

Revisions Proposed for UPA (2013)  
except for the fix re: loss/profit sharing and new provision providing for LLP on formation

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**SECTION 102. DEFINITIONS.** In this [act]:

(11) “Partnership”; includes a limited liability partnership and, except in [Article] 11,  
means an entity that is:

(A) formed under this [act] or becomes subject to this [act]:

(i) through a provision of a partnership agreement that displaces Section  
104(2); or

(ii) under Section 110 or [Article] 11; and

(B) except as provided in Section 801(6) or 801(7), is an association of two or  
more persons to carry on as co-owners a business for profit ~~formed under this [act] or that  
becomes subject to this [act] under [Article] 11 or Section 110. The term includes a limited  
liability partnership.~~

**Reporter’s Notes**

These revisions address several issues: (i) a non-LLP partnership may become subject to the act per the partnership agreement; (ii) during the “dissolution avoidance” period under new Section 801(6) or (7), a partnership will not be an association of *two or more* persons; and (iii) except for dissolution avoidance circumstances, it is important to retain the venerable language of “an association of two or more persons to carry on as co-owners a business for profit”.<sup>3</sup>

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<sup>1</sup> Noon to 4 PM Central

<sup>2</sup> 9 AM to 1 PM Central.

<sup>3</sup> As revised, the definition is complex, but some complexity is inevitable is one definition is to:

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[(30) “Protected agreement” means:

(A) a record evidencing indebtedness and any related agreement in effect on [date  
certain the effective date of this [act]];

(B) an agreement that is binding on an entity on [date certain the effective date of  
this [act]];

(C) the organic rules of an entity in effect on [date certain the effective date of this  
[act]]; or

(D) an agreement that is binding on any of the governors or interest holders of an  
entity on [date certain the effective date of this [act]].<sup>4</sup>

#### Reporter’s Notes

For the explanation of these revisions, see the Reporter’s Notes following  
Section 1141.

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- provide a basic definition (formed under this act) while
    - including LLPs; and
    - excluding Article 11;
  - provide three alternative entry methods:
    - provision of a partnership agreement (not applicable to an LLP)
    - the act’s transition provisions
    - the act’s entity transactions article; and
  - include the two partner concept while:
    - encompassing within the definition one and no-partner entities during the dissolution-avoidance period

<sup>4</sup> The same date should be inserted in each part of the definition.

## SECTION 202. FORMATION OF PARTNERSHIP.

(a) Except as otherwise provided in subsection (b), the association of two or more persons to carry on as co-owners a business for profit forms a partnership, whether or not the persons intend to form a partnership.

(b) An association formed under a statute other than this [act], a predecessor statute, or a comparable statute of another jurisdiction is not a partnership under this [act].

### Reporter's Notes

Section 202(b) could be read as overstating the exclusion (“not a partnership under this [act]”), because Article 11 and Section 104(b) both override the exclusion. For example, a foreign partnership might come under this act through an entity transaction under [Article] 11; a pre-existing non-LLP partnership might come under this act through an amendment to the partnership agreement.<sup>5</sup> However, one can also read Section 202(b) as: (i) applying to an association *ab initio*; but (ii) becoming inapplicable once [Article] 11 or Section 104(b) applies.

Note: adding a brief comment aimed at this issue may well suffice. The alternative is to amend subsection (b) somewhat as follows: Subject to Section 104(b) and [Article] 11, an~~An~~ association formed under a statute other than this [act], ....” However, this formulation makes an exception subject to an exclusion, which is unlikely to please the Committee on Style.

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## SECTION 302. TRANSFER OF PARTNERSHIP PROPERTY.

(a) Partnership property may be transferred as follows:....

(b) A partnership may recover partnership property from a transferee only if ....

(c) A partnership may not recover partnership property from a subsequent transferee if ....

~~(d) If a person holds all the partners' interests in the partnership, all the partnership~~

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<sup>5</sup> See UPA (2013) § 102 [as proposed to be revised] (defining “partnership” and referring § 104(2)).

~~property vests in that person. The person may sign a record in the name of the partnership to evidence vesting of the property in that person and may file or record the record.~~

#### Reporter's Notes

Deleting subsection (d) eliminates the aggregate-based vesting of partnership property in a sole partner. A partnership continues as an entity even when dissolved on account of having only one or no remaining partners or none. In either event, property should vest as part of winding up and not automatically by statute.

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**SECTION 801. EVENTS CAUSING DISSOLUTION.** A partnership is dissolved, and its business must be wound up, upon the occurrence of any of the following:

(1) in a partnership at will, the partnership knows or has notice of a person's express will to withdraw as a partner, other than a ~~partner~~ person that has dissociated as a partner under Section 601(2) through (10), but, if the person has specified a withdrawal date later than the date the partnership knew or had notice, on the later date;....

#### Reporter's Notes

This change conforms the current language to the definition in UPA (2013) § 102(10) (*person dissociated as a partner* rather than *dissociated partner*), which is the formulation used throughout the uniform acts.<sup>6</sup>

....

(5) on application by a transferee, the entry by [the appropriate court] of an order dissolving the partnership on the ground that it is equitable to wind up the partnership business....; ~~or~~

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<sup>6</sup> The Committee has not yet considered this revision, but the it is in accord with other proposed revisions – e.g., providing a veto right on rescinding dissolution to a *person dissociated as a partner* instead of a *dissociated partner*. See UPA (2013) § 803(2) [as proposed to be revised]

(6) the passage of 90 consecutive days during which the partnership ~~does not have at least two partners~~ has only<sup>7</sup> one partner; or

(7) the passage of 90 consecutive days during which the partnership has no partners, unless before the end of the period:

(A) consent to admit at least two specified persons as partners is given by transferees owning the rights to receive a majority of distributions as transferees at the time the consent is to be effective; and

(B) at least two specified persons become partners in accordance with the consent.<sup>8</sup>

#### Reporter's Notes

Section 801(6), which currently refers to a partnership “not hav[ing] at least two partners,” makes dissolution inevitable if no partners remain. To avoid that result, a new Section 801(7) adopts the same mechanism as ULLCA § 701(3) for filling the void.

Section 801(6) does not need a void-filling mechanism because the sole remaining partner may admit one or more additional partners under Section 402(b)(3): “After formation of a partnership, a person becomes a partner:... with the affirmative vote or consent of all the partners.”

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<sup>7</sup> The Committee's liaison to the Committee on Style suggests deleting “only”. Note: query whether “only” should be included at least for avoidance of doubt.

<sup>8</sup> As drafted, Section 801(7) provides a fresh 90 days in the event an 801(6) situation (a sole remaining partner) becomes an 801(7) situation (sole remaining partner dissociates without having admitted at least one other partner). Theoretically, therefore, an 801(6) situation might on the 89th day become a 801(7) situation, with a fresh 90 days, for a total of 179 days. The additional time seems warranted because the circumstances in play when filling the void under Section 801(7) are likely to be quite different than those in play under Section 801(6) – that is:

- transferees selecting by consent at least two partners [801(7)]; versus
- the sole remaining partner having the unfettered right to admit a new partner [801(6)].

Having consider the point, the Committee accepted the proposed language.

### **SECTION 803. RESCINDING DISSOLUTION.**

(a) A partnership may rescind its dissolution, unless a statement of termination applicable to the partnership has become effective or [the appropriate court] has entered an order under Section 801(4) or (5) dissolving the partnership.

(b) Rescinding dissolution under this section requires:

(1) the affirmative vote or consent of each partner;

(2) if the dissolution occurred under Section 801(1), the affirmative vote or consent of the person whose express will to withdraw as a partner caused the dissolution; and

~~(2)~~ (3) if the partnership has delivered to the [Secretary of State] for filing a statement of dissolution ....

(c) If a partnership rescinds its dissolution:

(1) the partnership resumes carrying on its business as if dissolution had never occurred;

(2) subject to paragraph (3), any liability incurred by the partnership, a partner, or a person dissociated as a partner<sup>9</sup> after the dissolution and before the rescission has become effective is determined as if dissolution had never occurred; and ....

#### **Reporter's Notes**

The Harmonization Project added a rescission provision to parallel those already existing in the limited partnership and LLC acts. Under those acts, rescinding dissolution (in the default mode) requires the unanimous consent of the partners/members, and UPA (2013) does likewise. However, under all three acts, partner/member is defined to exclude a

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<sup>9</sup> Unlike ULLCA (2013), UPA (2013) contemplates owner liability (i.e., no liability shield). The added language reflects this distinction.

person that has dissociated.<sup>10</sup> As a result, under UPA (2013) a person might rightfully dissociate as a partner, rightfully cause dissolution under Section 801(1), and yet but be powerless to prevent rescission of the dissolution. The added language fixes the problem.

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## **SECTION 807. KNOWN CLAIMS AGAINST DISSOLVED LIMITED**

### **LIABILITY PARTNERSHIP.**

(a) Except as otherwise provided in subsection (d), a dissolved limited liability partnership may give notice of a known claim under subsection (b), which has the effect provided in subsection (c).

(b) A dissolved limited liability partnership may in a record notify its known claimants of the dissolution. The notice must:

(1) state that the partnership is a limited liability partnership at the time of the notice;

(2) identify the time during which the dissolved partnership has been a limited liability partnership;

(3) specify the information required to be included in a claim;

~~(2)~~ (4) state that a claim must be in writing and provide a mailing address to which the claim is to be sent;

~~(3)~~ (5) state the deadline for receipt of a claim, which may not be less than 120 days after the date the notice is received by the claimant; and

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<sup>10</sup> See e.g. UPA (2013) § 102(10) (“‘Partner’ means a person that: (A) has become a partner in a partnership under Section 402 or was a partner in a partnership when the partnership became subject to this [act] under Section 110; and (B) has not dissociated as a partner under Section 601.”).

(6) state that ~~the~~ a claim for an obligation incurred by the partnership while a limited liability partnership will be barred if not received by the deadline.

~~(5) unless the partnership has been throughout its existence a limited liability partnership, state that the barring of a claim against the partnership will also bar any corresponding claim against any partner or person dissociated as a partner which is based on Section 306.~~

(c) A claim against a dissolved limited liability partnership for an obligation incurred by the partnership while a limited liability partnership is barred if the requirements of subsection (b) are met and: ....

#### **SECTION 808. OTHER CLAIMS AGAINST DISSOLVED LIMITED LIABILITY PARTNERSHIP.**

(a) A dissolved limited liability partnership may publish notice of its dissolution and request persons having claims against the partnership to present them in accordance with the notice.

(b) A notice under subsection (a) must:

(1) be published at least once in a newspaper of general circulation in the [county] in this state in which the dissolved limited liability partnership's principal office is located or, if the principal office is not located in this state, in the [county] in which the office of the partnership's registered agent is or was last located;

(2) state that the partnership is a limited liability partnership at the time of the notice,

(3) identify the time during which the dissolved partnership has been a limited liability partnership; and

(4) describe the information required to be contained in a claim, state that the claim must be in writing, and provide a mailing address to which the claim is to be sent; and

~~(3)~~ (5) state that a claim against the partnership for an obligation incurred by the partnership while a limited liability partnership is barred unless an action to enforce the claim is commenced not later than three years after publication of the notice; ~~and~~

~~(4) unless the partnership has been throughout its existence a limited liability partnership, state that the barring of a claim against the partnership will also bar any corresponding claim against any partner or person dissociated as a partner which is based on Section 306.~~

(c) If a dissolved limited liability partnership publishes a notice in accordance with subsection (b), the claim on an obligation incurred by the partnership while a limited liability partnership of each of the following claimants is barred unless the claimant commences an action to enforce the claim against the partnership not later than three years after the publication date of the notice: ....

(d) A claim not barred under this section or Section 807 may be enforced:

(1) against a dissolved limited liability partnership, to the extent of its undistributed assets;

(2) except as otherwise provided in Section 809, if assets of the partnership have been distributed after dissolution, against a partner or transferee to the extent of that person's proportionate share of the claim or of the partnership's assets distributed to the partner or transferee after dissolution, whichever is less, but a person's total liability for all claims under this paragraph may not exceed the total amount of assets distributed to the person after dissolution; and

(3) <sup>11</sup>against any person liable on the claim under Sections ~~306~~,<sup>12</sup> 703,<sup>13</sup> and  
805.<sup>14</sup>

....

~~**SECTION 810. LIABILITY OF PARTNER AND PERSON DISSOCIATED AS  
PARTNER WHEN CLAIM AGAINST PARTNERSHIP BARRED.** If a claim against a  
dissolved partnership is barred under Section 807, 808, or 809, any corresponding claim under  
Section 306, 703, or 805 is also barred.~~<sup>15</sup>

### Reporter's Notes

#### Conceptual Background to the Issue

The Harmonization Project added provisions on notice to creditors and discharge of obligations (“notice/discharge provisions”), deriving the language almost verbatim from provisions of the Model Business Corporation Act.

Accordingly, the UPA (2013) notice/discharge provisions encompass all the obligations of a dissolving general partnership – even obligations incurred while the partnership was not an LLP. The Harmonization Committee did not recognize this result and therefore cannot be said to have intended it.

The proposed revisions avoid that result and thereby avoid a major, unpleasant, unintended consequence. Under the original language, a general partnership that has never been an LLP can opt into LLP status just before dissolution and then use the notice/discharge provisions to retroactively create a shield protecting the partners from liability for all

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<sup>11</sup> Note – further attention required here. This provision appears to have been drafted in connection with the barring of claims against partners for partnership obligations incurred while the partnership is not an LLP. With the proposed revision, that connection no longer exists. Consider deleting the provision. For the ULLCA analog, see ULLCA (2013) § 706(d).

<sup>12</sup> 306 = shield provision. Because revised version applies to claims arising when the partnership has been an LLP, Section 306 would never impose liability.

<sup>13</sup> 703 = rescinding dissolution? Post -dissolution, a person can incur liability for committing the partnership to a deal not appropriate for winding up. That liability remains after rescission if a third party can prove reliance and prejudice. However, this continued liability is not a debt of the company..

<sup>14</sup> 805 = special litigation committee???? Note: probably 804 was intended

<sup>15</sup> Moot due to revisions in Sections 807 and 808.

obligations incurred during the non-LLP phase (i.e., the entire pre-dissolution period).

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## **SECTION 1102. RELATIONSHIP OF [ARTICLE] TO OTHER LAWS<sup>16</sup>**

(a) This [article] does not authorize an act prohibited by, and does not affect the application or requirements of, law other than this [article].

(b) A transaction effected under this [act] may not create or impair a right, duty, or obligation of a person under ....

(c) As used in this [article], with reference to the law of a foreign jurisdiction:

(1) merger, interest exchange, conversion, or domestication respectively include a transaction which under the foreign law achieves the same substantive effect as a merger, interest exchange, conversion, or domestication, as the case may be, under this [article], even though the foreign law:<sup>17</sup>

(A) denominates the transaction differently than this [article];

(B) includes within a denomination two or more transactions which this [article] encompasses separately; or

(C) uses two or more denominations to encompass transactions which this [article] encompasses in one denomination; and

(2) plan has the meaning necessary to give effect to subsection (c)(1).

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<sup>16</sup> Note: Conforming revisions should be made to ULLCA, ULPA, UBOC, and META (Model Entity Transactions Act).

<sup>17</sup> John Stieff has proposed putting quotations around the first list of *merger, interest exchange, conversion, or domestication* so as to permit deletion of “respectively” and “as the case may be”. The chair has not yet determined her views on John’s proposal.

### Reporter's Notes

Some jurisdictions use “conversion” to encompass transactions that change jurisdiction of formation, type of entity, or both. Other jurisdictions (and the uniform acts) use “domestication” to refer to transactions that effect solely a change in the jurisdiction of formation and “conversion” to encompass all transactions that change entity type – i.e. a transaction that makes solely that change and a transaction that also changes jurisdiction of formation.

The proposed language resolves potential uncertainty arising from mismatched nomenclature.

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### SECTION 1141. CONVERSION AUTHORIZED.<sup>18</sup>

(a) By complying with this [part], a domestic partnership may become:

(1) a domestic entity that is a different type of entity; or

(2) a foreign entity that is a different type of entity, if the conversion is authorized

by the law of the foreign entity's jurisdiction of formation.

(b) By complying with the provisions of this [part] applicable to foreign entities, a foreign entity that is not a foreign partnership may become a domestic partnership if the conversion is authorized by the law of the foreign entity's jurisdiction of formation.

[(c) If a protected agreement contains a provision that applies to a merger of a domestic partnership but does not refer to a conversion, the provision applies to a conversion of the partnership as if the conversion were a merger until the provision is amended after [date ~~certain~~the effective date of this [act]].]

### Reporter's Notes

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<sup>18</sup> Note: Conforming revisions should be made to within UPA for domestications and interest exchanges and for all three of the novel entity transactions in ULLCA, ULPA, UBOC, and META (Model Entity Transactions Act).

Back in the day (circa 2007 or earlier), when domestications and conversions were novel,<sup>19</sup> the ULC was concerned that persons could use these novel approaches to circumvent merger-related provisions, such as a restriction in a loan agreement that prevents mergers, which drafters had included in agreements long before the effective date of the relevant uniform act. To prevent this occurrence, the ULC adopted the concept of a “protected agreement.” Following is the current official comment:

“Protected agreement” [(a)(19)] – The term “protected agreement” refers to evidences of indebtedness and agreements binding on the entity or any of its governors or interest holders that are unpaid or executory in whole or in part on the effective date of this article. Thus, a revolving line of credit from a bank to a corporation would constitute a protected agreement even if advances were not made until after the effective date of this article. If a protected agreement has provisions that apply if an entity merges, those provisions will apply if the entity enters into an interest exchange, conversion, or domestication even though the agreement does not mention those other types of transactions. See Sections 2-301(d) (interest exchanges), 2-401(c) (conversions), and 2-501(d) (domestications).

In contrast, today an enacting jurisdiction may reasonably decide that the “protected agreement” concept is no longer appropriate or that the concept’s protection should protect only agreements made before some date in the past.<sup>20</sup> The revised language provides an enacting jurisdiction two alternatives:

- (1) Eliminate the concept. For this reason, the entire provision is bracketed, as is the definition of “protected agreement”.
- (2) Specify a date certain on and after which the protection does not apply. For this purpose “date certain” replaces “the effective date of this act”.

A legislative note will identify the policy issues and mechanics relevant (i) for determining whether to retain the “protected agreement” construct; and (ii) if so, for determining the date certain.<sup>21</sup>

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<sup>19</sup> Interest exchanges were even more novel. Before the Model Entity Transactions Act (2007), no jurisdiction authorized an interest exchange involving an unincorporated organization, and very few jurisdictions authorized interest exchanges for corporations.

<sup>20</sup> For example, in 2022 an enacting jurisdiction might conclude that, by 2015, domestication and conversions were no longer novel and of that date the protection is no longer appropriate.

<sup>21</sup> If an enacting state were to provide different dates certain depending on the type of entity transaction, the definition of “protected agreement” would become substantially more complicated. The legislative note will so indicate but will not attempt to specify the various possible permutations.