting a merger or consolidation into a nonqualified foreign association or articles or a certificate of dissolution or a statement of revival, a qualified foreign association shall not file an application for termination of authority or similar document in the Department of State and [a corporation]

a domestic association shall not file articles *or a certificate* of division dividing solely into nonqualified foreign [corporations] *associations* unless the articles, certificate, application or other document are accompanied by clearance certificates from the Department of Revenue and the Office of Employment Security of the Department of Labor and Industry, evidencing the payment by the association of all taxes and charges due the Commonwealth required by law.

§ 153. Fee schedule.

(a) General rule.—The fees of the Corporation Bureau of the Department of State, including fees for the public acts and transactions of the Secretary of the Commonwealth administered through the bureau, and of county filing officers under Title 13 (relating to commercial code), shall be as follows:

* * *

(3) Partnerships *and limited liability companies*:

(i) Certificate of limited partnership *or certificate of organization of a limited liability company* or like instrument forming a limited partnership *or organizing a limited liability company* 100

* * *

(iv) Application for registration of foreign limited partnership *or limited liability company* 180

(v) Certificate of amendment of registration of foreign limited partnership *or limited liability company* 180

(vi) Statement *of registration of registered limited liability partnership or statement* of election as an electing partnership 100

(vii) *Domestication of foreign limited liability company* 100

(viii) *Additional fee for each new entity resulting from a division* 100

[(vii)] (ix) Each ancillary transaction 52

* * *

(8) Uniform Commercial Code:

* * *

(vii) Beginning on January 1, 1994, and each January 1 thereafter, the [costs] *county fees* under paragraph (8) shall be increased by the percentage of increase in the Consumer Price Index for Urban Workers for the immediate preceding calendar year which shall be published in the Pennsylvania Bulletin annually by the Supreme Court on or before the preceding November 30. This subparagraph shall expire January 1, 2001.

* * *

§ 162. Contingent domestication of certain alien associations.

* * *

(b) Statement of contingent domestication.—The statement of contingent domestication shall be executed by the association and shall set forth in the English language:

(1) In the case of:

(i) a corporation subject to section 4161 (relating to domestication), the statements required to be set forth in articles of domestication (except the statement required by section 4161(b)(6));

(ii) a corporation subject to section 6161 (relating to domestication), the statements required to be set forth in articles of domestication (except the statement required by section 6161(b)(6)); [or]

(iii) *a limited partnership subject to section 8590 (relating to domestication), the statements required to be set forth in a certificate of domestication (except the statement required by section 8590(b)(5));*

(iv) *a limited liability company subject to section 8982 (relating to domestication), the statements required to be set forth in a certificate of domestication (except the statement required by section 8982(b)(5)); or*

(v) any other association, the statements required by section 161(b) (relating to statement of domestication) to be set forth in a statement of domestication (except the statement required by section 161(b)(5)).

(2) A statement that the effectiveness of the statement is contingent upon the subsequent filing of a statement of consummation of domestication.

(3) A statement that the filing of the statement of contingent domestication and the delegation of authority to file a statement of consummation of domestication has been authorized (unless its charter or other organic documents require a greater vote):

(i) by a majority vote of the votes cast by all shareholders entitled to vote thereon and, if any class of shares is entitled to vote thereon as a class, a majority of the votes cast in each class vote, in the case of a corporation subject to section 4161;

(ii) by a majority vote of the votes cast by all members, if any, entitled to vote thereon and, if any class of members is entitled to vote thereon as a class, a majority of the votes cast in each class vote, in the case of a corporation subject to section 6161; [or]

(iii) *by a majority vote of the votes cast by all partners entitled to vote thereon and, if any class of partners is entitled to vote thereon as a class, a majority of the votes cast in each class vote, in the case of a limited partnership subject to section 8590;*

(iv) *by a majority vote of the votes cast by all members entitled to vote thereon and, if any class of members is entitled to vote thereon as a class, a majority of the votes cast in each class vote, in the case of a limited liability company subject to section 8982; or*

(v) by a majority in interest of the shareholders, members or other proprietors of the association in any other case.

* * *

(f) Effect of filing statement of consummation of domestication.—Upon the filing of a statement of consummation of domestication, and until the filing of a statement of termination of domestication, the association shall have the status under the law of this Commonwealth of:

(1) a business corporation domesticated under section 4161, in the case of a corporation subject to that section;

(2) a nonprofit corporation domesticated under section 6161, in the case of a corporation subject to that section; [or]

(3) *a limited partnership domesticated under section 8590, in the case of a limited partnership subject to that section;*

(4) *a limited liability company domesticated under section 8982, in the case of a limited liability company subject to that section; or*

(5) an association domesticated under section 161, in any other case.

* * *

§ 1103. Definitions.

Subject to additional definitions contained in subsequent provisions of this subpart that are applicable to specific provisions of this subpart, the following words and phrases when used in this subpart shall have the meanings given to them in this section unless the context clearly indicates otherwise:

* * *

“Representative.” When used with respect to an association, joint venture, trust or other enterprise, means *a person occupying the position or discharging the functions of* a director, officer, employee or agent thereof, *regardless of the name or title by which the person may be designated.* The term does not imply that a director, as such, is an agent of a corporation.

* * *

§ 1746. Supplementary coverage.

* * *

(c) Grounds.—Indemnification pursuant to subsection (a) under any bylaw, agreement, vote of shareholders or directors or otherwise may be granted for any action taken [or any failure to take any action] and may be made whether or not the corporation would have the power to indemnify the person under any other provision of law except as provided in this section and whether or not the indemnified liability arises or arose from any threatened, pending or completed action by or in the right of the corporation. Such indemnification is declared to be consistent with the public policy of this Commonwealth.

§ 2902. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

* * *

“Profession.” Includes the performance of any type of personal service to the public that requires as a condition precedent to the performance of the service the obtaining of a license or admission to practice or other legal authorization, including all personal services that prior to the enactment of the act of July 9, 1970 (P.L.461, No.160), known as the Professional Corporation Law, could not lawfully be rendered by means of a corporation. By way of example, and without limiting the generality of the foregoing, the term includes for the purposes of this chapter personal services rendered as an architect, chiropractor, dentist, funeral director, osteopath, podiatrist, physician, professional engineer, veterinarian, certified public accountant or surgeon and, except as otherwise prescribed by general rules, an attorney at law. **[The] *Except as otherwise expressly provided by law*, the definition specified in this paragraph shall be applicable to this chapter only and shall not affect the interpretation of any other statute or any local zoning ordinance or other official document heretofore or hereafter enacted or promulgated.**

* * *

§ 2923. Issuance and retention of shares.

(a) General rule.—**[Shares] *Except as otherwise provided by a statute, rule or regulation applicable to a particular profession, shares* in a professional corporation may be beneficially owned, directly or indirectly, only by one or more licensed persons and any issuance or transfer of shares in violation of this restriction shall be void. A shareholder of a professional corporation shall not enter into a voting trust, proxy or any other arrangement vesting another person (other than another licensed person who is a direct or indirect shareholder of the same corporation) with the authority to exercise the voting power of any or all of his shares, and any such purported voting trust, proxy or other arrangement shall be void.**

* * *

§ 2924. Rendering professional services.

* * *

(b) Supporting staff.—This section shall not be interpreted to preclude the use of clerks, secretaries, nurses, administrators, bookkeepers, technicians and other assistants ***or paraprofessionals*** who are not usually and ordinarily considered by law, custom and practice to be rendering the professional service or services for which the professional corporation was incorporated nor to preclude the use of any other person who performs all his employment under the direct supervision and control of a licensed person. A person shall not, under the guise of employment, render professional services unless duly licensed or admitted to practice as required by law.

* * *

§ 3132. Officers.

[The president, secretary and treasurer of an insurance corporation shall be different persons.] The treasurer ***of an insurance corporation*** shall be a natural person of full age ***and may also be either the president or the***

secretary of the corporation. The president shall be a director of the corporation.

PART III
PARTNERSHIPS AND LIMITED
LIABILITY COMPANIES

§ 8102. Interchangeability of partnership, *limited liability company* and corporate forms of organization.

(a) General rule.—Subject to any restrictions on a specific line of business made applicable by section 103 (relating to subordination of title to regulatory laws):

(1) Any business that may be conducted in a corporate form may also be conducted as a partnership *or a limited liability company*.

(2) A domestic or foreign partnership *or limited liability company* may exercise any right, power, franchise or privilege that a domestic or foreign corporation engaged in the same line of business might exercise under the laws of this Commonwealth, including powers conferred by section 1511 (relating to additional powers of certain public utility corporations) or other provisions of law granting the right to a duly authorized corporation to take or occupy property and make compensation therefor.

(b) Exceptions.—Subsection (a) shall not:

(1) Affect any law relating to the taxation of partnerships, *limited liability companies* or corporations.

(2) Apply to a banking institution, credit union, insurance corporation or savings association, unless the laws relating thereto expressly contemplate the conduct of the regulated business in partnership *or limited liability company* form. *See section 8911 (relating to purposes).*

(3) [Permit] *Except as otherwise provided by law, permit a partnership to provide full limited liability for all of the investors therein or otherwise fail to preserve the intrinsic differences between the partnership and corporate forms.*

§ 8103. Continuation of certain limited partnerships *and limited liability companies*.

(a) Scope.—This section shall apply to any domestic limited partnership *or limited liability company* that elects to be governed by this section. The election or a termination of the election may be effected in the manner provided in section 8701(a) (relating to application of chapter). *For purposes of applying the provisions of section 8701(a) in the case of a limited liability company, the members of the company shall be deemed to be general partners, and section 8701(a)(3) shall not be applicable.*

(b) [General rule] *Limited partnerships*.—The action under section 8571(a)(4) (relating to nonjudicial dissolution) to elect to continue the business of a limited partnership to which this section applies or to appoint one or more replacement general partners of the partnership, or both, may be

effected by less than all, but not less than a majority in interest, of the partners.

(c) *Limited liability companies.*—*The action under section 8971(a)(4) (relating to dissolution) to consent to continue the business of a limited liability company to which this section applies may be effected by less than all, but not less than a majority in interest, of the members.*

§ 8104. *Reserved power of General Assembly.*

All present and future common or statutory law with respect to the formation, organization or regulation of partnerships, limited partnerships, electing partnerships or limited liability companies or prescribing powers, rights, duties or liabilities of such associations or their general or limited partners, members, managers, officers, agents or other representatives may be revoked, amended or repealed.

§ 8105. *Ownership of certain professional partnerships.*

Except as otherwise provided by a statute, rule or regulation applicable to a particular profession, all of the partners in a partnership that renders one or more restricted professional services shall be licensed persons. As used in this section, the term "restricted professional services" shall have the meaning specified in section 8903 (relating to definitions).

CHAPTER 82

REGISTERED LIMITED LIABILITY PARTNERSHIPS

Subchapter

- A. Domestic Registered Limited Liability Partnerships
- B. Foreign Registered Limited Liability Partnerships
- C. Annual Registration

SUBCHAPTER A

DOMESTIC REGISTERED LIMITED LIABILITY PARTNERSHIPS

Sec.

- 8201. Scope.
- 8202. Definitions.
- 8203. Name.
- 8204. Limitation on liability of partners.
- 8205. Liability of withdrawing partner.
- 8206. Insurance.
- 8207. Extraterritorial application of subchapter.

§ 8201. Scope.

(a) Application of subchapter.—This subchapter applies to a general or limited partnership formed under the laws of this Commonwealth that registers under this section. Any partnership that desires to register under this subchapter or to amend or terminate its registration shall file in the Department of State a statement of registration, amendment or termination,

as the case may be, which shall be signed by a general partner and shall set forth:

(1) The name of the partnership.

(2) Either:

(i) the address of the principal place of business of the partnership, in the case of a general partnership; or

(ii) subject to section 109 (relating to name of commercial registered office provider in lieu of registered address), the address, including street and number, if any, of the registered office of the partnership, in the case of a limited partnership.

(3) A statement that the partnership registers under this subchapter or that the registration of the partnership under this subchapter shall be amended or terminated, as the case may be. If the statement relates to an amendment, the amendment shall restate in full the statement of registration.

(4) A statement that the registration, amendment or termination has been authorized by at least a majority in interest of the partners.

(b) Effect of filing.—Upon the filing of the statement of registration, amendment or termination in the department, the registration under this subchapter shall be effective, amended or terminated, as the case may be. The effectiveness, amendment or termination of the registration of a partnership under this subchapter shall not be deemed to cause a dissolution of the partnership.

(c) Effect of registration.—As long as the registration under this subchapter is in effect, the partnership shall be governed by the provisions of this subchapter and, to the extent not inconsistent with this subchapter, Chapter 83 (relating to general partnerships) and, if a limited partnership, in addition, Chapter 85 (relating to limited partnerships). Without limiting the generality of the foregoing, a domestic or foreign registered limited liability partnership shall be treated the same as if it were not registered under this subchapter for purposes of:

(1) determining whether it is a permissible form of entity in which to conduct the practice of a profession; or

(2) the imposition by the Commonwealth or any political subdivision of any tax or license fee on or with respect to any income, property, privilege, transaction, subject or occupation.

(d) Continuation of registration.—If a registered limited liability partnership is dissolved and its business is continued without liquidation of the partnership affairs, the registration under this subchapter of the dissolved partnership shall continue to be applicable to the partnership continuing the business, and it shall not be necessary to make a new filing under this section until such time, if any, as the registration is to be amended or terminated.

(e) Cross references.—See sections 134 (relating to docketing statement) and 135 (relating to requirements to be met by filed documents).

§ 8202. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Foreign registered limited liability partnership.” A partnership that has registered under a law of any jurisdiction other than this Commonwealth similar to this subchapter, whether or not the partnership is required to register under section 8211 (relating to foreign registered limited liability partnerships).

“Registered limited liability partnership” or “domestic registered limited liability partnership.” A partnership as to which a registration under section 8201(a) (relating to scope) is in effect.

§ 8203. Name.

(a) General rule.—The name of a registered limited liability partnership shall:

(1) Not be one rendered unavailable for use by a corporation by any provision of section 1303(b) and (c) (relating to corporate name).

(2) Contain the term “company,” “limited” or “limited liability partnership,” or an abbreviation of one of those terms, or words or abbreviations of like import in English or any other language.

(b) Reservation of name.—The exclusive right to the use of a name for purposes of this subchapter may be reserved and transferred in the manner provided in section 1305 (relating to reservation of corporate name).

§ 8204. Limitation on liability of partners.

(a) General rule.—Except as provided in subsection (b), a partner in a registered limited liability partnership shall not be individually liable directly or indirectly, whether by way of indemnification, contribution or otherwise, for debts and obligations of, or chargeable to, the partnership that arise from any negligent or wrongful acts or misconduct committed by another partner or other representative of the partnership.

(b) Exceptions.—

(1) Subsection (a) shall not apply to any debt or obligation with respect to which the partnership is not in compliance with section 8206(a) (relating to insurance).

(2) Subsection (a) shall not affect the liability of a partner:

(i) Individually for any negligent or wrongful acts or misconduct committed by him or by any person under his direct supervision and control.

(ii) For any debts or obligations of the partnership:

(A) arising from any cause other than those specified in subsection (a); or

(B) as to which the partner has agreed in writing to be liable.

(iii) To the extent expressly undertaken in the partnership agreement or the certificate of limited partnership.

(3) Subsection (a) shall not affect in any way:

(i) the liability of the partnership itself for all its debts and obligations; or

(ii) the availability of the entire assets of the partnership to satisfy its debts and obligations.

(c) Continuation of limited liability.—Neither the termination of the registration of a partnership under this subchapter nor the dissolution of the partnership shall affect the limitation on the liability of a partner in the partnership under this section with respect to negligent or wrongful acts or misconduct occurring while the registration under this subchapter was in effect.

(d) Cross reference.—See section 103 (relating to subordination of title to regulatory laws).

§ 8205. Liability of withdrawing partner.

(a) General rule.—Except as provided in subsection (b), if the business of a registered limited liability partnership is continued without liquidation of the partnership affairs following the dissolution of the partnership as a result of the withdrawal for any reason of a partner, the withdrawing partner shall not be individually liable directly or indirectly, whether by way of indemnification, contribution or otherwise, for the debts and obligations of either the dissolved partnership or any partnership continuing the business if a statement of withdrawal is filed as provided in this section.

(b) Exceptions.—Subsection (a) shall not affect the liability of a partner:

(1) Individually for any negligent or wrongful acts or misconduct committed by him or by any person under his direct supervision and control.

(2) For any debts or obligations of the partnership as to which the withdrawing partner has agreed in writing to be liable.

(3) To the partnership for damages if the partnership agreement prohibits the withdrawal of the partner or the withdrawal otherwise violates the partnership agreement.

(4) Under section 8334 (relating to partner accountable as fiduciary).

(5) To the extent a debt or obligation of the partnership has been expressly undertaken by the partner in the partnership agreement or the certificate of limited partnership.

(6) If the partnership subsequently dissolves within one year after the date of withdrawal of the partner and the business of the partnership is not continued following such subsequent dissolution. This paragraph shall not be applicable in the case of a withdrawal caused by:

(i) the death of the partner; or

(ii) the retirement of the partner pursuant to a retirement policy of the dissolved partnership that has been in effect prior to the retirement of the partner for the shorter of one year or the period that the partnership has been in existence.

(c) Statement of withdrawal.—A statement of withdrawal shall be executed by the withdrawing partner or his personal representative and shall set forth:

- (1) The name of the registered limited liability partnership.
- (2) The name of the withdrawing partner.

(d) Filing and effectiveness.—The statement of withdrawal shall be filed in the Department of State and shall be effective upon filing. The withdrawing partner shall send a copy of the filed statement of withdrawal to the registered limited liability partnership.

(e) Cross references.—See sections 134 (relating to docketing statement) and 135 (relating to requirements to be met by filed documents).

§ 8206. Insurance.

(a) General rule.—In addition to any other insurance required by any law of this Commonwealth, a registered limited liability partnership shall carry liability insurance providing coverage of at least the minimum coverage amount above any applicable deductible and of a kind that covers the negligent or wrongful acts or misconduct as to which the limitation on liability provided by section 8204 (relating to limitation on liability of partners) is sought.

(b) Use as evidence.—If the registered limited liability partnership is in compliance with subsection (a), the requirements of that subsection shall not be admissible nor in any way made known to the jury in determining the issue of liability for or extent of the debt or obligation or damages in question.

(c) Alternative arrangements.—A registered limited liability partnership shall be deemed to be in compliance with subsection (a) if the partnership provides at least the minimum coverage amount in funds specifically designated and segregated for the satisfaction of judgments against the partnership or its partners based on the kinds of negligent or wrongful acts or misconduct as to which the limitation on liability provided by section 8204 is sought, by:

- (1) deposit in trust or in bank escrow of cash, bank certificates of deposit or United States Treasury obligations; or
- (2) a bank letter of credit or insurance company bond.

(d) Definition.—As used in this section, the term “minimum coverage amount” means \$100,000 times the number of general partners in excess of one, but in no event shall the minimum coverage amount be less than \$100,000 or more than \$1,000,000.

§ 8207. Extraterritorial application of subchapter.

(a) Legislative intent.—It is the intent of the General Assembly in enacting this subchapter that the legal existence of registered limited liability partnerships organized in this Commonwealth be recognized outside the boundaries of this Commonwealth and that, subject to any reasonable requirement of registration, a domestic registered limited liability partnership

transacting business outside this Commonwealth be granted protection of full faith and credit under the Constitution of the United States.

(b) Basis for determining liability of partners.—The liability of partners in a registered limited liability partnership shall at all times be determined under Chapters 83 (relating to general partnerships) and 85 (relating to limited partnerships) as modified by the provisions of this subchapter.

(c) Conflict of laws.—The personal liability of a partner of a registered limited liability partnership to any person or in any action or proceeding for the debts, obligations or liabilities of the partnership or for the acts or omissions of other partners or representatives of the partnership shall be governed solely and exclusively by the laws of this Commonwealth. Whenever a conflict arises between the laws of this Commonwealth and the laws of any other state with regard to the liability of partners of a registered limited liability partnership registered under this subchapter for the debts, obligations and liabilities of the partnership or for the acts or omissions of the other partners or representatives of the partnership, the laws of this Commonwealth shall govern in determining such liability.

SUBCHAPTER B
FOREIGN REGISTERED
LIMITED LIABILITY PARTNERSHIPS

Sec.

8211. Foreign registered limited liability partnerships.

§ 8211. Foreign registered limited liability partnerships.

(a) Governing law.—Subject to the Constitution of Pennsylvania:

(1) The laws of the jurisdiction under which a foreign registered limited liability partnership is organized govern its organization and internal affairs and the liability of its partners.

(2) A foreign registered limited liability partnership may not be denied registration by reason of any difference between those laws and the laws of this Commonwealth.

(b) Registration to do business.—A foreign registered limited liability partnership, regardless of whether or not it is also a foreign limited partnership, shall be subject to Subchapter K of Chapter 85 (relating to foreign limited partnerships) as if it were a foreign limited partnership, except that the name under which the foreign registered limited liability partnership registers and conducts business in this Commonwealth shall comply with the requirements of section 8203 (relating to name).

SUBCHAPTER C
ANNUAL REGISTRATION

Sec.

8221. Annual registration.

§ 8221. Annual registration.

(a) **General rule.**—Every domestic registered limited liability partnership in existence on December 31 of any year and every foreign registered limited liability partnership that is registered to do business in this Commonwealth on December 31 of any year shall file in the Department of State with respect to that year, and on or before April 15 of the following year, a certificate of annual registration on a form provided by the department, signed by a general partner and accompanied by the annual registration fee prescribed by subsection (b). The department shall not charge a fee other than the annual registration fee for filing the certificate of annual registration.

(b) **Annual registration fee.**—

(1) The annual registration fee to be paid when filing a certificate of annual registration shall be equal to a base fee of \$200 times the number of persons who were general partners of the partnership on December 31 of the year with respect to which the certificate of annual registration is being filed and who:

(i) in the case of a natural person, had his principal residence on that date in this Commonwealth; or

(ii) in the case of any other person, was incorporated or otherwise organized or existing on that date under the laws of this Commonwealth.

(2) The base fee of \$200 shall be increased on December 31, 1997, and December 31 of every third year thereafter by the percentage increase in the Consumer Price Index for Urban Workers during the most recent three calendar years for which that index is available on the date of adjustment. Each adjustment under this paragraph shall be rounded up to the nearest \$10.

(c) **Notice of annual registration.**—Not later than February 1 of each year, the department shall give notice to every partnership required to file a certificate of annual registration with respect to the preceding year of the requirement to file the certificate. The notice shall state the amount of the base fee payable under subsection (b)(1), as adjusted pursuant to subsection (b)(2), if applicable, and shall be accompanied by the form of certificate of annual registration to be filed. Failure by the department to give notice to any party, or failure by any party to receive notice, of the annual registration requirement shall not relieve the party of the obligation to file the certificate of annual registration.

(d) **Credit to Corporation Bureau Restricted Account.**—The annual registration fee shall not be deemed to be an amount received by the department under Subchapter C of Chapter 1 for purposes of section 155 (relating to disposition of funds), except that \$25 of the fee shall be credited to the Corporation Bureau Restricted Account.

(e) **Annual fee to be lien.**—Failure to pay the annual registration fee imposed by this section shall not affect the existence or status of the registered limited liability partnership as such, but the annual registration fee

shall be a lien from the time the annual registration fee is due and payable upon all of the property and proceeds thereof of the registered limited liability partnership in which a security interest can be perfected in whole or in part by filing in the department under 13 Pa.C.S. Div. 9 (relating to secured transactions; sales of accounts, contract rights and chattel paper), whether the property and proceeds are owned by the partnership at the time the annual registration fee becomes due and payable or are acquired thereafter. Except as otherwise provided by statute, the lien created by this subsection shall have priority over all other liens, security interests or other charges, except liens for taxes or other charges due the Commonwealth. The lien created by this subsection shall be entered on the records of the department and indexed in the same manner as a financing statement filed under 13 Pa.C.S. Div. 9. At the time an annual registration fee that has resulted in the creation of a lien under this subsection is paid, the department shall terminate the lien with respect to that annual registration fee without requiring a separate filing by the partnership for that purpose.

§ 8311. Partnership defined.

* * *

(b) Exceptions.—Any association formed under any statute of this Commonwealth except this chapter or corresponding provisions of prior law, or under any statute adopted by authority other than the authority of this Commonwealth, is not a partnership under this chapter unless the association would have been a partnership in this Commonwealth prior to March 26, 1915. This chapter shall apply to *registered limited liability partnerships*, limited partnerships, *limited liability companies and electing partnerships*, except insofar as the statutes relating to those [partnerships] *associations* are inconsistent with this chapter.

§ 8503. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Certificate of limited partnership.” The certificate referred to in section 8511 (relating to certificate of limited partnership) and the certificate as amended. The term includes any other statements or certificates permitted or required to be filed in the Department of State by sections 108 (relating to change in location or status of registered office provided by agent) and 138 (relating to statement of correction) or this [chapter] *part*. If an amendment of the certificate of limited partnership or a certificate of merger made in the manner permitted by this chapter restates the certificate in its entirety or if there is a certificate of consolidation, thenceforth the “certificate of limited partnership” shall not include any prior documents and any certificate issued by the department with respect thereto shall so state.

* * *

“Foreign limited partnership.” A partnership formed under the laws of any jurisdiction other than this Commonwealth and having as partners one or

more general partners and one or more limited partners, whether or not required to register under Subchapter [J] K (relating to foreign limited partnerships).

* * *

“Qualified foreign limited partnership.” A foreign limited partnership that is registered under Subchapter [J] K (relating to foreign limited partnerships) to do business in this Commonwealth.

* * *

§ 8510. Indemnification.

* * *

(c) Grounds.—Indemnification pursuant to subsection (a) may be granted for any action taken [or any failure to take any action] and may be made whether or not the limited partnership would have the power to indemnify the person under any other provision of law except as provided in this section and whether or not the indemnified liability arises or arose from any threatened, pending or completed action by or in the right of the limited partnership. Such indemnification is declared to be consistent with the public policy of this Commonwealth.

* * *

§ 8513. Cancellation of certificate.

* * *

(d) Dissolution by domestication.—Whenever a domestic limited partnership has domesticated itself under the laws of another jurisdiction by action similar to that provided by section 8590 (relating to domestication) and has authorized that action by the vote required by this chapter for the approval of a proposal that the limited partnership dissolve voluntarily, the limited partnership may surrender its certificate of limited partnership under the laws of this Commonwealth by filing in the department a certificate of cancellation under subsection (a).

[(d)] (e) Cross references.—See sections 134 (relating to docketing statement) and 8514 (relating to execution of certificates).

§ 8514. Execution of certificates.

(a) General rule.—Each certificate or other document required or permitted by this chapter to be filed in the Department of State shall be executed in the following manner:

* * *

(8) A certificate of merger [or], consolidation *or division* must be signed by a general partner.

* * *

(12) A certificate of domestication must be signed by a general partner.

* * *

§ 8523. Liability of limited partners to third parties.

* * *

(f) Professional relationship unaffected.—*Subsection (a) shall not afford limited partners of a limited partnership providing professional services with greater immunity than is available to the officers, shareholders, employees or agents of a professional corporation. See section 2925 (relating to professional relationship retained).*

(g) Disciplinary jurisdiction unaffected.—*A limited partnership providing professional services shall be subject to the applicable rules and regulations adopted by, and all the disciplinary powers of, the court, department, board, commission or other government unit regulating the profession in which the limited partnership is engaged. The court, department, board or other government unit may require that a limited partnership include in its certificate of limited partnership provisions that conform to any rule or regulation heretofore or hereafter promulgated for the purpose of enforcing the ethics of a profession. This chapter shall not affect or impair the disciplinary powers of the court, department, board, commission or other government unit over licensed persons or any law, rule or regulation pertaining to the standards for professional conduct of licensed persons or to the professional relationship between any licensed person rendering professional services and the person receiving professional services.*

§ 8545. Merger and consolidation of limited partnerships authorized.

* * *

(c) Business trusts and other associations.—*The provisions of this subchapter applicable to domestic and foreign limited partnerships shall also be applicable to a merger or consolidation to which a domestic limited partnership is a party or in which such a partnership is the resulting entity with or into a domestic or foreign corporation, business trust, general partnership or other association. Except as otherwise provided by law in this or any other state, the powers and duties vested in and imposed upon the general partners and limited partners in this subchapter shall be exercised and performed by the group of persons under the direction of whom the business and affairs of the corporation, business trust or other association are managed and the holders or owners of shares or other interests in the corporation, business trust or other association, respectively, irrespective of the names by which the managing group and the holders or owners of shares or other interests are designated. The units into which the shares or other interests in the corporation, business trust or other association are divided shall be deemed to be partnership interests for the purposes of applying the provisions of this subchapter to a merger or consolidation involving the corporation, business trust or other association.*

SUBCHAPTER J DIVISION

Sec.

8576. Division authorized.

8577. Proposal and adoption of plan of division.

8578. Division without approval of limited partners.

8579. Certificate of division.

8580. Effect of division.

§ 8576. Division authorized.

(a) Division of domestic limited partnership.—Any domestic limited partnership may, in the manner provided in this subchapter, be divided into two or more domestic limited partnerships organized or to be organized under this chapter or into one or more domestic limited partnerships and one or more foreign limited partnerships to be organized under the laws of another jurisdiction or jurisdictions or into two or more foreign limited partnerships if the laws of the other jurisdictions authorize the division.

(b) Division of foreign limited partnership.—Any foreign limited partnership may, in the manner provided in this subchapter, be divided into one or more domestic limited partnerships to be organized under this chapter and one or more foreign limited partnerships organized or to be organized under the laws of another jurisdiction or jurisdictions or into two or more domestic limited partnerships if the foreign limited partnership is authorized under the laws of the jurisdiction under which it is organized to effect a division.

(c) Surviving and new limited partnerships.—The limited partnership effecting a division, if it survives the division, is designated in this subchapter as the surviving limited partnership. All limited partnerships originally organized by a division are designated in this subchapter as new limited partnerships. The surviving limited partnership, if any, and the new limited partnership or partnerships are collectively designated in this subchapter as the resulting limited partnerships.

§ 8577. Proposal and adoption of plan of division.

(a) Preparation of plan.—A plan of division shall be prepared, setting forth:

(1) The terms and conditions of the division, including the manner and basis of:

(i) The reclassification of the partnership interests in the surviving limited partnership, if there be one, and, if any of the partnership interests in the dividing limited partnership are not to be converted solely into partnership interests or other securities or obligations of one or more of the resulting limited partnerships, the partnership interests or other securities or obligations of any other person or cash, property or rights that the holders of the partnership interests are to receive in exchange for or upon conversion of the partnership interests and the surrender of any certificates evidencing them, which securities or obligations, if any, of any other person or cash, property or rights may be in addition to or in lieu of partnership interests or other securities or obligations of one or more of the resulting limited partnerships.

(ii) The disposition of the partnership interests and other securities or obligations, if any, of the new limited partnership or partnerships resulting from the division.

(2) A statement that the dividing limited partnership will or will not survive the division.

(3) Any changes desired to be made in the certificate of limited partnership of the surviving limited partnership, if there be one, including a restatement of the certificate.

(4) The certificates of limited partnership required by subsection (c).

(5) Such other provisions as are deemed desirable.

(b) Reference to outside facts.—Any of the terms of the plan may be made dependent upon facts ascertainable outside of the plan if the manner in which the facts will operate upon the terms of the plan is set forth in the plan.

(c) Certificates of limited partnership of new limited partnerships.—There shall be included in or annexed to the plan of division:

(1) Certificates of limited partnership, which shall contain all of the statements required by this chapter to be set forth in a restated certificate of limited partnership for each of the new domestic limited partnerships, if any, resulting from the division.

(2) Certificates of limited partnership or other organizational documents for each of the new foreign limited partnerships, if any, resulting from the division.

(d) Proposal and adoption.—Except as otherwise provided in section 8578 (relating to division without approval of limited partners), the plan of division shall be proposed and adopted and may be amended after its adoption and termination by a domestic limited partnership in the manner provided for the proposal, adoption, amendment and termination of a plan of merger in Subchapter F (relating to merger and consolidation), except section 8546(g) (relating to approval of merger or consolidation) or, if the dividing limited partnership is a foreign limited partnership, in accordance with the laws of the jurisdiction in which it is organized. There shall be included in or enclosed with the notice of the meeting of limited partners to act on the plan, a copy or a summary of the plan.

(e) Restrictions on certain distributions.—A plan of division may not be made effective if the effect of the plan is to make a distribution to the holders of any class or series of partnership interests of the dividing limited partnership unless the distribution is permitted by section 8557 (relating to limitations on distribution).

(f) Action by holders of indebtedness.—Unless otherwise provided by an indenture or other contract by which the dividing limited partnership is bound, a plan of division shall not require the approval of the holders of any debt securities or other obligations of the dividing limited partnership or of any representative of the holders if the transfer of assets effected by the division, if effected by means of a sale, lease, exchange or other disposition,

and any related distribution would not require the approval of the holders or representatives thereof.

(g) Special requirements.—If any provision of the certificate of limited partnership or partnership agreement of a dividing domestic limited partnership adopted before February 5, 1995, requires for the proposal or adoption of a plan of merger or consolidation a specific number or percentage of votes of general or limited partners or other special procedures, the plan of division shall not be proposed or adopted by the general or limited partners without that number or percentage of votes or compliance with the other special procedures.

§ 8578. Division without approval of limited partners.

Unless otherwise restricted by its partnership agreement, a plan of division that does not alter the state of organization of a limited partnership nor amend in any respect the provisions of its certificate of limited partnership or partnership agreement (except amendments that may be made without action by the limited partners) shall not require the approval of the limited partners of the limited partnership if:

(1) the dividing limited partnership survives the division and all the partnership interests and other securities and obligations, if any, of all new limited partnerships resulting from the plan are owned solely by the surviving limited partnership; or

(2) the transfers of assets effected by the division, if effected by means of a sale, lease, exchange or other disposition, would not require the approval of the limited partners.

§ 8579. Certificate of division.

(a) Contents.—Upon the adoption of a plan of division by the limited partnership desiring to divide, as provided in this subchapter, a certificate of division shall be executed by the limited partnership and shall, subject to section 109 (relating to name of commercial registered office provider in lieu of registered address), set forth:

(1) The name and the location of the registered office, including street and number, if any, of the dividing domestic limited partnership or, in the case of a dividing foreign limited partnership, the name of the limited partnership and the jurisdiction in which it is organized, together with either:

(i) If a qualified foreign limited partnership, the address, including street and number, if any, of its registered office in this Commonwealth.

(ii) If a nonqualified foreign limited partnership, the address, including street and number, if any, of its principal office under the laws of that jurisdiction.

(2) The statute under which the dividing limited partnership was organized and the date of organization.

(3) A statement that the dividing limited partnership will or will not survive the division.

(4) The name and the address, including street and number, if any, of the registered office of each new domestic limited partnership or qualified foreign limited partnership resulting from the division.

(5) If the plan is to be effective on a specific date, the hour, if any, and the month, day and year of the effective date.

(6) The manner in which the plan was adopted by the limited partnership.

(7) The plan of division.

(b) Filing.—The certificate of division and the certificates or statement, if any, required by section 139 (relating to tax clearance of certain fundamental transactions) shall be filed in the Department of State.

(c) Effective date of certificate of division.—Upon the filing of a certificate of division in the Department of State or upon the effective date specified in the plan of division, whichever is later, the division shall become effective. The division of a domestic limited partnership into one or more foreign limited partnerships or the division of a foreign limited partnership shall be effective according to the laws of the jurisdictions where the foreign limited partnerships are or are to be organized, but not until a certificate of division has been adopted and filed as provided in this subchapter.

(d) Cross references.—See sections 134 (relating to docketing statement), 135 (relating to requirements to be met by filed documents) and 8514 (relating to execution of certificates).

§ 8580. Effect of division.

(a) Multiple resulting limited partnerships.—Upon the division becoming effective, the dividing limited partnership shall be subdivided into the distinct and independent resulting limited partnerships named in the plan of division, and, if the dividing limited partnership is not to survive the division, the existence of the dividing limited partnership shall cease. The resulting limited partnerships, if they are domestic limited partnerships, shall not thereby acquire authority to engage in any business or exercise any right that a limited partnership may not be organized under this chapter to engage in or exercise. Any resulting foreign limited partnership that is stated in the certificate of division to be a qualified foreign limited partnership shall be a qualified foreign limited partnership under Subchapter K (relating to foreign limited partnerships), and the certificate of division shall be deemed to be the application for registration as a foreign limited partnership of the limited partnership.

(b) Property rights.—

(1) (i) All the property, real, personal and mixed, of the dividing limited partnership, and all debts due on whatever account to it, including subscriptions for partnership interests or other causes of action belonging to it, shall, except as otherwise provided in paragraph (2), to the extent transfers of assets are contemplated by the plan of division, be deemed without further action to be transferred to and vested in the resulting limited partnerships on such a manner and basis

and with such effect as is specified in the plan, or per capita among the resulting limited partnerships, as tenants in common, if no specification is made in the plan, and the title to any real estate or interest therein vested in any of the limited partnerships shall not revert or be in any way impaired by reason of the division.

(ii) Upon the division becoming effective, the resulting limited partnerships shall each thenceforth be responsible as separate and distinct limited partnerships only for such liabilities as each limited partnership may undertake or incur in its own name but shall be liable for the liabilities of the dividing limited partnership in the manner and on the basis provided in subparagraphs (iv) and (v).

(iii) Liens upon the property of the dividing limited partnership shall not be impaired by the division.

(iv) One or more but less than all of the resulting limited partnerships shall be free of the liabilities of the dividing limited partnership to the extent, if any, specified in the plan if no fraud of creditors or partners or violation of law shall be effected thereby and if all applicable provisions of law are complied with.

(v) If the conditions in subparagraph (iv) for freeing one or more of the resulting limited partnerships from the liabilities of the dividing limited partnership are not satisfied, the liabilities of the dividing limited partnership shall not be affected by the division nor shall the rights of creditors thereof or of any person dealing with the limited partnership be impaired by the division, and any claim existing or action or proceeding pending by or against the limited partnership may be prosecuted to judgment as if the division had not taken place, or the resulting limited partnerships may be proceeded against or substituted in its place as joint and several obligors on such liability, regardless of any provision of the plan of division apportioning the liabilities of the dividing limited partnership.

(2) (i) The transfer of any fee or freehold interest or leasehold having a remaining term of 30 years or more in any tract or parcel of real property situate in this Commonwealth owned by a dividing limited partnership (including property owned by a foreign limited partnership dividing solely under the law of another jurisdiction) to a new limited partnership resulting from the division shall not be effective until one of the following documents is filed in the office for the recording of deeds of the county, or each of them, in which the tract or parcel is situated:

(A) A deed, lease or other instrument of confirmation describing the tract or parcel.

(B) A duly executed duplicate original copy of the certificate of division.

(C) A copy of the certificate of division certified by the Department of State.

(D) A declaration of acquisition setting forth the value of real estate holdings in the county of the limited partnership as an acquired company.

(ii) The provisions of 75 Pa.C.S. § 1114 (relating to transfer of vehicle by operation of law) shall not be applicable to a transfer of ownership of any motor vehicle, trailer or semitrailer from a dividing limited partnership to a new limited partnership under this section or under a similar law of any other jurisdiction, but any such transfer shall be effective only upon compliance with the requirements of 75 Pa.C.S. § 1116 (relating to issuance of new certificate following transfer).

(c) Taxes.—Any taxes, penalties and public accounts of the Commonwealth claimed against the dividing limited partnership but not settled, assessed or determined prior to the division shall be settled, assessed or determined against any of the resulting limited partnerships and, together with interest thereon, shall be a lien against the property, both real and personal, of all the limited partnerships. Upon the application of the dividing limited partnership, the Department of Revenue, with the concurrence of the Office of Employment Security of the Department of Labor and Industry, shall release one or more, but less than all, of the resulting limited partnerships from liability and liens for all taxes, penalties and public accounts of the dividing limited partnership due the Commonwealth for periods prior to the effective date of the division if those departments are satisfied that the public revenues will be adequately secured.

(d) Certificate of limited partnership of surviving limited partnership.—The certificate of limited partnership of the surviving limited partnership, if there be one, shall be deemed to be amended to the extent, if any, that changes in its certificate of limited partnership are stated in the plan of division.

(e) Certificates of limited partnership of new limited partnerships.—The statements that are set forth in the plan of division with respect to each new domestic limited partnership and that are required or permitted to be set forth in a restated certificate of limited partnership of limited partnerships organized under this chapter, or the certificate of limited partnership of each new limited partnership set forth therein, shall be deemed to be the certificate of limited partnership of each new limited partnership.

(f) Disposition of partnership interests.—Unless otherwise provided in the plan, the partnership interests and other securities or obligations, if any, of each new limited partnership resulting from the division shall be distributable to:

- (1) the surviving limited partnership if the dividing limited partnership survives the division; or
- (2) the partners of the dividing limited partnership in the proportions in which the partners share in distributions, in any other case.

SUBCHAPTER [J] K
FOREIGN LIMITED PARTNERSHIPS

* * *

§ 8590. Domestication.

(a) General rule.—Any qualified foreign limited partnership may become a domestic limited partnership by filing in the Department of State a certificate of domestication. The certificate of domestication, upon being filed in the department, shall constitute the certificate of limited partnership of the domesticated foreign limited partnership, and it shall thereafter continue as a limited partnership which shall be a domestic limited partnership subject to this chapter.

(b) Certificate of domestication.—The certificate of domestication shall be executed by the limited partnership and shall set forth in the English language:

(1) The name of the limited partnership. If the name is in a foreign language, it shall be set forth in Roman letters or characters or Arabic or Roman numerals.

(2) Subject to section 109 (relating to name of commercial registered office provider in lieu of registered address), the address, including street and number, if any, of its registered office in this Commonwealth.

(3) A statement that upon domestication the limited partnership will be subject to the domestic limited partnership provisions of the Pennsylvania Revised Uniform Limited Partnership Act and, if desired, a brief statement of the purpose or purposes for which it is to be domesticated, which shall be a purpose or purposes for which a domestic limited partnership may be organized under this chapter and which may consist of or include a statement that the limited partnership shall have unlimited power to engage in and to do any lawful act concerning any or all lawful business for which limited partnerships may be organized under the Pennsylvania Revised Uniform Limited Partnership Act.

(4) Any desired provisions relating to the manner and basis of reclassifying the partnership interests in the limited partnership.

(5) A statement that the filing of the certificate of domestication and, if desired, the renunciation of the original certificate of limited partnership of the limited partnership has been authorized (unless its certificate of limited partnership or other organic documents require a greater vote) by a majority of the votes cast by all partners entitled to vote thereon and, if any class of partners is entitled to vote thereon as a class, a majority of the votes cast in each class vote.

(6) Any other provisions authorized by this chapter to be set forth in an original certificate of limited partnership.

See sections 134 (relating to docketing statement), 135 (relating to requirements to be met by filed documents) and 8514 (relating to execution of certificates).

(c) Effect of domestication.—*As a domestic limited partnership, the domesticated limited partnership shall no longer be a foreign limited partnership for the purposes of this chapter and shall have all the powers and privileges and be subject to all the duties and limitations granted and imposed upon domestic limited partnerships. The property, debts, liens, estates, taxes, penalties and public accounts due the Commonwealth shall continue to be vested in and imposed upon the limited partnership to the same extent as if it were the successor by merger of the domesticating limited partnership with and into a domestic limited partnership under Subchapter F (relating to merger and consolidation). The partnership interests in the domesticated limited partnership shall be unaffected by the domestication except to the extent, if any, reclassified in the certificate of domestication.*

SUBCHAPTER [K] L
DERIVATIVE ACTIONS

* * *

§ 8705. Limited liability in certain cases.

* * *

(c) Professional relationship unaffected.—*Subsection (a) shall not afford the partners of an electing partnership providing professional services with greater immunity than is available to the officers, shareholders, employees or agents of a professional corporation. See section 2925 (relating to professional relationship retained).*

CHAPTER 89
LIMITED LIABILITY COMPANIES

Subchapter

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SUBCHAPTER A
PRELIMINARY PROVISIONS

Sec.

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8908. Election of professional association to become limited liability company.

§ 8901. Short title of chapter.

This chapter shall be known and may be cited as the Limited Liability Company Law of 1994.

§ 8902. Legislative intent.

It is the intent of the General Assembly in enacting this chapter that the legal existence of limited liability companies organized in this Commonwealth be recognized outside the boundaries of this Commonwealth and that, subject to any reasonable requirement of registration, a domestic limited liability company transacting business outside this Commonwealth be granted protection of full faith and credit under the Constitution of the United States.

§ 8903. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Bankrupt.” A person who is the subject of:

- (1) an order for relief or a voluntary case under 11 U.S.C. (relating to bankruptcy);
- (2) a comparable order or case under a successor statute of general application; or
- (3) a comparable order or case under a State insolvency act.

“Certificate of organization.” The certificate of organization referred to in section 8913 (relating to certificate of organization) and the certificate of organization as amended. The term includes any other statements or certificates permitted or required to be filed in the Department of State by sections 108 (relating to change in location or status of registered office provided by agent) and 138 (relating to statement of correction) or this part. If an amendment of the certificate of organization or a certificate of merger or division made in the manner permitted by this chapter restates the certificate of organization in its entirety or if there is a certificate of consolidation or domestication, thenceforth the certificate of organization shall not include any prior documents, and any certificate issued by the Department of State with respect thereto shall so state.

“Court.” Subject to any inconsistent general rule prescribed by the Supreme Court of Pennsylvania:

(1) the court of common pleas of the judicial district embracing the county where the registered office of the limited liability company is or is to be located; or

(2) where a company results from a merger, consolidation, division or other transaction without establishing a registered office in this Commonwealth or withdraws as a foreign limited liability company, the court of common pleas in which venue would have been laid immediately prior to the transaction or withdrawal.

“Department.” The Department of State of the Commonwealth.

“Domestic restricted professional company” or “restricted professional company.” A limited liability company that renders one or more restricted professional services.

“Entitled to vote.” Those persons entitled at the time to vote on the matter under the certificate of organization or operating agreement of the limited liability company or any applicable controlling provision of law.

“Event of dissociation.” An event that causes a person to cease to be a member of a limited liability company. See section 8971(a)(4) (relating to dissolution).

“Foreign limited liability company.” An association organized under the laws of any jurisdiction other than this Commonwealth, whether or not required to register under Subchapter J (relating to foreign companies), which would be a limited liability company if organized under the laws of this Commonwealth.

“Licensed person.” A natural person who is duly licensed or admitted to practice his profession by a court, department, board, commission or other agency of this Commonwealth or another jurisdiction to render a professional service that is or will be rendered by the professional company of which he is or intends to become a manager, member, employee or agent.

“Limited liability company” or “company.” An association that is a limited liability company organized and existing under this chapter.

“Liquidating trustee.” A person appointed by the court to carry out the winding up of a limited liability company.

“Manager.” A person selected under section 8941(b) (relating to management) to manage a limited liability company.

“Member.” A person who has been admitted to membership in a limited liability company and who has not dissociated from the company.

“Obligation.” Includes a note or other form of indebtedness, whether secured or unsecured.

“Operating agreement.” Any agreement of the members as to the affairs of a limited liability company and the conduct of its business. The operating agreement need not be in writing except where this chapter refers to a written provision of the operating agreement. The operating agreement may contain any provision for the regulation of the internal affairs of the company agreed to by the members, whether or not specifically authorized by or in contravention of this chapter, except where this chapter:

(1) refers only to a rule as set forth in the certificate of organization;

or

(2) expressly provides that the operating agreement shall not relax or contravene any provision on a specified subject.

See sections 8913(8) (relating to certificate of organization) and 8915 (relating to modification by agreement).

“Professional company.” A limited liability company that renders one or more professional services.

“Professional services.” The term shall have the meaning specified in section 2902 (relating to definitions).

“Qualified foreign limited liability company.” A foreign limited liability company that is registered under Subchapter J (relating to foreign companies) to do business in this Commonwealth.

“Qualified foreign restricted professional company.” A qualified foreign limited liability company that renders one or more restricted professional services.

“Real property.” Includes land, any interest, leasehold or estate in land and any improvements on it.

“Registered office.” That office maintained by a domestic or foreign limited liability company in this Commonwealth as required by section 8906 (relating to registered office). See section 109 (relating to name of commercial registered office provider in lieu of registered address).

“Relax.” When used with respect to a provision of the certificate of organization or operating agreement, means to provide lesser rights for an affected representative, manager or member.

“Restricted professional services.” The following professional services: chiropractic, dentistry, law, medicine and surgery, optometry, osteopathic medicine and surgery, podiatric medicine, public accounting, psychology or veterinary medicine.

“Unless otherwise provided.” When used to introduce or modify a rule, implies that the alternative provisions contemplated may either relax or restrict the stated rule.

“Unless otherwise restricted.” When used to introduce or modify a rule, implies that the alternative provisions contemplated may further restrict but may not relax the stated rule.

§ 8904. Rules for cases not provided for in this chapter.

(a) General rule.—Unless otherwise provided in the certificate of organization, in any case not provided for in this chapter:

(1) If the certificate of organization does not contain a statement to the effect that the limited liability company shall be managed by managers, the provisions of Chapters 81 (relating to general provisions) and 83 (relating to general partnerships) govern, and the members shall be deemed to be general partners for purposes of applying the provisions of those chapters.

(2) If the certificate of organization provides that the company shall be managed by managers, the provisions of Chapters 81, 83 and 85 (relating to limited partnerships) govern, and:

(i) the managers shall have the authority of general partners prescribed in those chapters; and

(ii) the members shall be deemed to be limited partners for purposes of applying the provisions of those chapters.

(b) Basis for determining liability of members, etc.—Except as otherwise provided in section 110 (relating to supplementary general principles of law applicable), the liability of members, managers and employees of a company shall at all times be determined solely and exclusively by the provisions of this chapter.

§ 8905. Name.

(a) General rule.—The name of each limited liability company as set forth in its certificate of organization shall:

(1) Be expressed in Roman letters or characters or Arabic or Roman numerals.

(2) Not be one rendered unavailable for use by a corporation by any provision of section 1303(b) and (c) (relating to corporate name).

(3) Contain the term “company,” “limited” or “limited liability company” or an abbreviation of one of those terms.

(b) Reservation of name.—The exclusive right to the use of a name for purposes of this chapter may be reserved and transferred in the manner provided by section 1305 (relating to reservation of corporate name).

§ 8906. Registered office.

(a) General rule.—Every limited liability company shall have and continuously maintain in this Commonwealth a registered office which may, but need not, be the same as its place of business.

(b) Change of registered office.—After organization, a change in the location of the registered office may be effected at any time by the company. Before the change becomes effective, the company shall amend its certificate of organization under the provisions of this chapter to reflect the change in location or shall file in the Department of State a certificate of change of registered office setting forth:

(1) The name of the company.

(2) The address, including street and number, if any, of its then registered office.

(3) The address, including street and number, if any, to which the registered office is to be changed.

(c) Alternative procedure.—A company may satisfy the requirements of this chapter concerning the maintenance of a registered office in this Commonwealth by setting forth in any document filed in the department under any provision of this chapter that permits or requires the statement of the address of its then registered office, in lieu of that address, the statement

authorized by section 109(a) (relating to name of commercial registered office provider in lieu of registered address).

(d) Cross references.—See sections 108 (relating to change in location or status of registered office provided by agent), 134 (relating to docketing statement) and 135 (relating to requirements to be met by filed documents).
§ 8907. Execution of documents.

(a) General rule.—Any document filed in the Department of State under this title by a domestic or foreign limited liability company subject to this chapter may be executed on behalf of the company by any one duly authorized member or manager thereof.

(b) Cross reference.—See section 135 (relating to requirements to be met by filed documents).

§ 8908. Election of professional association to become limited liability company.

(a) General rule.—This chapter applies to every professional association subject to Chapter 93 (relating to professional associations) that elects to accept the provisions of this chapter in the manner set forth in subsection (b).

(b) Procedure for election.—A professional association may elect to accept this chapter by filing in the Department of State a certificate of election of limited liability company status which shall be executed by all of the associates of the professional association and shall set forth:

(1) The name of the professional association.

(2) The name of the county in the office of the prothonotary of which the initial articles of association of the association were filed.

(3) A statement that the associates of the professional association have elected to accept the provisions of this chapter for the government and regulation of the affairs of the association.

(4) The provisions that shall constitute the initial certificate of organization of the limited liability company resulting from the filing, which may include such amendments to the articles of association of the professional association as the associates may choose to adopt.

See sections 134 (relating to docketing statement) and 135 (relating to requirements to be met by filed documents).

(c) Date of organization.—This chapter shall become applicable to the professional association, and it shall be deemed organized as a limited liability company, on the date the certificate of election is filed in the department.

SUBCHAPTER B ORGANIZATION; CERTIFICATE OF ORGANIZATION

Sec.

8911. Purposes.

8912. Organization.

8913. Certificate of organization.

8914. Filing of certificate of organization.

8915. Modification by agreement.**§ 8911. Purposes.**

(a) General rule.—Limited liability companies may be organized under this chapter for any lawful purpose, except for the purpose of banking or insurance. Unless otherwise restricted in its certificate of organization, every limited liability company has as its purpose the engaging in all lawful business for which limited liability companies may be organized under this chapter.

(b) Effect of limitation.—A limitation upon the business, purposes or powers of a limited liability company, expressed or implied in its certificate of organization or operating agreement or implied by law, shall not be asserted in order to defend any action at law or in equity between the company and a third person, or between a member and a third person, involving any contract to which the company is a party or any right of property or any alleged liability of whatever nature, but the limitation may be asserted:

(1) In an action by a member against the company to enjoin the doing of unauthorized acts or the transaction or continuation of unauthorized business. If the unauthorized acts or business sought to be enjoined are being transacted pursuant to any contract to which the company is a party, the court may, if all of the parties to the contract are parties to the action and if it deems the result to be equitable, set aside and enjoin the performance of the contract and in so doing shall allow to the company or to the other parties to the contract, as the case may be, such compensation as may be appropriate for the loss or damage sustained by any of them from the action of the court in setting aside and enjoining the performance of the contract, but anticipated profits to be derived from the performance of the contract shall not be awarded by the court as a loss or damage sustained.

(2) In any action by or in the right of the company to procure a judgment in its favor against an incumbent or former member or manager of the company for loss or damage due to his unauthorized acts.

(3) In a proceeding by the Commonwealth to enjoin the company from the doing of unauthorized or unlawful business.

(c) Conveyance of property by or to a company.—A conveyance or transfer by or to a limited liability company of property, real or personal, of any kind or description shall not be invalid or fail because in making the conveyance or transfer or in acquiring the property, real or personal, any representative of the company acting within the scope of the actual or apparent authority given to him by the company has exceeded any of the purposes or powers of the company.

(d) Cross references.—See sections 8102 (relating to interchangeability of partnership, limited liability company and corporate forms of organization) and 8996(a) (relating to purposes of restricted professional companies).

§ 8912. Organization.

One or more persons may organize a limited liability company under the provisions of this chapter. The person or persons need not be members of the company at the time of organization or at any time thereafter.

§ 8913. Certificate of organization.

The certificate of organization shall be signed by each of the organizers and shall set forth in the English language:

(1) The name of the limited liability company, unless the name is in a foreign language, in which case it shall be set forth in Roman letters or characters or Arabic or Roman numerals.

(2) Subject to section 109 (relating to name of commercial registered office provider in lieu of registered address), the address, including street and number, if any, of its initial registered office in this Commonwealth.

(3) The name and address, including street and number, if any, of each of the organizers.

(4) If a member's interest in the company is to be evidenced by a certificate of membership interest, a statement to that effect.

(5) If management of the company is vested in a manager or managers, a statement to that effect.

(6) If the certificate of organization is to be effective on a specified date, the hour, if any, and the month, day and year of the effective date.

(7) If the company is a restricted professional company, a statement to that effect, including a brief description of the restricted professional service or services to be rendered by the company.

(8) Any other provision, whether or not specifically authorized by or in contravention of this chapter, that the members elect to set out in the certificate of organization for the regulation of the internal affairs of the company, except where a provision of this chapter expressly provides that the certificate of organization shall not relax or contravene any provision on a specified subject. But see section 8915 (relating to modification by agreement). A provision included in the certificate of organization under this paragraph shall be deemed to be a provision of the operating agreement for purposes of any provision of this chapter that refers to a rule as set forth in the operating agreement.

§ 8914. Filing of certificate of organization.

(a) General rule.—The certificate of organization shall be filed in the Department of State.

(b) Effective date of organization.—A limited liability company is organized upon the filing of the certificate of organization in the department or at any later effective time specified in the certificate of organization.

(c) Cross references.—See sections 134 (relating to docketing statement) and 135 (relating to requirements to be met by filed documents).

§ 8915. Modification by agreement.

The provisions of this chapter are intended to permit a limited liability company to qualify for taxation as an entity that is not an association taxable

as a corporation under the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.). Notwithstanding the limitations in the definition of “operating agreement” in section 8903 (relating to definitions) and the limitations in section 8913(8) (relating to certificate of organization), the certificate of organization and operating agreement may effect any change in the form of organization of the company, in addition to or in contravention of the provisions of this chapter, that may be necessary to accomplish that purpose.

SUBCHAPTER C POWERS, DUTIES AND SAFEGUARDS

Sec.

- 8921. Powers and capacity.
- 8922. Liability of members and managers.
- 8923. Property.
- 8924. Limited transferability of membership interest.
- 8925. Taxation of limited liability companies.
- 8926. Certain specifically authorized debt terms.

§ 8921. Powers and capacity.

(a) General rule.—Except as provided in section 103 (relating to subordination of title to regulatory laws), a limited liability company shall have the legal capacity of natural persons to act.

(b) Business that may be carried on.—Subject to the limitations and restrictions imposed by statute or contained in its certificate of organization, every limited liability company may carry on any business that a partnership without limited partners may carry on and shall have the power to perform any act that such a partnership may perform.

(c) Cross reference.—See section 8102 (relating to interchangeability of partnership, limited liability company and corporate forms of organization).

§ 8922. Liability of members and managers.

(a) General rule.—Neither the members of a limited liability company nor the managers of a company managed by one or more managers are liable, solely by reason of being a member or a manager, under an order of a court or in any other manner for a debt, obligation or liability of the company of any kind or for the acts or omissions of any other member, manager, agent or employee of the company.

(b) Professional relationship unaffected.—Subsection (a) shall not afford members and managers of a professional company with greater immunity than is available to the officers, shareholders, employees or agents of a professional corporation. See section 2925 (relating to professional relationship retained).

(c) Disciplinary jurisdiction unaffected.—A professional company shall be subject to the applicable rules and regulations adopted by, and all the disciplinary powers of, the court, department, board, commission or other

government unit regulating the profession in which the company is engaged. The court, department, board or other government unit may require that a company include in its certificate of organization or operating agreement provisions that conform to any rule or regulation heretofore or hereafter promulgated for the purpose of enforcing the ethics of a profession. This chapter shall not affect or impair the disciplinary powers of the court, department, board, commission or other government unit over licensed persons or any law, rule or regulation pertaining to the standards for professional conduct of licensed persons or to the professional relationship between any licensed person rendering professional services and the person receiving professional services.

(d) Conflict of laws.—The personal liability of a member of a company to any person or in any action or proceeding for the debts, obligations or liabilities of the company or for the acts or omissions of other members, managers, employees or agents of the company shall be governed solely and exclusively by this chapter and the laws of this Commonwealth. Whenever a conflict arises between the laws of this Commonwealth and the laws of any other state with regard to the liability of members of a company organized and existing under this chapter for the debts, obligations and liabilities of the company or for the acts or omissions of the other members, managers, employees or agents of the company, the laws of this Commonwealth shall govern in determining such liability.

(e) Cross reference.—See section 8904(b) (relating to rules for cases not provided for in this chapter).

§ 8923. Property.

(a) General rule.—Property transferred to or otherwise acquired by a limited liability company becomes property of the company. A member has no interest in specific property of a company.

(b) Title.—Property may be acquired, held and conveyed in the name of a company. Any estate in real property may be acquired in the name of the company, and title to any estate so acquired shall vest in the company itself rather than in the members individually.

§ 8924. Limited transferability of membership interest.

(a) General rule.—The interest of a member in a limited liability company constitutes the personal estate of the member and may be transferred or assigned as provided in writing in the operating agreement. Unless otherwise provided in writing in the operating agreement, if all of the other members of the company other than the member proposing to dispose of his interest do not approve of the proposed transfer or assignment by unanimous written consent, the transferee of the interest of the member shall have no right to participate in the management of the business and affairs of the company or to become a member. The transferee shall only be entitled to receive the distributions and the return of contributions to which that member would otherwise be entitled.

(b) Certificate of membership interest.—The certificate of organization may provide that a member's interest in a company may be evidenced by a certificate of membership interest issued by the company and may also provide for the assignment or transfer of any membership interest represented by such a certificate and make other provisions with respect to such certificates. See 13 Pa.C.S. § 8102 (relating to definitions and index of definitions).

§ 8925. Taxation of limited liability companies.

(a) General rule.—For the purposes of the imposition by the Commonwealth of any tax or license fee on or with respect to any income, property, privilege, transaction, subject or occupation, a domestic or foreign limited liability company that is not a domestic or qualified foreign restricted professional company shall be deemed to be a corporation organized and existing under Part II (relating to corporations), and a member of such a company, as such, shall be deemed to be a shareholder of a corporation. Such a company may elect to be treated as a Pennsylvania S corporation, and its members shall be deemed shareholders of such a corporation, only if the company satisfies the conditions for electing that status. For purposes of the corporate net income tax and the capital stock and franchise tax, such a company shall be considered a "corporation" and an "entity" as defined in Articles IV and VI of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, and, if such a company is not required to file a Federal corporate income tax return, these taxes shall be computed as if such a Federal return had been filed. Nothing in this subsection shall impair or preempt the ability of a political subdivision to levy, assess or collect any applicable taxes or license fees authorized pursuant to the act of December 31, 1965 (P.L.1257, No.511), known as The Local Tax Enabling Act, on any company which elects limited liability company status in accordance with the provisions of this chapter.

(b) Reorganizations.—Every domestic or foreign limited liability company, regardless of whether it is also a domestic or qualified foreign restricted professional company, shall be deemed to be a corporation for purposes of applying the provisions of section 303(a) of the Tax Reform Code of 1971, with respect to a "reorganization" as defined in that section.

(c) Cross reference.—See section 8997 (relating to taxation of restricted professional companies).

§ 8926. Certain specifically authorized debt terms.

A limited liability company shall be subject to section 1510 (relating to certain specifically authorized debt terms) to the same extent as if it were a business corporation.

SUBCHAPTER D FINANCIAL PROVISIONS

Sec.

8931. Contributions to capital.

8932. Distributions.

8933. Distributions upon an event of dissociation.

8934. Distributions in kind.

8935. Right to distribution.

§ 8931. Contributions to capital.

(a) General rule.—An interest in a limited liability company may be issued in exchange for cash, tangible or intangible property, services rendered or a promissory note or other obligation to contribute cash or tangible or intangible property or to perform services.

(b) Enforceability.—A promise by a member to contribute to a company is not enforceable unless set out in a writing signed by the member. This subsection may not be varied by any provision of the certificate of organization or operating agreement.

(c) Inability to perform.—A member is obligated to the company to perform any enforceable promise to contribute cash or property or to perform services even if the member is unable to perform because of death, disability or other reason.

(d) Substitute performance.—If a member does not make the required contribution of property or services, the member is obligated, at the option of the company, to contribute cash equal to that portion of the value of the stated contribution that has not been made.

(e) Compromise.—The obligation of a member to make a contribution may be compromised only with the unanimous consent of the members.

§ 8932. Distributions.

A limited liability company may from time to time divide the profits of its business and distribute the same to and allocate any losses among the members of the company upon the basis stipulated in the operating agreement or, if not stipulated in the operating agreement, per capita.

§ 8933. Distributions upon an event of dissociation.

Upon the occurrence of an event of dissociation which does not result in the dissolution of the limited liability company, a dissociating member is entitled to receive any distribution to which the member is entitled under the operating agreement on the terms provided in the operating agreement and, within a reasonable time after dissociation, the fair value of the interest of the member in the company as of the date of dissociation based upon the right of the member to share in distributions from the company.

§ 8934. Distributions in kind.

(a) No right to distribution in kind.—A member, regardless of the nature of the contribution of the member, has no right to demand and receive any distribution from a limited liability company in any form other than cash.

(b) Limitation on distributions in kind.—A member may not be compelled to accept from a company a distribution of any asset in kind to the extent that the percentage of the asset distributed to the member exceeds a percentage

of that asset that is equal to the percentage in which the member shares in distributions from the company.

§ 8935. Right to distribution.

At the time a member becomes entitled to receive a distribution, the member has the status of and is entitled to all remedies available to a creditor of the limited liability company with respect to the distribution.

SUBCHAPTER E
MANAGEMENT AND MEMBERS

Sec.

8941. Management.

8942. Voting.

8943. Duties of managers and members.

8944. Classes of members.

8945. Indemnification.

8946. Transactions by member or manager.

8947. Resignation of manager.

8948. Dissociation of member limited.

§ 8941. Management.

(a) General rule.—Except as provided in subsection (b), management of the business and affairs of a limited liability company shall be vested in its members.

(b) Managers.—The certificate of organization may provide that management of a company shall be vested, to the extent provided in the certificate of organization, in one or more managers.

(c) Selection and qualifications of managers.—If the certificate of organization provides that management of a company shall be vested in one or more managers, they shall be named in or selected in the manner prescribed by the operating agreement. A manager:

(1) Need not be a member of the company or a natural person.

(2) Shall serve for a term of one year and until his successor has been elected and qualified or until his earlier death, resignation or removal.

(d) Cross reference.—See section 8996(b) (relating to ownership and governance of restricted professional companies).

§ 8942. Voting.

(a) General rule.—Subject to subsection (b), the affirmative vote or consent of a majority of the members or managers of a limited liability company entitled to vote on a matter shall be required to decide any matter to be acted upon by the members or managers.

(b) Unanimous vote required.—Except as provided in subsection (c) or in writing in the operating agreement, the affirmative vote or consent of all of the members shall be required to:

(1) amend the certificate of organization or any written provision of the operating agreement; or

(2) authorize a manager, member or other person to do any act on behalf of the company that contravenes the certificate of organization or a written provision of the operating agreement, including, without limitation, any provision that expressly limits the purpose, business or affairs of the company or the conduct thereof.

(c) Exception.—An amendment of the certificate of organization that:

(1) restates without change all of the operative provisions of the certificate of organization as theretofore in effect;

(2) changes the name or registered office of the company; or

(3) accomplishes any combination of the foregoing purposes;

is not an amendment of the certificate of organization for the purposes of subsection (b).

(d) Changes in required vote.—

(1) The certificate of organization or a written provision of the operating agreement may provide that, whenever an applicable provision of law requires the vote or consent of a specified number or percentage of members or of a class of members for the taking of any action, a higher number or percentage of votes or consents shall be required for the action.

(2) Unless otherwise provided in the certificate of organization or a written provision of the operating agreement, whenever the certificate or agreement requires for the taking of any action by the members or a class of members a specific number or percentage of votes or consents, the provision of the certificate or agreement setting forth that requirement shall not be amended or repealed by any lesser number or percentage of votes or consents of the members or the class of members.

(3) Paragraph (2) shall not apply to a provision setting forth the right of members to act by unanimous written consent in lieu of a meeting.

(e) Procedures.—The operating agreement may set forth provisions relating to notice of the time, place or purpose of any meeting at which any matter is to be voted on by any members or managers, waiver of the 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 with respect to the exercise of any such right to vote.

§ 8943. Duties of managers and members.

(a) Companies without managers.—If the certificate of organization does not provide that the limited liability company shall be managed by managers, every member must account to the company for any benefit and hold as trustee for it any profits derived by him without the consent of the other members from any transaction connected with the organization, conduct or winding up of the company or any use by him of its property. This subsection may not be varied by any provision of the certificate of organization or operating agreement.

(b) Companies with managers.—If the certificate of organization provides that the company shall be managed by one or more managers:

(1) Unless otherwise provided in writing in the operating agreement, the provisions of Subchapter B of Chapter 17 (relating to officers, directors and shareholders) shall be applicable to representatives of the company.

(2) A member who is not a manager shall have no duties to the company or to the other members solely by reason of acting in his capacity as a member.

§ 8944. Classes of members.

(a) General rule.—An operating agreement may provide for:

(1) classes or groups of members having such relative rights, powers and duties as the operating agreement may provide;

(2) the future creation in the manner provided in the operating agreement of additional classes or groups of members having such relative rights, powers and duties as may from time to time be established, including rights, powers and duties senior to existing classes and groups of members; and

(3) the taking of an action, including, without limitation, amendment of the certificate of organization or operating agreement or creation of a class or group of interests in the limited liability company that was not previously outstanding, without the vote or approval of any member or class or group of members.

(b) Class voting.—The operating agreement may grant to all or certain identified members or a specified class or group of members the right to vote (on a per capita or other basis), separately or with all or any class or group of members, upon any matter.

§ 8945. Indemnification.

(a) General rule.—Subject to such standards and restrictions, if any, as are set forth in the operating agreement, a limited liability company may and shall have the power to indemnify and hold harmless any member or manager or other person from and against any and all claims and demands whatsoever.

(b) When indemnification is not to be made.—Indemnification under subsection (a) shall not be made in any case where the act giving rise to the claim for indemnification is determined by a court to have constituted willful misconduct or recklessness. The certificate of organization or operating agreement may not provide for indemnification in the case of willful misconduct or recklessness.

(c) Grounds.—Indemnification under subsection (a) may be granted for any action taken and may be made whether or not the company would have the power to indemnify the person under any other provision of law except as provided in this section and whether or not the indemnified liability arises or arose from any threatened, pending or completed action by or in the right of the company. Such indemnification is declared to be consistent with the public policy of this Commonwealth.

(d) Payment of expenses.—Expenses incurred by a member, manager or other person in defending any action or proceeding against which

indemnification may be made under this section may be paid by the company in advance of the final disposition of such action or proceeding upon receipt of an undertaking by or on behalf of such person to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by the company.

(e) Rights to indemnification.—The indemnification and advancement of expenses provided by or granted under this section shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to serve in the capacity as to which he was indemnified and shall inure to the benefit of the heirs, executors and administrators of such person.

§ 8946. Transactions by member or manager.

(a) General rule.—A member or manager may be an employee or other representative of and engage in transactions with a limited liability company to the same extent as a person who is not a member or manager of the company.

(b) Managers.—A person who is both a member and a manager of a company has the rights and powers and is subject to the duties and liabilities of a manager and has the rights, powers, duties and liabilities of a member to the extent of his participation in the company as a member.

§ 8947. Resignation of manager.

A manager of a limited liability company may resign at any time, but if the resignation violates the operating agreement, the company may recover from the former manager damages for breach of the operating agreement.

§ 8948. Dissociation of member limited.

Notwithstanding anything to the contrary set forth in this part, an operating agreement may provide that a member may not voluntarily dissociate from the limited liability company or assign his membership interest prior to the dissolution and winding-up of the company, and an attempt by a member to dissociate voluntarily from the company in violation of the operating agreement shall be ineffective.

SUBCHAPTER F AMENDMENT OF CERTIFICATE

Sec.

8951. Amendment of certificate of organization.

§ 8951. Amendment of certificate of organization.

(a) General rule.—The certificate of organization is amended by filing a certificate of amendment thereto in the Department of State. The certificate of amendment shall set forth:

- (1) The name of the limited liability company.
- (2) The date of filing of the original certificate of organization.
- (3) The amendment to the certificate of organization.
- (4) If the amendment is to be effective on a specified date, the hour, if any, and the month, day and year of the effective date.

(b) **Limitation.**—An amendment adopted under this section shall not amend the certificate of organization in such a way that as so amended it would not be authorized by this chapter as an original certificate of organization, except that:

(1) A restated certificate of organization shall, subject to section 109 (relating to name of commercial registered officer provider in lieu of registered address), state the address of the current instead of the initial registered office of the company in this Commonwealth and need not state the names and addresses of the organizers.

(2) The company shall not be required to revise any other provision of its certificate if the provision is valid and operative immediately prior to the filing of the amendment in the department.

(c) **Effectiveness of certificate of amendment.**—Upon the filing of the certificate of amendment in the department or upon the effective time specified in the certificate of amendment, whichever is later, the certificate of amendment shall become effective, and the certificate of organization shall be deemed to be amended accordingly.

(d) **Cross references.**—See sections 134 (relating to docketing statement), 135 (relating to requirements to be met by filed documents), 8907 (relating to execution of documents) and 8942 (relating to voting).

SUBCHAPTER G MERGERS AND CONSOLIDATIONS

Sec.

8956. Merger and consolidation of limited liability companies authorized.

8957. Approval of merger or consolidation.

8958. Certificate of merger or consolidation.

8959. Effect of merger or consolidation.

§ 8956. Merger and consolidation of limited liability companies authorized.

(a) **Domestic surviving or new limited liability company.**—Any two or more domestic limited liability companies, or any two or more foreign limited liability companies, or any one or more domestic limited liability companies and any one or more foreign limited liability companies, may, in the manner provided in this subchapter, be merged into one of the domestic limited liability companies designated in this subchapter as the surviving limited liability company, or consolidated into a new limited liability company to be formed under this chapter, if the foreign limited liability companies are authorized by the laws of the jurisdiction under which they are organized to effect a merger or consolidation with a limited liability company of another jurisdiction.

(b) **Foreign surviving or new limited liability company.**—Any one or more domestic limited liability companies and any one or more foreign limited liability companies may, in the manner provided in this subchapter, be merged into one of the foreign limited liability companies designated in

this subchapter as the surviving limited liability company, or consolidated into a new limited liability company to be organized under the laws of the jurisdiction under which one of the foreign limited liability companies is organized, if the laws of that jurisdiction authorize a merger with or consolidation into a limited liability company of another jurisdiction.

(c) Business trusts and other associations.—The provisions of this subchapter applicable to domestic and foreign limited liability companies shall also be applicable to a merger or consolidation to which a domestic limited liability company is a party or in which such a company is the resulting entity with or into a domestic or foreign corporation, partnership, business trust or other association. The surviving or resulting entity in such a merger or consolidation may be a corporation, partnership, business trust or other association. Except as otherwise provided by law in this Commonwealth or any other jurisdiction, the powers and duties vested in and imposed upon the managers and members in this subchapter shall be exercised and performed by the group of persons under the direction of whom the business and affairs of the corporation, partnership, business trust or other association are managed and the holders or owners of shares or other interests in the corporation, partnership, business trust or other association, respectively, irrespective of the names by which the managing group and the holders or owners of shares or other interests are designated. The units into which the shares or other interests in the corporation, partnership, business trust or other association are divided shall be deemed to be membership interests for the purposes of applying the provisions of this subchapter to a merger or consolidation involving the corporation, partnership, business trust or other association.

§ 8957. Approval of merger or consolidation.

(a) Preparation of plan of merger or consolidation.—A plan of merger or consolidation, as the case may be, shall be prepared, setting forth:

(1) The terms and conditions of the merger or consolidation.

(2) If the surviving or new limited liability company is or is to be a domestic limited liability company:

(i) in the case of a merger, any changes desired to be made in the certificate of organization or operating agreement, which may include a restatement of either or both; or

(ii) in the case of a consolidation:

(A) all of the statements required by this chapter to be set forth in a restated certificate of organization; and

(B) the written provisions, if any, of the operating agreement.

(3) The manner and basis of converting the membership interests of each company into membership interests, securities or obligations of the surviving or new company, as the case may be, and, if any of the membership interests of any of the companies that are parties to the merger or consolidation are not to be converted solely into membership interests, securities or obligations of the surviving or new company, the

membership interests, securities or obligations of any other person or cash, property or rights that the holders of such membership interests are to receive in exchange for, or upon conversion of, such membership interests, and the surrender of any certificates evidencing them, which securities or obligations, if any, of any other person or cash, property or rights may be in addition to or in lieu of the membership interests, securities or obligations of the surviving or new company.

(4) Such other provisions as are deemed desirable.

(b) Reference to outside facts.—Any of the terms of the plan may be made dependent upon facts ascertainable outside of the plan if the manner in which the facts will operate upon the terms of the plan is set forth in the plan.

(c) Postadoption amendment of plan of merger or consolidation.—A plan of merger or consolidation may contain a provision that the managers, if any, of the constituent companies may amend the plan at any time prior to its effective date, except that an amendment made subsequent to any adoption of the plan by the members of any constituent company shall not, without the approval of the members, change:

(1) The amount or kind of membership interests, obligations, cash, property or rights to be received in exchange for or on conversion of all or any of the membership interests of the constituent company.

(2) Any term of the certificate of organization or operating agreement of the surviving or new company to be effected by the merger or consolidation.

(3) Any of the terms and conditions of the plan if the change would adversely affect the holders of any membership interests of the constituent company.

(d) Proposal of merger or consolidation.—Every merger or consolidation shall be proposed, in the case of each domestic limited liability company that is managed by one or more managers, by the adoption by the managers of a resolution approving the plan of merger or consolidation and, in any other case, in accordance with any applicable procedures specified in the operating agreement. Except where the approval of the members is unnecessary under this subchapter or the operating agreement, the plan shall be submitted to a vote of the members entitled to vote thereon at a regular or special meeting of the members.

(e) Party to plan.—An association that approves a plan in its capacity as a member or creditor of a merging or consolidating company or that furnishes all or a part of the consideration contemplated by a plan does not thereby become a party to the plan or the merger or consolidation for the purposes of this subchapter.

(f) Notice of meeting of members.—Written notice of the meeting of members that will act on the proposed plan shall be given to each member of record, whether or not entitled to vote thereon, of each domestic limited liability company that is a party to the merger or consolidation. There shall

be included in or enclosed with the notice a copy of the proposed plan or a summary thereof. The provisions of this subsection may not be relaxed by any provision of the certificate of organization or operating agreement.

(g) Adoption of plan by members.—The plan of merger or consolidation shall be adopted upon receiving a majority of the votes cast by all members, if any, entitled to vote thereon of each of the domestic limited liability companies that is a party to the merger or consolidation and, if any class of members is entitled to vote thereon as a class, a majority of the votes cast in each class vote. A proposed plan of merger or consolidation shall not be deemed to have been adopted by a company that is managed by one or more managers unless it has also been approved by the managers, regardless of the fact that the managers have directed or suffered the submission of the plan to the members for action.

(h) Adoption by managers.—

(1) Unless otherwise required by a written provision of the operating agreement, a plan of merger or consolidation shall not require the approval of the members of a company that is managed by one or more managers if:

(i) the plan, whether or not the company is the surviving company, does not alter the status of the company as a domestic limited liability company or alter in any respect the provisions of its certificate of organization or operating agreement, except changes that may be made without action by the members; and

(ii) each membership interest outstanding immediately prior to the effective date of the merger or consolidation is to continue as or to be converted into, except as may be otherwise agreed by the holder thereof, an identical membership interest in the surviving or new company after the effective date of the merger or consolidation.

(2) If a merger or consolidation is effected pursuant to paragraph (1), the plan of merger or consolidation shall be deemed adopted by the company when it has been adopted by the managers pursuant to subsection (d).

(i) Termination of plan.—Prior to the time when a merger or consolidation becomes effective, the merger or consolidation may be terminated pursuant to provisions therefor, if any, set forth in the plan. If a certificate of merger or consolidation has been filed in the department prior to the termination, a certificate of termination executed by each company that is a party to the merger or consolidation, unless the plan permits termination by less than all of the companies, in which case the certificate shall be executed on behalf of the company exercising the right to terminate, shall be filed in the department. The certificate of termination shall set forth:

(1) A copy of the certificate of merger or consolidation relating to the plan that is terminated.

(2) A statement that the plan has been terminated in accordance with the provisions therefor set forth therein.

See sections 134 (relating to docketing statement), 135 (relating to requirements to be met by filed documents) and 8907 (relating to execution of documents).

(j) Authorization by foreign limited liability companies.—The plan of merger or consolidation shall be authorized, adopted or approved by each foreign limited liability company that desires to merge or consolidate in accordance with the laws of the jurisdiction in which it is organized.
§ 8958. Certificate of merger or consolidation.

(a) General rule.—Upon the adoption of the plan of merger or consolidation by the limited liability companies desiring to merge or consolidate, as provided in this subchapter, a certificate of merger or a certificate of consolidation, as the case may be, shall be executed by each company and shall, subject to section 109 (relating to name of commercial registered office provider in lieu of registered address), set forth:

(1) The name and the location of the registered office, including street and number, if any, of the domestic surviving or new limited liability company or, in the case of a foreign surviving or new limited liability company, the name of the company and its jurisdiction of organization, together with either of the following:

(i) If a qualified foreign limited liability company, the address, including street and number, if any, of its registered office in this Commonwealth.

(ii) If a nonqualified foreign limited liability company, the address, including street and number, if any, of its principal office under the laws of the jurisdiction in which it is organized.

(2) The name and address, including street and number, if any, of the registered office of each other domestic limited liability company and qualified foreign limited liability company that is a party to the merger or consolidation.

(3) If the plan is to be effective on a specified date, the hour, if any, and the month, day and year of the effective date.

(4) The manner in which the plan was adopted by each domestic limited liability company and, if one or more foreign limited liability companies are parties to the merger or consolidation, the fact that the plan was authorized, adopted or approved, as the case may be, by each of the foreign limited liability companies in accordance with the laws of the jurisdiction in which it is organized.

(5) Except as provided in subsection (b), the plan of merger or consolidation.

(b) Omission of certain provisions of plan of merger or consolidation.—A certificate of merger or consolidation may omit all provisions of the plan of merger or consolidation except provisions, if any, that are intended to amend or constitute the operative provisions of the certificate of organization of a company as in effect subsequent to the effective date of the plan, if the certificate of merger or consolidation states that the full text of the plan is on

file at the principal place of business of the surviving or new company and states the address thereof. A company that takes advantage of this subsection shall furnish a copy of the full text of the plan, on request and without cost, to any member of any company that was a party to the plan and, unless all parties to the plan had fewer than 30 members each, on request and at cost to any other person.

(c) Filing of certificate of merger or consolidation.—The certificate of merger or certificate of consolidation, as the case may be, and the certificates or statement, if any, required by section 139 (relating to tax clearance of certain fundamental transactions) shall be filed in the department.

(d) Effective date of merger or consolidation.—Upon the filing of the certificate of merger or the certificate of consolidation in the Department of State or upon the effective date specified in the plan of merger or consolidation, whichever is later, the merger or consolidation shall be effective. The merger or consolidation of one or more domestic limited liability companies into a foreign limited liability company shall be effective according to the provisions of law of the jurisdiction in which the foreign limited liability company is organized, but not until a certificate of merger or certificate of consolidation has been adopted and filed, as provided in this subchapter.

(e) Cross references.—See sections 134 (relating to docketing statement), 135 (relating to requirements to be met by filed documents) and 8907 (relating to execution of documents).

§ 8959. Effect of merger or consolidation.

(a) Single surviving or new limited liability company.—Upon the merger or consolidation becoming effective, the several limited liability companies parties to the merger or consolidation shall be a single company which, in the case of a merger, shall be the company designated in the plan of merger as the surviving company and, in the case of a consolidation, shall be the new company provided for in the plan of consolidation. The separate existence of all companies parties to the merger or consolidation shall cease, except that of the surviving company, in the case of a merger.

(b) Property rights.—All the property, real, personal and mixed, of each of the companies parties to the merger or consolidation and all debts due on whatever account to any of them, as well as all other things and causes of action belonging to any of them, shall be deemed to be transferred to and vested in the surviving or new company, as the case may be, without further action, and the title to any real estate or any interest therein vested in any of the companies shall not revert or be in any way impaired by reason of the merger or consolidation. The surviving or new company shall thenceforth be responsible for all the liabilities of each of the companies so merged or consolidated. Liens upon the property of the merging or consolidating companies shall not be impaired by the merger or consolidation, and any claim existing or action or proceeding pending by or against any of the companies may be prosecuted to judgment as if the merger or consolidation

had not taken place or the surviving or new company may be proceeded against or substituted in its place.

(c) Taxes.—Any taxes, penalties and public accounts of the Commonwealth claimed against any of the merging or consolidating companies but not settled, assessed or determined prior to the merger or consolidation shall be settled, assessed or determined against the surviving or new company and, together with interest thereon, shall be a lien against the property, both real and personal, of the surviving or new company.

(d) Certificate of organization.—In the case of a merger, the certificate of organization of the surviving domestic limited liability company, if any, shall be deemed to be amended to the extent, if any, that changes in its certificate of organization are stated in the plan of merger. In the case of a consolidation into a domestic limited liability company, the statements that are set forth in the plan of consolidation or certificate of organization set forth therein shall be deemed to be the certificate of organization of the new limited liability company.

SUBCHAPTER H DIVISION

Sec.

- 8961. Division authorized.
- 8962. Proposal and adoption of plan of division.
- 8963. Division without member approval.
- 8964. Certificate of division.
- 8965. Effect of division.

§ 8961. Division authorized.

(a) Division of domestic company.—Any domestic limited liability company may, in the manner provided in this subchapter, be divided into two or more domestic limited liability companies organized or to be organized under this chapter, or into one or more domestic limited liability companies and one or more foreign limited liability companies to be organized under the laws of another jurisdiction or jurisdictions, or into two or more foreign limited liability companies, if the laws of the other jurisdictions authorize the division.

(b) Division of foreign company.—Any foreign limited liability company may, in the manner provided in this subchapter, be divided into one or more domestic limited liability companies to be organized under this chapter and one or more foreign limited liability companies organized or to be organized under the laws of another jurisdiction or jurisdictions, or into two or more domestic limited liability companies, if the foreign limited liability company is authorized under the laws of the jurisdiction under which it is incorporated to effect a division.

(c) Surviving and new companies.—The company effecting a division, if it survives the division, is designated in this subchapter as the surviving

company. All companies originally organized by a division are designated in this subchapter as new companies. The surviving company, if any, and the new company or companies are collectively designated in this subchapter as the resulting companies.

§ 8962. Proposal and adoption of plan of division.

(a) Preparation of plan.—A plan of division shall be prepared, setting forth:

(1) The terms and conditions of the division, including the manner and basis of:

(i) The reclassification of the membership interests of the surviving company, if there be one, and, if any of the membership interests of the dividing company are not to be converted solely into membership interests or other securities or obligations of one or more of the resulting companies, the membership interests or other securities or obligations of any other person or cash, property or rights that the holders of such membership interests are to receive in exchange for or upon conversion of such membership interests, and the surrender of any certificates evidencing them, which securities or obligations, if any, of any other person or cash, property or rights may be in addition to or in lieu of membership interests or other securities or obligations of one or more of the resulting companies.

(ii) The disposition of the membership interests and other securities or obligations, if any, of the new company or companies resulting from the division.

(2) A statement that the dividing company will or will not survive the division.

(3) Any changes desired to be made in the certificate of organization of the surviving company, if there be one, including a restatement of the certificate.

(4) The certificates of organization required by subsection (c).

(5) Such other provisions as are deemed desirable.

(b) Reference to outside facts.—Any of the terms of the plan may be made dependent upon facts ascertainable outside of the plan if the manner in which the facts will operate upon the terms of the plan is set forth in the plan.

(c) Certificates of organization of new companies.—There shall be included in or annexed to the plan of division:

(1) Certificates of organization, which shall contain all of the statements required by this chapter to be set forth in a restated certificate, for each of the new domestic limited liability companies, if any, resulting from the division.

(2) Certificates of organization or other organizational documents for each of the new foreign limited liability companies, if any, resulting from the division.

(d) Proposal and adoption.—Except as otherwise provided in section 8963 (relating to division without member approval), the plan of division shall be proposed and adopted and may be amended after its adoption and terminated by a domestic limited liability company in the manner provided for the proposal, adoption, amendment and termination of a plan of merger in Subchapter G (relating to mergers and consolidations) or, if the dividing company is a foreign limited liability company, in accordance with the laws of the jurisdiction in which it is organized.

(e) Action by holders of indebtedness.—Unless otherwise provided by an indenture or other contract by which the dividing limited liability company is bound, a plan of division shall not require the approval of the holders of any debt securities or other obligations of the dividing company or of any representative of the holders if the transfer of assets effected by the division, if effected by means of a sale, lease, exchange or other disposition, and any related distribution would not require the approval of the holders or representatives thereof.

§ 8963. Division without member approval.

Unless otherwise required by a written provision of the operating agreement, a plan of division that does not alter the state of organization of a limited liability company that is managed by one or more managers nor amend in any respect the provisions of its certificate of organization or operating agreement (except amendments which may be made without action by the members) shall not require the approval of the members of the company if:

(1) the dividing company has only one class of membership interests outstanding and the membership interests and other securities, if any, of each company resulting from the plan are distributed pro rata to the members of the dividing company;

(2) the dividing company survives the division and all the membership interests and other securities and obligations, if any, of all new companies resulting from the plan are owned solely by the surviving company; or

(3) the transfers of assets effected by the division, if effected by means of a sale, lease, exchange or other disposition, would not require the approval of the members.

§ 8964. Certificate of division.

(a) Contents.—Upon the adoption of a plan of division by the limited liability company desiring to divide, as provided in this subchapter, a certificate of division shall be executed by the company and shall, subject to section 109 (relating to name of commercial registered office provider in lieu of registered address), set forth:

(1) The name and the location of the registered office, including street and number, if any, of the dividing domestic limited liability company or, in the case of a dividing foreign limited liability company, the name of the company and the jurisdiction in which it is organized, together with either:

(i) If a qualified foreign limited liability company, the address, including street and number, if any, of its registered office in this Commonwealth.

(ii) If a nonqualified foreign limited liability company, the address, including street and number, if any, of its principal office under the laws of that jurisdiction.

(2) The statute under which the dividing company was organized and the date of organization.

(3) A statement that the dividing company will or will not survive the division.

(4) The name and address, including street and number, if any, of the registered office of each new domestic limited liability company or qualified foreign limited liability company resulting from the division.

(5) If the plan is to be effective on a specific date, the hour, if any, and the month, day and year of the effective date.

(6) The manner in which the plan was adopted by the company.

(7) The plan of division.

(b) Filing.—The certificate of division and the certificates or statement, if any, required by section 139 (relating to tax clearance of certain fundamental transactions) shall be filed in the Department of State.

(c) Effective date of division.—Upon the filing of the certificate of division in the Department of State or upon the effective date specified in the plan of division, whichever is later, the division shall become effective. The division of a domestic limited liability company into one or more foreign limited liability companies or the division of a foreign limited liability company shall be effective according to the laws of the jurisdictions where the foreign companies are or are to be organized but not until a certificate of division has been adopted and filed as provided in this subchapter.

(d) Cross references.—See sections 134 (relating to docketing statement), 135 (relating to requirements to be met by filed documents) and 8907 (relating to execution of documents).

§ 8965. Effect of division.

(a) Multiple resulting companies.—Upon the division becoming effective, the dividing company shall be subdivided into the distinct and independent resulting companies named in the plan of division, and, if the dividing company is not to survive the division, the existence of the dividing company shall cease. The resulting companies, if they are domestic limited liability companies, shall not thereby acquire authority to engage in any business or exercise any right that a company may not be organized under this chapter to engage in or exercise. Any resulting foreign limited liability company that is stated in the certificate of division to be a qualified foreign limited liability company shall be a qualified foreign limited liability company under Subchapter J (relating to foreign companies), and the certificate of division shall be deemed to be the application for registration of a foreign limited liability company of the limited liability company.

(b) Property rights.—

(1) (i) All the property, real, personal and mixed, of the dividing company and all debts due on whatever account to it, including subscriptions for membership interests and other causes of action belonging to it, shall, except as otherwise provided in paragraph (2), to the extent transfers of assets are contemplated by the plan of division, be deemed without further action to be transferred to and vested in the resulting companies on such a manner and basis and with such effect as is specified in the plan, or per capita among the resulting companies as tenants in common if no specification is made in the plan, and the title to any real estate or interest therein vested in any of the companies shall not revert or be in any way impaired by reason of the division.

(ii) Upon the division becoming effective, the resulting companies shall each thenceforth be responsible as separate and distinct companies only for such liabilities as each company may undertake or incur in its own name but shall be liable for the liabilities of the dividing company in the manner and on the basis provided in subparagraphs (iv) and (v).

(iii) Liens upon the property of the dividing company shall not be impaired by the division.

(iv) One or more, but less than all, of the resulting companies shall be free of the liabilities of the dividing company to the extent, if any, specified in the plan if no fraud of creditors or members or violation of law shall be effected thereby and if all applicable provisions of law are complied with.

(v) If the conditions in subparagraph (iv) for freeing one or more of the resulting companies from the liabilities of the dividing company are not satisfied, the liabilities of the dividing company shall not be affected by the division nor shall the rights of creditors thereof or of any person dealing with the company be impaired by the division, and any claim existing or action or proceeding pending by or against the company may be prosecuted to judgment as if the division had not taken place, or the resulting companies may be proceeded against or substituted in its place as joint and several obligors on such liability, regardless of any provision of the plan of division apportioning the liabilities of the dividing company.

(2) (i) The transfer of any fee or freehold interest or leasehold having a remaining term of 30 years or more in any tract or parcel of real property situate in this Commonwealth owned by a dividing company (including property owned by a foreign limited liability company dividing solely under the law of another jurisdiction) to a new company resulting from the division shall not be effective until one of the following documents is filed in the office for the recording of deeds of the county, or each of them, in which the tract or parcel is situated:

(A) A deed, lease or other instrument of confirmation describing the tract or parcel.

(B) A duly executed duplicate original copy of the certificate of division.

(C) A copy of the certificate of division certified by the Department of State.

(D) A declaration of acquisition setting forth the value of real estate holdings in such county of the company as an acquired company.

(ii) The provisions of 75 Pa.C.S. § 1114 (relating to transfer of vehicle by operation of law) shall not be applicable to a transfer of ownership of any motor vehicle, trailer or semitrailer from a dividing company to a new company under this section or under a similar law of any other jurisdiction but any such transfer shall be effective only upon compliance with the requirements of 75 Pa.C.S. § 1116 (relating to issuance of new certificate following transfer).

(c) Taxes.—Any taxes, penalties and public accounts of the Commonwealth claimed against the dividing company but not settled, assessed or determined prior to the division shall be settled, assessed or determined against any of the resulting companies and, together with interest thereon, shall be a lien against the property, both real and personal, of all the companies. Upon the application of the dividing company, the Department of Revenue, with the concurrence of the Office of Employment Security of the Department of Labor and Industry, shall release one or more, but less than all, of the resulting companies from liability and liens for all taxes, penalties and public accounts of the dividing company due the Commonwealth for periods prior to the effective date of the division if those departments are satisfied that the public revenues will be adequately secured.

(d) Certificate of organization of surviving company.—The certificate of organization of the surviving company, if there be one, shall be deemed to be amended to the extent, if any, that changes in its certificate are stated in the plan of division.

(e) Certificates of organization of new companies.—The statements that are set forth in the plan of division with respect to each new domestic limited liability company and that are required or permitted to be set forth in a restated certificate of organization of companies organized under this chapter or the certificate of organization of each new company set forth therein shall be deemed to be the certificate of organization of each new company.

(f) Managers.—Unless otherwise provided in the plan, the managers, if any, of the dividing limited liability company shall be the initial managers of each of the resulting companies.

(g) Disposition of membership interests.—Unless otherwise provided in the plan, the membership interests and other securities or obligations, if any, of each new company resulting from the division shall be distributable to:

(1) the surviving company if the dividing company survives the division; or

(2) the members of the dividing company in the proportions in which the members share in distributions, in any other case.

SUBCHAPTER I DISSOLUTION

Sec.

8971. Dissolution.

8972. Judicial dissolution.

8973. Winding up.

8974. Distribution of assets upon dissolution.

8975. Certificate of dissolution.

8976. Effect of filing certificate of dissolution.

8977. Survival of remedies and rights after dissolution.

8978. Dissolution by domestication.

§ 8971. Dissolution.

(a) General rule.—A limited liability company is dissolved and its affairs shall be wound up upon the happening of the first to occur of the following events:

(1) At the time or upon the happening of events specified in the certificate of organization.

(2) At the time or upon the happening of events specified in writing in the operating agreement.

(3) By the unanimous written agreement or consent of all members.

(4) Upon a member becoming a bankrupt or executing an assignment for the benefit of creditors or the death, retirement, resignation, expulsion or dissolution of a member or the occurrence of any other event that terminates the continued membership of a member in the company unless the business of the company is continued by the consent of all the remaining members given within 90 days following such event or under a right to do so stated in the operating agreement.

(5) Entry of an order of judicial dissolution under section 8972 (relating to judicial dissolution).

(b) Cross reference.—See section 8103 (relating to continuation of certain limited partnerships and limited liability companies).

§ 8972. Judicial dissolution.

On application by or for a member, the court may order dissolution of a limited liability company whenever it is not reasonably practicable to carry on the business in conformity with the operating agreement.

§ 8973. Winding up.

(a) General rule.—Except as provided in subsection (b) and unless otherwise provided in the operating agreement, the affairs of a limited liability company shall be wound up by the managers or, if none, by:

(1) the members who have not wrongfully dissolved the company; or

(2) a person approved by the members or, if there is more than one class or group of members, by each class or group of members, in each case by a majority in interest of the members in each class or group.

(b) Judicial supervision.—The court may wind up the affairs of the company upon application of any member, his legal representative or assignee and, in connection therewith, may appoint a liquidating trustee.

§ 8974. Distribution of assets upon dissolution.

(a) General rule.—In settling accounts after dissolution, the liabilities of the limited liability company shall be entitled to payment in the following order:

(1) Those to creditors, including members or managers who are creditors, in the order of priority as provided by law, in satisfaction of the liabilities of the company, whether by payment or the making of reasonable provision for payment thereof, other than liabilities for distributions to members under section 8932 (relating to distributions) or 8933 (relating to distributions upon an event of dissociation).

(2) Unless otherwise provided in the operating agreement, to members and former members in satisfaction of liabilities for distributions under section 8932 or 8933.

(3) Unless otherwise provided in the operating agreement, to members in respect of:

(i) Their contributions to capital.

(ii) Their share of the profits and other compensation by way of income on their contributions.

(b) Provision for claims.—A company that has dissolved shall pay or make reasonable provision to pay all claims and obligations, including all contingent, conditional or unmatured claims and obligations, known to the company and all claims and obligations that are known to the company but for which the identity of the claimant is unknown. If there are sufficient assets, such claims and obligations shall be paid in full, and any such provision for payment made shall be made in full. If there are insufficient assets, such claims and obligations shall be paid or provided for according to their priority and, among claims and obligations of equal priority, ratably to the extent of assets available therefor. Unless otherwise provided in the operating agreement, any remaining assets shall be distributed as provided in this chapter. Any liquidating trustee winding up the affairs of a company who has complied with this section shall not be personally liable to the claimants of the dissolved company by reason of his actions in winding up the company.

§ 8975. Certificate of dissolution.

(a) General rule.—When all debts, liabilities and obligations of the limited liability company have been paid and discharged or adequate provision has been made therefor and all of the remaining property and assets of the company have been distributed to the members, a certificate of dissolution

shall be executed by the company. The certificate of dissolution shall set forth:

(1) The name of the company.

(2) That all debts, obligations and liabilities of the company have been paid and discharged or that adequate provision has been made therefor.

(3) That all the remaining property and assets of the company have been distributed among its members in accordance with their respective rights and interests.

(4) That there are no actions pending against the company in any court or that adequate provision has been made for the satisfaction of any judgment that may be entered against it in any pending action.

(b) Filing of certificate.—The certificate of dissolution and the certificates or statement required by section 139 (relating to tax clearance of certain fundamental transactions) shall be filed in the Department of State.

(c) Cross references.—See sections 134 (relating to docketing statement), 135 (relating to requirements to be met by filed documents) and 8907 (relating to execution of documents).

§ 8976. Effect of filing certificate of dissolution.

(a) General rule.—Upon the filing of a certificate of dissolution, the existence of the limited liability company shall cease, except for the purpose of legal actions, other proceedings and appropriate action as provided in this chapter.

(b) Postfiling administration.—The manager or managers in office at the time of dissolution or the survivors of them or, if management of the company is retained by the members, then all members shall thereafter be trustees for the members and creditors of the dissolved company and as such shall have authority to distribute any company property discovered after dissolution, convey real estate and take such other action as may be necessary on behalf of and in the name of such dissolved company.

§ 8977. Survival of remedies and rights after dissolution.

(a) General rule.—The dissolution of a limited liability company shall not eliminate or impair any remedy available to or against the company or its managers or members for any right or claim existing or liability incurred prior to the dissolution, if an action thereon is brought on behalf of:

(1) the company within the time otherwise limited by law; or

(2) any other person before or within two years after the date of the dissolution or within the time otherwise limited by law, whichever is less.

(b) Action in name of company.—An action brought under subsection (a) may be prosecuted against and defended by the company under the name of the company.

(c) Preservation of limited liability.—The dissolution of a company shall not affect the limited liability of members with respect to transactions occurring or acts or omissions done or omitted in the name of or by the company except that each member shall be liable for his pro rata portion of

the unpaid liabilities of the company up to the amount of the net assets of the company distributed to the member in connection with the dissolution.

§ 8978. Dissolution by domestication.

Whenever a domestic limited liability company has domesticated itself under the laws of another jurisdiction by action similar to that provided by section 8982 (relating to domestication) and has authorized that action by the vote required by this subchapter for the approval of a proposal that the company dissolve voluntarily, the company may surrender its certificate of organization under the laws of this Commonwealth by filing in the Department of State a certificate of dissolution under section 8975 (relating to certificate of dissolution). In lieu of the statements required by section 8975(a)(2) through (4), the certificate of dissolution shall set forth a statement that the company has domesticated itself under the laws of another jurisdiction.

SUBCHAPTER J FOREIGN COMPANIES

Sec.

8981. Foreign limited liability companies.

8982. Domestication.

§ 8981. Foreign limited liability companies.

(a) General rule.—A foreign limited liability company shall be subject to Subchapter K of Chapter 85 (relating to foreign limited partnerships) as if it were a foreign limited partnership, except that:

(1) Section 8582(a)(5) and (6) (relating to registration) shall not be applicable to the application for registration of a foreign limited liability company.

(2) If the foreign limited liability company is to be a qualified foreign restricted professional company, its application for registration shall so state and shall also contain a brief description of the professional service or services to be rendered by the company.

(3) A qualified foreign limited liability company shall enjoy the same rights and privileges as a domestic limited liability company, but no more, and, except as otherwise provided by law, shall be subject to the same liabilities, restrictions, duties and penalties now in force or hereafter imposed upon domestic limited liability companies to the same extent as if it had been organized under this chapter.

(b) Provision applicable to all foreign limited liability companies.—Section 8926 (relating to certain specifically authorized debt terms) shall be applicable to any obligation, as defined in section 1510 (relating to certain specifically authorized debt terms), of a foreign limited liability company executed or effected in this Commonwealth or affecting real property situated in this Commonwealth.

§ 8982. Domestication.

(a) General rule.—Any qualified foreign limited liability company may become a domestic limited liability company by filing in the Department of State a certificate of domestication. The certificate of domestication, upon being filed in the department, shall constitute the certificate of organization of the domesticated company, and it shall thereafter continue as a limited liability company which shall be a domestic limited liability company subject to this chapter.

(b) Certificate of domestication.—The certificate of domestication shall be executed by the company and shall set forth in the English language:

(1) The name of the company. If the name is in a foreign language, it shall be set forth in Roman letters or characters or Arabic or Roman numerals.

(2) Subject to section 109 (relating to name of commercial registered office provider in lieu of registered address), the address, including street and number, if any, of its registered office in this Commonwealth.

(3) A statement that upon domestication the company will be subject to the domestic limited liability company provisions of the Limited Liability Company Law of 1994 and, if desired, a brief statement of the purpose or purposes for which it is to be domesticated which shall be a purpose or purposes for which a domestic limited liability company may be organized under this chapter and which may consist of or include a statement that the company shall have unlimited power to engage in and to do any lawful act concerning any or all lawful business for which companies may be organized under the Limited Liability Company Law of 1994.

(4) Any desired provisions relating to the manner and basis of reclassifying the membership interests of the company.

(5) A statement that the filing of the certificate of domestication and, if desired, the renunciation of the original certificate of organization of the company has been authorized, unless its certificate of organization or other organic documents require a greater vote, by a majority of the votes cast by all members entitled to vote thereon and, if any class of members is entitled to vote thereon as a class, a majority of the votes cast in each class vote.

(6) Any other provisions authorized or required by this chapter to be set forth in an original certificate of organization.

See sections 134 (relating to docketing statement), 135 (relating to requirements to be met by filed documents) and 8907 (relating to execution of documents).

(c) Effect of domestication.—As a domestic limited liability company, the domesticated company shall no longer be a foreign limited liability company for the purposes of this chapter and shall have all the powers and privileges and be subject to all the duties and limitations granted and imposed upon domestic limited liability companies. The property, debts, liens, estates, taxes,

penalties and public accounts due the Commonwealth shall continue to be vested in and imposed upon the company to the same extent as if it were the successor by merger of the domesticating company with and into a domestic limited liability company under Subchapter G (relating to mergers and consolidations). The shares of the domesticated company shall be unaffected by the domestication except to the extent, if any, reclassified in the certificate of domestication.

SUBCHAPTER K ACTIONS

Sec.

8991. Parties to actions.

8992. Authority to sue.

8993. Effect of lack of authority to sue.

§ 8991. Parties to actions.

(a) General rule.—Suit may be brought by or against a limited liability company in its own name.

(b) Members as parties.—A member of a company is not a proper party to an action or proceeding by or against the company, except where the object is to enforce the right of a member against or his liability to the company.

§ 8992. Authority to sue.

Suit on behalf of a limited liability company may be brought in the name of the company by:

(1) Any member of the company, whether or not the certificate of organization vests management of the company in one or more managers, who is duly authorized to sue by the vote of members entitled to vote who do not have an interest in the outcome of the suit that is adverse to the interest of the company.

(2) Any manager of the company, if the certificate of organization vests management of the company in one or more managers, who is duly authorized to do so by the vote of managers who do not have an interest in the outcome of the suit that is adverse to the interest of the company.

§ 8993. Effect of lack of authority to sue.

The lack of authority of a member or manager to sue on behalf of a limited liability company may not be asserted as a defense to an action by the company or by the company as a basis for bringing a subsequent suit on the same cause of action.

SUBCHAPTER L RESTRICTED PROFESSIONAL COMPANIES

Sec.

8995. Application and effect of subchapter.

8996. Restrictions.

8997. Taxation of restricted professional companies.

8998. Annual registration.

§ 8995. Application and effect of subchapter.

(a) General rule.—This subchapter shall be applicable to a limited liability company that is a restricted professional company.

(b) Application to limited liability companies generally.—Except as provided in section 8997 (relating to taxation of restricted professional companies), the existence of a provision of this subchapter shall not of itself create any implication that a contrary or different rule of law is or would be applicable to a limited liability company that is not a restricted professional company. This subchapter shall not affect any statute or rule of law that is or would be applicable to a limited liability company that is not a restricted professional company.

(c) Laws applicable to restricted professional companies.—Except as otherwise provided in this subchapter, this chapter shall be generally applicable to all restricted professional companies. The specific provisions of this subchapter shall control over the general provisions of this chapter.

(d) Election of restricted professional company status.—At the time an existing limited liability company that has previously conducted a business not involving the rendering of a restricted professional service begins to render one or more restricted professional services, the company shall amend its certificate of organization to include the statement required by section 8913(7) (relating to certificate of organization). For purposes of sections 8925 (relating to taxation of limited liability companies) and 8997, the company shall be deemed to have become a restricted professional company on the first day of the taxable year of the company following the taxable year in which the amendment of its certificate of organization required by this subsection is filed.

(e) Termination of restricted professional company status.—Except as provided in this subsection, the status of a restricted professional company as such shall terminate, and the company shall cease to be subject to this subchapter, at such time as it ceases to render any restricted professional services. Upon ceasing to render any restricted professional services, the company shall amend its certificate of organization to delete the statement required by section 8913(7). For purposes of sections 8925 and 8997, the company shall be deemed to have ceased being a restricted professional company on the first day of the taxable year of the company following the taxable year in which it ceased to render any restricted professional services.

§ 8996. Restrictions.

(a) Purposes of restricted professional companies.—A restricted professional company shall not engage in any business other than conducting the practice of the restricted professional service or services for which it was specifically organized, except that a restricted professional company may:

(1) Own real and personal property necessary for or appropriate or desirable in the fulfillment or rendering of its specific restricted professional service or services and it may invest its funds in real estate, mortgages, stocks, bonds or any other type of investment.

(2) Be a partner, shareholder, member or other owner of a partnership, corporation, limited liability company or other association engaged in the business of rendering the restricted professional service or services for which the restricted professional company was organized.

(b) Ownership and governance of restricted professional companies.—Except as otherwise provided by a statute, rule or regulation applicable to a particular profession, all of the members and the managers, if any, of a restricted professional company shall be licensed persons.

(c) Rendering restricted professional services.—

(1) A restricted professional company may lawfully render restricted professional services only through licensed persons. The company may employ persons not so licensed but those persons shall not render any restricted professional services rendered or to be rendered by it.

(2) Paragraph (1) shall not be interpreted to preclude the use of clerks, secretaries, nurses, administrators, bookkeepers, technicians and other assistants or paraprofessionals who are not usually and ordinarily considered by law, custom and practice to be rendering the restricted professional service or services for which the restricted professional company was organized nor to preclude the use of any other person who performs all his employment under the direct supervision and control of a licensed person. A person shall not under the guise of employment render restricted professional services unless duly licensed or admitted to practice as required by law.

(3) Notwithstanding any other provision of law, a restricted professional company may charge for the restricted professional services rendered by it, may collect those charges and may compensate those who render the restricted professional services.

(d) Application.—For purposes of applying subsection (a):

(1) The practice of the restricted professional service of public accounting shall be deemed to include:

(i) the provision of one or more kinds of services involving the use of accounting or auditing skills, including, without limitation, the issuance of reports on financial statements;

(ii) the provision of one or more kinds of management advisory, financial advisory or consulting services; and

(iii) the preparation of tax returns or the furnishing of advice on tax matters.

(2) A restricted professional company shall not engage in the conduct of the business of or own directly or indirectly any equity interest in:

(i) A clinical laboratory as defined in section 2 of the act of September 26, 1951 (P.L.1539, No.389), known as The Clinical Laboratory Act.

(ii) A blood bank as defined in section 3 of the act of December 6, 1972 (P.L.1614, No.335), known as the Pennsylvania Blood Bank Act.

(iii) A health care facility as defined in section 802.1 of the act of July 19, 1979 (P.L.130, No.48), known as the Health Care Facilities Act.

(iv) An ambulatory service facility as defined in section 3 of the act of July 8, 1986 (P.L.408, No.89), known as the Health Care Cost Containment Act.

(v) A kidney treatment center or a hemodialysis center.

§ 8997. Taxation of restricted professional companies.

(a) General rule.—Except as provided in subsection (b) and in section 8925(b) (relating to taxation of limited liability companies), for the purposes of the imposition by the Commonwealth or any political subdivision of any tax or license fee on or with respect to any income, property, privilege, transaction, subject or occupation, a domestic or qualified foreign restricted professional company shall be deemed to be a limited partnership organized and existing under Chapter 85 (relating to limited partnerships), and a member of such a company, as such, shall be deemed a limited partner of a limited partnership.

(b) Exception.—A domestic or qualified foreign restricted professional company shall be subject to section 8925(a), instead of subsection (a), for the whole of any taxable year of the company during any part of which the company has:

- (1) engaged in any business not permitted by section 8996(a) (relating to purposes of restricted professional companies);
- (2) had only one member; or
- (3) been a member of a limited liability company.

§ 8998. Annual registration.

(a) General rule.—Every domestic restricted professional company in existence on December 31 of any year and every qualified foreign restricted professional company that is registered to do business in this Commonwealth on December 31 of any year shall file in the Department of State with respect to that year, and on or before April 15 of the following year, a certificate of annual registration on a form provided by the department, executed by the company and accompanied by the annual registration fee prescribed by subsection (b). The department shall not charge a fee other than the annual registration fee for filing the certificate of annual registration. The certificate of annual registration shall include a statement by the company as to whether or not it engaged in any business not permitted by section 8996(a) (relating to purposes of restricted professional companies) during the year with respect to which the certificate is being filed.

(b) Annual registration fee.—

(1) The annual registration fee to be paid when filing a certificate of annual registration shall be equal to a base fee of \$300 times the number of persons who:

- (i) were members of the company on December 31 of the year with respect to which the certificate of annual registration is being filed;
- (ii) were licensed persons; and
- (iii) had their principal residence at the time in this Commonwealth.

(2) The base fee of \$300 shall be increased on December 31, 1997, and December 31 of every third year thereafter by the percentage increase in the Consumer Price Index for Urban Workers during the most recent three calendar years for which that index is available on the date of adjustment. Each adjustment under this paragraph shall be rounded up to the nearest \$10.

(c) Notice of annual registration.—Not later than February 1 of each year, the department shall give notice to every restricted professional company required to file a certificate of annual registration with respect to the preceding year of the requirement to file the certificate. The notice shall state the amount of the base fee payable under subsection (b)(1), as adjusted pursuant to subsection (b)(2), if applicable, and shall be accompanied by the form of certificate to be filed. Failure by the department to give notice to any party or failure by any party to receive notice of the annual registration requirement shall not relieve the party of the obligation to file the certificate.

(d) Credit to Corporation Bureau Restricted Account.—The annual registration fee shall not be deemed to be an amount received by the department under Subchapter C of Chapter 1 (relating to Corporation Bureau and UCC fees) for purposes of section 155 (relating to disposition of funds), except that \$25 of the fee shall be credited to the Corporation Bureau Restricted Account.

(e) Functions of Department of State.—The department shall send to the Department of Revenue a copy of any certificate that discloses the conduct of any business not permitted by section 8996(a).

(f) Annual fee to be lien.—Failure to pay the annual registration fee imposed by this section shall not affect the existence or status of the restricted professional company as such, but the annual registration fee shall be a lien from the time the annual registration fee is due and payable upon all of the property and proceeds thereof of the company in which a security interest can be perfected, in whole or in part, by filing in the department under 13 Pa.C.S. Div. 9 (relating to secured transactions; sales of accounts, contract rights and chattel paper), whether the property and proceeds are owned by the company at the time the annual registration fee becomes due and payable or are acquired thereafter. Except as otherwise provided by statute, the lien created by this subsection shall have priority over all other liens, security interests or other charges, except liens for taxes or other charges due the Commonwealth. The lien created by this subsection shall be entered on the records of the department and indexed in the same manner as

a financing statement filed under 13 Pa.C.S. Div. 9. At the time an annual registration fee that has resulted in the creation of the lien under this subsection is paid, the department shall terminate the lien with respect to that annual registration fee without requiring a separate filing by the company for that purpose.

(g) Cross references.—See section 8907 (relating to execution of documents) and 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

§ 9302. Application of chapter.

This chapter shall apply to and the word “association” in this chapter shall mean a professional association organized under the act of August 7, 1961 (P.L.941, No.416), known as the Professional Association Act, which has not:

(1) Reorganized as an electing partnership under Chapter 87 (relating to electing partnerships).

(2) Elected to become a professional corporation in the manner provided by section 2905 (relating to election of professional associations to become professional corporations).

(3) *Elected to become a limited liability company in the manner provided by section 8908 (relating to election of professional association to become limited liability company).*

An association may not be originally organized under this chapter.

§ 9501. Application and effect of chapter.

* * *

(d) *Multistate application.—It is the intent of the General Assembly in enacting this chapter that the legal existence of business trusts organized in this Commonwealth be recognized outside the boundaries of this Commonwealth and that, subject to any reasonable requirement of registration, a domestic business trust transacting business outside this Commonwealth be granted protection of full faith and credit under the Constitution of the United States.*

§ 9506. Liability of trustees and beneficiaries.

* * *

(c) *Certain specifically authorized debt terms.—A business trust shall be subject to section 1510 (relating to certain specifically authorized debt terms) to the same extent as if it were a business corporation.*

(d) *Professional relationship unaffected.—Subsection (a) shall not afford trustees or beneficiaries of a business trust providing professional services with greater immunity than is available to the officers, shareholders, employees or agents of a professional corporation. See section 2925 (relating to professional relationship retained).*

(e) *Disciplinary jurisdiction unaffected.—A business trust providing professional services shall be subject to the applicable rules and regulations adopted by, and all the disciplinary powers of, the court, department, board, commission or other government unit regulating the profession in which the business trust is engaged. The court, department, board or other*

government unit may require that a business trust include in its instrument provisions that conform to any rule or regulation heretofore or hereafter promulgated for the purpose of enforcing the ethics of a profession. This chapter shall not affect or impair the disciplinary powers of the court, department, board, commission or other government unit over licensed persons or any law, rule or regulation pertaining to the standards for professional conduct of licensed persons or to the professional relationship between any licensed person rendering professional services and the person receiving professional services.

(f) Permissible beneficiaries.—Except as otherwise provided by a statute, rule or regulation applicable to a particular profession, all of the beneficiaries of a business trust that renders one or more restricted professional services shall be licensed persons. As used in this subsection, the term “restricted professional services” shall have the meaning specified in section 8903 (relating to definitions).

(g) Conflict of laws.—The personal liability of a trustee or beneficiary of a business trust to any person or in any action or proceeding for the debts, obligations or liabilities of the trust or for the acts or omissions of other trustees, beneficiaries, employees or agents of the trust shall be governed solely and exclusively by this chapter and the laws of this Commonwealth. Whenever a conflict arises between the laws of this Commonwealth and the laws of any other state with respect to the liability of trustees or beneficiaries of a trust organized and existing under this chapter for the debts, obligations and liabilities of the trust or for the acts or omissions of the other trustees, beneficiaries, employees or agents of the trust, the laws of this Commonwealth shall govern in determining such liability.

§ 9507. Foreign business trusts.

(a) General rule.—A business trust organized under any laws other than those of this Commonwealth shall be subject to Subchapters B (relating to qualification) and C (relating to powers, duties and liabilities) of Chapter 41, as if it were a foreign business corporation, except that a qualified foreign business trust shall enjoy the same rights and privileges as a domestic business trust, but no more, and, except as otherwise provided by law, shall be subject to the same liabilities, restrictions, duties and penalties now in force or hereafter imposed upon domestic business trusts, to the same extent as if it were a domestic business trust.

(b) Provision applicable to all foreign business trusts.—Section 9506(c) (relating to certain specifically authorized debt terms) shall be applicable to any obligation, as defined in section 1510 (relating to certain specifically authorized debt terms), of a business trust organized under any laws other than those of this Commonwealth, whether or not required to qualify in this Commonwealth, executed or effected in this Commonwealth or affecting real property situated in this Commonwealth.

Section 5. Amendment of Title 42.

Section 2524 of Title 42 is amended to read:

§ 2524. Penalty for unauthorized practice of law.

[Any] (a) *General rule.*—*Except as provided in subsection (b), any person who within this Commonwealth shall practice law, or who shall hold himself out to the public as being entitled to practice law, or use or advertise the title of lawyer, attorney at law, attorney and counselor at law, counselor, or the equivalent in any language, in such a manner as to convey the impression that he is a practitioner of the law of any jurisdiction, without being an attorney at law or a corporation complying with 15 Pa.C.S. Ch. 29 (relating to professional corporations), commits a misdemeanor of the third degree.*

(b) *Practice by associations.*—

(1) *An association does not violate subsection (a) if it provides legal services only through officers, employees or agents who are duly admitted to practice law. The association may employ persons not admitted to practice law, but those persons shall not render any legal services rendered or to be rendered by the association.*

(2) *This subsection shall not be interpreted to preclude the use of clerks, secretaries, administrators, bookkeepers, technicians and other assistants who are not usually and ordinarily considered by law, custom and practice to be rendering legal services nor to preclude the use of any other person who performs all his employment under the direct supervision and control of a person duly admitted to practice law. A person shall not, under the guise of employment, render legal services unless duly admitted to practice law.*

(3) *Notwithstanding any other provision of law, an association may charge for the legal services of its officers, employees and agents, may collect those charges and may compensate those who render the professional services.*

Section 6. Amendment of Title 54.

As much of Title 54 as is hereinafter set forth is amended or added to read:

§ 303. Scope of chapter.

* * *

(b) *Mandatory registration.*—

* * *

(2) Paragraph (1) shall not apply to any:

* * *

(vi) *Limited liability company which is registered in the department pursuant to 15 Pa.C.S. Ch. 89 (relating to limited liability companies).*

(vii) *Registered limited liability partnership which is registered in the department pursuant to 15 Pa.C.S. Ch. 82¹ (relating to registered*

¹ "8105" in enrolled bill.

limited liability partnerships).

(viii) Business trust which is registered in the department pursuant to 15 Pa.C.S. Ch. 95 (relating to business trusts).

* * *

§ 501. Register established.

(a) General rule.—A register is established by this chapter which shall consist of such of the following names as are not deleted therefrom by operation of section 504 (relating to effect of failure to make decennial filings) or 506 (relating to voluntary termination of registration by corporations and other associations):

* * *

(6) In the case of a limited partnership or limited liability company subject to 15 Pa.C.S. Ch. 85 (relating to limited partnerships) or 89 (relating to limited liability companies), the name of the partnership or company as set forth in the certificate of limited partnership, certificate of organization or application for registration as a foreign limited partnership or foreign limited liability company, as the case may be.

(7) In the case of a business trust which exists subject to 15 Pa.C.S. Ch. 95 (relating to business trusts), the name of the trust as set forth in the instrument filed in the department under 15 Pa.C.S. § 9503 (relating to documentation of trust), or in the application for registration filed pursuant to 15 Pa.C.S. § 9507 (relating to foreign business trusts).

(8) In the case of a registered limited liability partnership subject to 15 Pa.C.S. Ch. 82 (relating to registered limited liability partnerships) that is not also a limited partnership, the name of the partnership as set forth in the statement of registration or application for registration as a foreign registered limited liability partnership.

* * *

Section 7. Repeal.

The act of May 26, 1947 (P.L.318, No.140), known as The C.P.A. Law, is repealed insofar as it prohibits practice of public accounting in the form of a limited liability company whose members are all certified public accountants duly qualified to practice as certified public accountants in a state or territory of the United States or the District of Columbia or public accountants registered under said act and engaged in the practice of public accounting.

Section 8. Retroactivity.

The amendment of 15 Pa.C.S. § 153(a)(8)(vii) shall be retroactive to December 18, 1992, but the Department of State shall not be required to refund any portion of a fee collected under 15 Pa.C.S. § 153(a)(8) if the amount of the fee was lawful at the time it was collected.

Section 9. Effective date.

This act shall take effect in 60 days.

SOURCE NOTES

The source note for 15 Pa.C.S. § 8104 is as follows:

15 Pa.C.S. § 8104: Patterned after Constitution, Article 10, § 3, and 15 Pa.C.S. § 501(a).

The source notes for 15 Pa.C.S. Ch. 82 are as follows:

15 Pa.C.S. § 8201: Patterned after 15 Pa.C.S. § 8701. Compare Title IX La. Civ. Code § 3410 and Tex. Partnerships and Joint Stock Cos. Code Art. 6132b, § 45-A.

15 Pa.C.S. § 8202: New.

15 Pa.C.S. § 8203: Patterned after 15 Pa.C.S. § 8505. Compare 6 Del. Code § 1545, Title IX La. Civ. Code § 3411 and Tex. Partnerships and Joint Stock Cos. Code Art. 6132b, § 45-B.

15 Pa.C.S. § 8204: Subsections (a) and (b) patterned after 6 Del. Code § 1515(b) and (c), Title IX La. Civ. Code § 3409 and Tex. Partnerships and Joint Stock Cos. Code Art. 6132b, § 15. Subsection (c) patterned after 15 Pa.C.S. § 1979(b).

15 Pa.C.S. § 8205: Patterned in general after 15 Pa.C.S. § 8524(a).

15 Pa.C.S. § 8206: Subsections (a) and (b) patterned after Tex. Partnerships and Joint Stock Cos. Code Art. 6132b, § 45-C. Subsection (c) patterned after 6 Del. Code § 1546(d).

15 Pa.C.S. § 8207: Subsection (a) patterned after 15 Pa.C.S. § 8902. Subsection (b) patterned after 15 Pa.C.S. § 8904(b). Subsection (c) patterned after 15 Pa.C.S. § 8922(c).

15 Pa.C.S. § 8211: Subsection (a) patterned after 15 Pa.C.S. § 8581. Subsection (b) patterned after 15 Pa.C.S. § 8981(a).

15 Pa.C.S. § 8221: New.

The source notes for the new provisions of 15 Pa.C.S. Ch. 85 are as follows:

15 Pa.C.S. § 8576: Patterned after 15 Pa.C.S. § 1951.

15 Pa.C.S. § 8577: Patterned after 15 Pa.C.S. § 1952.

15 Pa.C.S. § 8578: Patterned after 15 Pa.C.S. § 1953.

15 Pa.C.S. § 8579: Patterned after 15 Pa.C.S. §§ 1954, 1955 and 1956.

15 Pa.C.S. § 8580: Patterned after 15 Pa.C.S. § 1957.

15 Pa.C.S. § 8590: Patterned after 15 Pa.C.S. §§ 4161 and 4162.

The source notes for 15 Pa.C.S. Ch. 89 are as follows:

15 Pa.C.S. § 8901: Patterned after Prototype Limited Liability Company Act § 101.

15 Pa.C.S. § 8902: See also 15 Pa.C.S. §§ 8904(b) and 8922(d).

15 Pa.C.S. § 8903: Definition of “real property” patterned after Wyo. Stat. 17-15-102. Definition of “bankrupt” patterned after proposed Revised Uniform Partnership Act § 101. Definitions of “relax,” “unless otherwise provided” and “unless otherwise restricted” patterned after 15 Pa.C.S. § 1103. Definitions of “certificate of organization,” “court,” “department,” “entitled to vote,” “foreign limited liability company,” “liquidating trustee,” “obligation,” “qualified foreign limited liability company” and “registered office” patterned after 15 Pa.C.S. § 8503. Definitions of “event of dissociation,” “limited liability company,” “manager” and “member” patterned

after Prototype Limited Liability Company Act § 102. The first two sentences of the definition of “operating agreement” are patterned after the definition of that term in Prototype Limited Liability Company Act § 102. The third sentence of the definition of “operating agreement” is patterned in general after 15 Pa.C.S. § 1306(b). Definition of “licensed person” patterned after 15 Pa.C.S. § 2902. The terms “domestic restricted professional company,” “professional company,” “professional services,” “qualified foreign restricted professional company” and “restricted professional services” are new. The terms used in the definition of “restricted professional services” are defined in the following other provisions of law: “chiropractic” (act of December 16, 1986 (P.L.1646, No.188), § 102); “dentistry” (act of May 1, 1933 (P.L.216, No.76), § 2, as amended); “law” (cf. 42 Pa.C.S. Ch. 25 Subch. B); “medicine and surgery” (section 2 of act of December 20, 1985 (P.L.457, No.112); see also 1 Pa.C.S. § 1991); “optometry” (act of June 6, 1980 (P.L.197, No.57), § 2); “osteopathic medicine and surgery” (act of October 5, 1978 (P.L.1109, No.261), § 2); “podiatric medicine” (act of March 2, 1956 (1955 P.L.1206, No.375), § 2, as amended); “public accounting” (act of May 26, 1947 (P.L.318, No.140), § 2, as amended by the act of March 7, 1984 (P.L.106, No.23), § 1); “psychology” (act of March 23, 1972 (P.L.136, No.52), § 2); “veterinary medicine” (act of December 27, 1974 (P.L.995, No.326), § 3).

15 Pa.C.S. § 8904: Patterned in general after 15 Pa.C.S. § 8504. Prototype Limited Liability Company Act §§ 301, 302, 303, 305, 702, 705 and 707 omitted as supplied by this section.

15 Pa.C.S. § 8905: Patterned after 15 Pa.C.S. § 8505(a) and (b). Compare Prototype Limited Liability Company Act §§ 103 and 104.

15 Pa.C.S. § 8906: Patterned after 15 Pa.C.S. § 8506. Compare Prototype Limited Liability Company Act § 105.

15 Pa.C.S. § 8907: Patterned after 15 Pa.C.S. § 1109. Compare Prototype Limited Liability Company Act § 204.

15 Pa.C.S. § 8908: Patterned after 15 Pa.C.S. § 2905.

15 Pa.C.S. § 8911: First sentence of subsection (a) patterned after Prototype Limited Liability Company Act § 106 (first sentence) and Wyo. Stat. 17-15-103. Second sentence of subsection (a) patterned after 15 Pa.C.S. § 1301 (second sentence). Subsections (b) and (c) patterned after 15 Pa.C.S. § 1503.

15 Pa.C.S. § 8912: Patterned after Prototype Limited Liability Company Act § 201.

15 Pa.C.S. § 8913: Patterned after 15 Pa.C.S. §§ 1306(a) and 8511(a) and Prototype Limited Liability Company Act § 202. Paragraph (8) patterned in part after 15 Pa.C.S. § 1306(b).

15 Pa.C.S. § 8914: Patterned after 15 Pa.C.S. §§ 1308 and 1309(a). Compare Prototype Limited Liability Company Act §§ 205 and 206.

15 Pa.C.S. § 8915: Patterned after 15 Pa.C.S. § 8707(a).

15 Pa.C.S. § 8921: Subsection (a) patterned after 15 Pa.C.S. § 1501. Compare Wyo. Stat. 17-15-104 and the Commentary to Prototype Limited

Liability Company Act § 106. Subsection (b) patterned after 15 Pa.C.S. §§ 1502(a) and 8508. Subsection (c) is new.

15 Pa.C.S. § 8922: Subsection (a) patterned after Wyo. Stat. 17-15-113, except last clause which is patterned after Prototype Limited Liability Company Act § 304. Subsections (b) and (c) derived from 15 Pa.C.S. § 2925. Subsections (d) and (e) are new. As to subsection (d), see also 15 Pa.C.S. § 8902.

15 Pa.C.S. § 8923: Patterned after Prototype Limited Liability Company Act § 701.

15 Pa.C.S. § 8924: Subsection (a) patterned after Wyo. Stat. 17-15-122. Subsection (b) patterned after 15 Pa.C.S. § 8562(b).

15 Pa.C.S. § 8925: Subsection (a) patterned in part after 15 Pa.C.S. § 8708.

15 Pa.C.S. § 8926: New. Compare 15 Pa.C.S. § 9506(c).

15 Pa.C.S. § 8931: Subsection (a) patterned after 15 Pa.C.S. § 8541 and Prototype Limited Liability Company Act § 501. Subsections (b) through (e) patterned after Prototype Limited Liability Company Act § 502.

15 Pa.C.S. § 8932: Patterned after Wyo. Stat. 17-15-119, except that reference to per capita distribution added. Compare Prototype Limited Liability Company Act § 601.

15 Pa.C.S. § 8933: Patterned after Prototype Limited Liability Company Act § 602.

15 Pa.C.S. § 8934: Patterned after Prototype Limited Liability Company Act § 603.

15 Pa.C.S. § 8935: Patterned after Prototype Limited Liability Act § 604.

15 Pa.C.S. § 8941: Patterned after Prototype Limited Liability Company Act § 401.

15 Pa.C.S. § 8942: Subsections (a) and (b) patterned after Prototype Limited Liability Company Act § 403. Subsection (d) patterned after 15 Pa.C.S. § 8503 ("partnership agreement"(3)). Subsection (e) patterned after 15 Pa.C.S. § 8522(c).

15 Pa.C.S. § 8943: Subsection (a) patterned after 15 Pa.C.S. § 8334(a). Subsection (b)(1) patterned after 15 Pa.C.S. § 9506(b). Subsection (b)(2) patterned after Prototype Limited Liability Company Act § 402(c).

15 Pa.C.S. § 8944: Patterned after 15 Pa.C.S. § 8522(a) and (b).

15 Pa.C.S. § 8945: Patterned after 15 Pa.C.S. § 8510.

15 Pa.C.S. § 8946: Patterned after 6 Del. Code §§ 18-107 and 18-403.

15 Pa.C.S. § 8947: Patterned after 6 Del. Code § 18-602.

15 Pa.C.S. § 8948: Patterned after 6 Del. Code § 18-603.

15 Pa.C.S. § 8951: Subsection (a) patterned after 15 Pa.C.S. § 8512(a). Subsection (b) patterned after 15 Pa.C.S. § 1911(b). Subsections (c) and (d) patterned after 15 Pa.C.S. § 8512(e) and (g). Compare Prototype Limited Liability Company Act § 203.

15 Pa.C.S. § 8956: Patterned after 15 Pa.C.S. § 8545.

15 Pa.C.S. § 8957: Patterned after 15 Pa.C.S. § 8546.

- 15 Pa.C.S. § 8958:** Patterned after 15 Pa.C.S. §§ 8547 and 8548.
- 15 Pa.C.S. § 8959:** Patterned after 15 Pa.C.S. § 8549.
- 15 Pa.C.S. § 8961:** Patterned after 15 Pa.C.S. § 1951.
- 15 Pa.C.S. § 8962:** Patterned after 15 Pa.C.S. § 1952.
- 15 Pa.C.S. § 8963:** Patterned after 15 Pa.C.S. § 1953.
- 15 Pa.C.S. § 8964:** Patterned after 15 Pa.C.S. §§ 1954, 1955 and 1956.
- 15 Pa.C.S. § 8965:** Patterned after 15 Pa.C.S. § 1957.
- 15 Pa.C.S. § 8971:** Patterned after 15 Pa.C.S. § 8571(a) and (c). See also Prototype Limited Liability Company Act § 901.
- 15 Pa.C.S. § 8972:** Patterned after 15 Pa.C.S. § 8572 and Prototype Limited Liability Company Act § 902.
- 15 Pa.C.S. § 8973:** Patterned after 15 Pa.C.S. § 8573.
- 15 Pa.C.S. § 8974:** Patterned after 15 Pa.C.S. § 8574.
- 15 Pa.C.S. § 8975:** Patterned after Wyo. Stat. 17-15-127 and 17-15-128(a).
- 15 Pa.C.S. § 8976:** Patterned after Wyo. Stat. 17-15-128(b), except that the reference in subsection (b) to trusteeship by members in the absence of managers is added. See also Wyo. Stat. 17-15-129(a).
- 15 Pa.C.S. § 8977:** Patterned after 15 Pa.C.S. § 8575(a) and (b) (first sentence).
- 15 Pa.C.S. § 8978:** Patterned after 15 Pa.C.S. § 1980.
- 15 Pa.C.S. § 8981:** Subsection (a) patterned after 15 Pa.C.S. § 9507. Subsection (b) patterned after 15 Pa.C.S. § 4146.
- 15 Pa.C.S. § 8982:** Patterned after 15 Pa.C.S. §§ 4161 and 4162.
- 15 Pa.C.S. § 8991:** Subsection (a) patterned after Prototype Limited Liability Company Act § 1101. Subsection (b) patterned after Wyo. Stat. 17-15-130.
- 15 Pa.C.S. § 8992:** Patterned after Prototype Limited Liability Company Act § 1102.
- 15 Pa.C.S. § 8993:** Patterned after Prototype Limited Liability Company Act § 1103.
- 15 Pa.C.S. § 8995:** Subsections (a), (b) and (c) are patterned after 15 Pa.C.S. §§ 2901 and 3101. Subsections (d) and (e) are patterned generally after 15 Pa.C.S. §§ 2904 and 2906, respectively.
- 15 Pa.C.S. § 8996:** Subsection (a) patterned after 15 Pa.C.S. § 2922. Subsection (b) is patterned after 15 Pa.C.S. § 2923(a) (first sentence). Subsection (c) patterned after 15 Pa.C.S. § 2924. Subsection (d)(1) patterned after the Uniform Accountancy Act § 3(g).
- 15 Pa.C.S. § 8997:** Subsection (a) patterned in part after 15 Pa.C.S. § 8708.
- 15 Pa.C.S. § 8998:** New.

APPROVED—The 7th day of December 1994, A.D.

ROBERT P. CASEY