

Indiana Revised Uniform Limited Partnership Act

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I. INTRODUCTION

The most significant development in the area of Indiana business associations law during the past year was the enactment of the new Indiana Revised Uniform Limited Partnership Act¹ (IRULPA or "new Act") which is based largely on the Revised Uniform Limited Partnership Act of 1976, with 1985 amendments ("Model Act"). It also incorporates some features of the 1985 Delaware Limited Partnership Act,² ("Delaware Act") and reflects changes intended to parallel aspects of the Indiana Business Corporation Law³ (IBCL) that became effective on August 1, 1987.

The IRULPA superseded the prior Indiana Uniform Limited Partnership Act (IULPA or "old Act")⁴ which was enacted in 1949. The IULPA was based on the Uniform Limited Partnership Act (ULPA) promulgated in 1916. There were no reported cases arising under the IULPA until recently, and even now there have been only a few cases involving this statute. However, the use in Indiana of the limited partnership form of enterprise might increase under the modern, flexible, state of the art IRULPA.

The purpose of this Survey Article is to compare the new Act with the old Act and the Model Act. Before doing that, however, a brief introduction to limited partnerships is in order. The limited partnership is a business organization with attributes somewhere between the corporation and the general partnership.⁵ There are two classes of partners in a limited partnership: any number of limited partners and at least one general partner charged with conducting the partnership's business. Limited partners are somewhat analogous to shareholders of a corporation because their liability for partnership obligations is limited to the amount

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1. IND. CODE §§ 23-16-1-1 to -12-6 (1988). Indiana has recognized limited partnerships since 1859. *See generally* Brown, *The Limited Partnership in Indiana*, 5 IND. L.J. 421 (1930).

2. DEL. CODE ANN. tit. 6, §§ 17-101 to 1108 (Supp. 1986).

3. IND. CODE §§ 23-1-17-1 to -54-3 (1988).

4. IND. CODE §§ 23-4-2-1 to -2-31 (repealed effective 1993).

5. *See generally* J. CRANE & A. BROMBERG, LAW OF PARTNERSHIP § 26 (1968) [hereinafter CRANE & BROMBERG].

they have invested in the business. They differ from corporate shareholders, however, by being restricted in the degree they can take part or participate in controlling the partnership's business without risk of losing their limited liability status.⁶ One major difference between the new and old Acts is that the limited partner's risk of being subjected to personal liability is much reduced under the IRULPA.

The general partner, or partners, in a limited partnership manage the business. They have the same rights, duties and liabilities as partners in a general partnership including unlimited liability for the obligations of the enterprise. Another distinction between general and limited partnerships is the formality necessary for organization. Here again the limited partnership is akin to the corporation because both require compliance with specific statutory provisions to be formed properly. In contrast, organizing a general partnership can be very informal. The formalities of organizing a limited partnership, however, have been simplified in the new Act as compared to the old Act.

II. BACKGROUND AND APPLICABILITY OF IRULPA

The origins of limited partnerships can be traced back to the middle ages.⁷ Two early common law decisions⁸ holding that "profit sharing" alone was a ground for imposing liability for losses, created the need for a business form permitting investors to share profits with limited liability for losses and to invest capital without responsibility for management. The limited partnership is such a device, although a limited partner's protection against unlimited liability⁹ is less secure than the protection given to a shareholder of a corporation.

Statutory authority is needed to form limited partnerships. Early statutes dating back 150 years often were strictly construed on the grant of limited liability.¹⁰ Consequently, limited partnerships were not very common. Even the promulgation of the ULPA did not cause a substantial increase in the use of limited partnerships. They have been used, however,

6. The elimination of this distinction has been seriously urged. See Basile, *Limited Liability for Limited Partners: An Argument for the Abolition of the Control Rule*, 38 VAND. L. REV. 1199 (1985); Kempin, *The Problem of Control in Limited Partnership Law: An Analysis and Recommendation*, 22 AM. BUS. L.J. 443 (1985).

7. CRANE & BROMBERG, *supra* note 5, § 26, at 143-44.

8. Waugh v. Carver, 2 H. Bl. 235, 126 Eng. Rep. 525 (1793); Grace v. Smith, 2 Wm. Bl. 998, 1000, 96 Eng. Rep. 587, 588 (1775). Eventually, these cases were overruled in England. Cox v. Hickman, 8 H.L. Cas. 268, 11 Eng. Rep. 431 (1860). See generally CRANE & BROMBERG, *supra* note 5, §§ 14(b), 26(a).

9. See Klein v. Weiss, 284 Md. 36, 395 A.2d 126 (1978); Gilman Paint & Varnish Co. v. Legum, 197 Md. 665, 670, 80 A.2d 906, 908 (1951).

10. CRANE & BROMBERG, *supra* note 5, at 144 n.25.

with some frequency in real estate and oil and gas ventures¹¹ and in high-risk ventures such as theatrical enterprises where the parties want both limited liability and the conduit type of income tax treatment of partnerships.¹²

One reason for the limited use of the limited partnership form of business is that although the ULPA was an improvement over prior limited partnership statutes, it contained some ambiguous provisions, and other provisions created some serious practical problems for limited partnerships.¹³ These problems prompted the National Conference of Commissioners on Uniform State Laws to promulgate the Model Act in 1976 "to modernize the prior uniform law while retaining the special character of limited partnerships as compared to corporations."¹⁴ The

11. See generally Lowell, *Organizing a Limited Partnership to Achieve Real Estate Investment Objectives in Indiana*, 48 IND. L.J. 369 (1973).

12. These deals were often organized to shelter income of individuals who would otherwise have to pay high income tax rates rather than as true profit making ventures which would increase the investors' taxes even more. Although limits on tax shelters imposed by the Tax Reform Act of 1976, and the reduction of the maximum tax bracket, should have reduced the incentive to invest in a "business" that produces nothing but tax losses, a Department of the Treasury study showed a dramatic increase from 1979 to 1982 in the number of tax shelter partnerships being used as a vehicle to reduce the tax liabilities of high income individuals. Nelson, *Taxes Paid by High-Income Taxpayers and the Growth of Partnerships*, INTERNAL REVENUE SERVICE STATISTICS OF INCOME BULLETIN (1985).

13. See Basile, *The 1985 Delaware Revised Uniform Limited Partnership Act*, 41 BUS. LAW. 571, 572 (1986).

14. Lamb, *Introduction—Symposium: Limited Partnership Act*, 9 ST. MARY'S L.J. 441 (1978). See also REV. UNIF. LIMITED PARTNERSHIP ACT commissioners' prefatory note, 6 U.L.A. 211-13 (Supp. 1988). No state adopted the RULPA for several years until the probable tax treatment of organizations formed under it could be ascertained. Once that issue was resolved, states started to adopt the RULPA and now it is the law in most jurisdictions.

Delaware did not adopt the original ULPA until 1973. It was the last state to adopt the act. The Delaware ULPA contained some nonuniform provisions designed to make Delaware an attractive jurisdiction in which to organize limited partnerships. The Delaware act adopted in 1982 also included nonuniform provisions for the same purpose. Delaware significantly amended its limited partnership act in 1985 shortly before the Commissioners adopted the 1985 amendments to the RULPA. Those amendments were intended to further refine the statute, in part in response to the changes the Delaware legislature made when it adopted the RULPA in 1982. Delaware, in turn, acted to provide an even "clearer and more flexible limited partnership act than the 1985 RULPA." Basile, *supra* note 13, at 573. Delaware clearly intends to be a state as attractive to large limited partnerships as it is to large corporations.

See generally Aslanides, Cardinali, Haynsworth, Lane & Niesar, *Limited Partnerships—What's Next and What's Left?*, 34 BUS. LAW. 257 (1978); Hecker, *The Revised Uniform Limited Partnership Act: Provisions Affecting the Relationship of the Firm and its Members to Third Parties*, 27 KANSAS L. REV. 1 (1978); Kessler, *The New Uniform Limited*

Commissioners' Prefatory Note points out that although a limited partnership can be more flexible than a corporation with respect to relations among the partners, the consensual relationship among partners requires more concurrence from passive investors than might be acceptable to corporate management.¹⁵ Finally, the Commissioners point out that the limited partnership is an alternative to the corporation form of enterprise but that neither the ULPA nor the Model Act was intended to make the limited partnership appropriate in all cases where the corporate form is undesirable for tax or other reasons.¹⁶

A major difference between the old and the new Acts is that under the IULPA limited partnerships organized under prior statutes continued to be controlled by those statutes unless the partnership elected to come under that Act.¹⁷ The IRULPA applies to all Indiana limited partnerships organized after its effective date of July 1, 1988.¹⁸ Existing limited partnerships can "opt in" to the IRULPA by filing a new certificate of limited partnership with the secretary of state after July 1, 1988.¹⁹ Unless otherwise agreed by all partners, the applicable provisions of the IULPA governing allocation of profits and losses, distributions to a withdrawing partner, and distribution of assets upon the winding up of a limited partnership govern limited partnerships formed before July 1, 1988.²⁰ However, after July 1, 1993, the IRULPA will apply to limited partnerships existing before July 1, 1988, regardless of whether the partnership opts in.²¹ The IRULPA follows the approach of the drafters

Partnership Act: A Critique, 48 *FORDHAM L. REV.* 159 (1979); *Symposium: Limited Partnership Act*, 9 *ST. MARY'S L.J.* 441 (1978); Note, *Investor Protection and the Revised Uniform Limited Partnership Act*, 56 *WASH. L. REV.* 99 (1980).

15. REV. UNIF. LIMITED PARTNERSHIP ACT commissioner's prefatory note, 6 *U.L.A.* 211 (Supp. 1988).

16. *Id.* at 211-13.

17. IND. CODE §§ 23-4-2-28(3), -30(2) (repealed effective 1993).

18. *Id.* § 23-16-12-2(a). The effective date for the IRULPA as it applies to foreign limited partnerships seeking to transact business in Indiana is January 1, 1989. *Id.* § 23-16-12-2(d).

19. *Id.* § 23-16-12-2(f)(1). The IULPA continues to apply to existing limited partnerships that do not opt in to the IRULPA. *Id.* § 23-16-12-2(g).

20. *Id.* § 23-16-12-2(e).

21. *Id.* § 23-16-12-2(f)(2). The statute provides that if a limited partnership existing under [the IULPA] before July 1, 1988, does not file a certificate of limited partnership or a certificate of amendment with the secretary of state by July 1, 1993, and no event has occurred that, under [the IRULPA], requires the filing of a certificate of amendment, then:

(1) the limited partnership continues to exist as a limited partnership under [the IRULPA], and the failure to file a certificate with the secretary of state does not impair the validity of any contract or act of the limited partnership nor prevent the limited partnership from defending any action in any court

of the Delaware Act which also provides for an extended effective date.²²

The IRULPA approach differs from the current version of the Model Act which provides that the repeal of any earlier limited partnership statute does not impair, or otherwise affect, the organization or the continued existence of an existing limited partnership, nor impair any contract or affect any right accrued before its effective date.²³ The purpose of this savings clause is to ensure that the application of the Model Act to existing limited partnerships "would not violate constitutional prohibitions against the impairment of contracts."²⁴

Interestingly, the IRULPA provides that an existing limited partnership which does not file a new or amended limited partnership certificate by July 1, 1993, continues as a limited partnership under the IRULPA, and that failing to file does not impair the validity of any contract or act of the limited partnership or prevent it from defending any action in an Indiana court.²⁵ It is not clear whether this provision would affect rights accrued against the partnership or against the general or limited partners under the IULPA before July 1, 1993, which raises some possible constitutional problems. However, there probably will be few if any limited partnerships that might face such problems.

A limited partnership organized under the IRULPA may carry on any business which a general partnership may conduct except the making of insurance within the meaning of the Indiana Insurance Law.²⁶ A general partnership is defined in the Indiana Uniform Partnership Act (IUPA) as "an association of two (2) or more persons to carry on as co-owners a business for profit."²⁷ The term business is defined in the

in Indiana;

- (2) a limited partner of the limited partnership is not liable as a general partner solely by reason of the failure to file a certificate with the secretary of state; and
- (3) the limited partnership may not maintain an action in any court of Indiana until it has filed a certificate with the secretary of state in compliance with [the IRULPA].

Id. § 23-16-12-2(h).

22. DEL. CODE ANN. tit. 6, § 17-114 (Supp. 1986).

23. REV. UNIF. LIMITED PARTNERSHIP ACT § 116, 6 U.L.A. 365 (Supp. 1988).

24. *Id.*

25. IND. CODE § 23-16-12-2(h) (1988). The IULPA was similar. *Id.* § 23-4-2-3 (repealed effective 1993).

26. *Id.* § 23-16-2-7. A proposed business contemplating the purchase of liquor by individuals and the entering into of storage and service agreements with various private clubs has been held to be neither a "business" nor "operated for profit" within the meaning of the ULP. *Roby v. Day*, 635 P.2d 611 (Okla. 1981).

27. IND. CODE § 23-4-1-6 (repealed effective 1993). The existence of statutes authorizing the organization of particular types of partnerships with special attributes does not preclude the use of a limited partnership unless the special statute and the limited

IUPA to include "every trade, occupation, or profession."²⁸

Limited partnership statutes are not the only sources of law controlling limited partnerships. Other statutes might restrict the otherwise lawful business of a limited partnership. For example, it has been held that the failure to comply with statutory requirements regulating entry into the liquor business made a limited partnership agreement void and unenforceable.²⁹ It also has been held that a statute limiting the amount of land that can be owned by a corporation or association controlled by nonresident aliens applied to a limited partnership.³⁰ A general partnership must be dissolved if its business becomes illegal after its inception³¹ and presumably this is the case with limited partnerships as well.

III. SUBSTANTIVE PROVISIONS OF IRULPA

A. Definitions and General Provisions

One of the most obvious differences between the old Act and the new Act is that the IRULPA groups related provisions in twelve separate chapters.³² The IULPA substantive provisions are contained in one chapter.³³ This change makes it easier for an attorney to review the statutory rules that apply to limited partnerships.

The definition sections of the IRULPA are in chapter 1.³⁴ The general provisions are in chapter 2.³⁵ These include the provisions relating to names of limited partnerships.³⁶ Under IRULPA a limited partnership

partnership act are irreconcilable. *See* *Stowe v. Merrilees*, 6 Cal. App. 2d 217, 44 P.2d 368 (1935) (limited partnership for mining purposes proper even though special statute provided for mining partnerships).

28. IND. CODE § 23-4-1-2 (repealed effective 1993).

29. *See* *Sponholz v. Meyer*, 27 Wis. 288, 70 N.W.2d 619 (1955) (limited partner's accounting action dismissed because of his failure to disclose his name in the liquor license application, even though the purpose of the licensing act was to disclose those persons controlling licensee.) *Cf.* *Searles v. Haynes*, 126 Ind. App. 626, 129 N.E.2d 362, *reh'g denied*, 130 N.E.2d 2182 (1955).

30. *Lehndorff Geneva, Inc. v. Warren*, 74 Wis. 2d 369, 246 N.W.2d 815 (1976).

31. *See* *Searles*, 126 Ind. App. 626, 129 N.E.2d 362.

32. IND. CODE §§ 23-16-1 to -12 (1988). The model act has eleven articles.

33. *Id.* § 23-4-2 (repealed effective 1993).

34. *Id.* §§ 23-16-1-1 to -14. The definitions in the model act are contained in Article 3.

35. *Id.* §§ 23-16-2-1 to -9.

36. *Id.* § 23-16-2-1. The name of a limited partnership as set forth in its certificate of limited partnership must contain the words "limited partnership" or the abbreviation "L.P." *Id.* § 23-16-2-1(a)(1). It "may not contain the name of a limited partner unless: (A) it is also the name of a general partner or the corporate name of a corporate general partner; (B) or the business of the limited partnership had been carried on under the name before the admission of that limited partner." *Id.* § 23-16-2-1(a)(2). The name "may

may reserve the exclusive right to a name.³⁷ The IULPA did not provide for reservation of names of limited partnerships. Even though the records of limited partnerships will now be in the office of the Secretary of State, as with corporations, the IRULPA unlike the Model Act³⁸ and the Delaware Act³⁹ inexplicably does not integrate the registration of limited partnership names with corporation names. Thus, an Indiana limited partnership can have a name that is not distinguishable from the name of an Indiana corporation or a registered foreign corporation.⁴⁰

Chapter 2 of the IRULPA requires a limited partnership to maintain in the state an office and an agent for service of process.⁴¹ The IRULPA goes beyond the Model Act by providing for the resignation of registered agents⁴² and for service of process on limited partnerships.⁴³ The IRULPA prescribes certain partnership records that must be kept in the registered office,⁴⁴ and gives partners the right to inspect these records.⁴⁵ There were no counterparts to these provisions in the IULPA. The effect of these provisions is to create a statutory scheme similar to that existing for corporations under the IBCL.

The IRULPA eliminates what was in effect a fraudulent conveyance provision applicable to secured loans by limited partners, as well as the prohibition against a general partner sharing pro rata with other partnership creditors in the case of unsecured loans.⁴⁶ Section 23-16-2-8⁴⁷ which effects this change is similar to, but goes beyond, the Model Act,⁴⁸ and gives the partners very extensive rights to deal with the

not contain any word or phrase indicating or implying that it is organized other than for a purpose stated in its partnership agreement." *Id.* § 23-16-2-1(a)(3). Generally the name of a limited partnership "must be such as to distinguish it upon the records in the office of the secretary of state from the name of any limited partnership reserved, registered, or organized under the laws of Indiana or qualified to do business or registered as a foreign limited partnership in Indiana," *id.* § 23-16-2-1(a)(4), but a non-distinguishable name may be used with the consent of the other limited partnership or by a court judgment. *Id.* § 23-16-2-1(b).

37. *Id.* § 23-16-2-2.

38. REV. UNIF. LIMITED PARTNERSHIP ACT § 102(3), 6 U.L.A. 241 (Supp. 1988).

39. DEL. CODE ANN. tit. 6, § 17-102(4) (Supp. 1986).

40. This can be a significant problem in Indiana because a corporation can indicate its corporateness in its name by using the word "Limited" or the abbreviation "Ltd." It can be argued that "XYZ, Ltd.," a corporation, is distinguishable from "XYZ, L.P.," a limited partnership, but it can be questioned if that is a distinction with a difference in the real world.

41. IND. CODE § 23-16-2-3(a) (1988).

42. *Id.* § 23-16-2-4.

43. *Id.* § 23-16-2-5.

44. *Id.* § 23-16-2-6(a).

45. *Id.* § 23-16-2-6(b).

46. *Id.* § 23-4-2-13 (repealed effective 1993).

47. IND. CODE § 23-16-2-8 (1988).

48. REV. UNIF. LIMITED PARTNERSHIP ACT § 107, 6 U.L.A. 256 (Supp. 1988). This

partnership, including the right to borrow from the partnership, except as provided in the partnership agreement.

The IRULPA also goes beyond the Model Act and the IULPA by authorizing the indemnification of partners, employees, officers or agents of the limited partnership.⁴⁹ It is not clear to what extent this indemnification right will affect the otherwise unlimited personal liability of a general partner in a limited partnership.

Unlike a general partnership which can be a private, informal and voluntary arrangement among the partners, creating a limited partnership still requires compliance with the statutory provisions of the IRULPA.⁵⁰ However, the "formalities" of the IRULPA are less extensive than those of the IULPA. The IULPA statutory scheme emphasized a certificate of limited partnership which did not comport with commercial reality. In fact, the IULPA did not even expressly recognize the existence of a partnership agreement.

B. Formation and Certificate of Limited Partnership

The IRULPA recognizes in chapter 3 that the basic document in a limited partnership is the partnership agreement, just as in a general partnership. Except with respect to assignments of partnership interests, "a person has the rights, and is subject to the liabilities, of a general partner only if the person has signed a limited partnership agreement in person or by an attorney-in-fact."⁵¹ The IRULPA provides that an agreement may be amended from time to time. However,

unless the partnership agreement provides otherwise, an amendment of the partnership agreement may be made only with the written consent of each limited partner who may be adversely affected by an amendment that would accomplish any of the following:

(1) Increase the obligations of any limited partner to make

section makes substantial changes to section 13 of the IULPA. The drafters did not intend to give carte blanche to partners, but rather concluded that such matters should be controlled by general fraudulent conveyance statutes or by doctrines developed under bankruptcy or insolvency laws which may require subordination of loans by partners. REV. UNIF. LIMITED PARTNERSHIP ACT, 6 U.L.A. 256 (Supp. 1988). Presumably this will be the case in Indiana.

49. IND. CODE § 23-16-2-9 (1988). Delaware does, too. See DEL. CODE ANN. tit. 6, § 17-18 (Supp. 1986).

50. A limited partnership cannot be formed by "implication." See *MIF Securities v. R.C. Stamm & Co.*, 94 A.D.2d 211, 463 N.Y.S.2d 771 (1983). See generally CRANE & BROMBERG, *supra* note 5, § 26(b).

51. IND. CODE § 23-16-3-1(a) (1988).

contributions.

(2) Alter the allocation for tax purposes of any items of income, gain, loss, deduction, or credit.

(3) Alter the manner of computing the distributions of any partner.

(4) Alter, except as provided in [the agreement], the voting or other rights of any limited partner.

(5) Allow the obligation of a partner to make a contribution to be compromised by written consent of fewer than all partners.

[or]

(6) Alter the procedures for amendment of the partnership agreement.⁵²

The authority for the partnership agreement "to provide otherwise," which authority is not in the Model or Delaware Acts, can jeopardize the rights of limited partners of Indiana limited partnerships.

A limited partnership is still required to file a certificate of limited partnership containing specified information⁵³ which is filed in the office of the Secretary of State.⁵⁴ Centralized filing of certificates of limited partnerships is a major change from the scheme of the IULPA. It should simplify greatly the task of an attorney organizing a limited partnership. The Secretary of State's office has prepared many documents for filing by corporations under the IBCL. However, the incumbent Secretary of State has elected not to provide forms for limited partnership transactions or filings.⁵⁵

A limited partnership certificate must include the following:

(1) The name of the limited partnership.

(2) The address of the office and the name and address of the agent for service of process.

(3) The name and the business address of each general partner.

(4) The latest date upon which the limited partnership is to dissolve. [and]

(5) Any other matters the general partners agree to include.⁵⁶

A limited partnership is formed at the time the initial certificate of limited partnership is filed in the office of the Secretary of State "or

52. *Id.* § 23-16-3-1(b).

53. *Id.* § 23-16-3-2(a).

54. The limited partnership certificate required by the IULPA was filed with the county recorder of the county in which the principal place of business of the partnership is located. *Id.* § 23-4-2-2(b).

55. See Indiana Limited Partnership Guide § I(A)(4).

56. IND. CODE § 23-16-3-2(a) (1988).

at any later time specified in the certificate of limited partnership if, in either case, there has been substantial compliance with the requirements of the IRULPA.”⁵⁷ “Unless the certificate specifies an effective date that is different from the filing date, the time and date of the filing of the certificate is conclusive evidence as to when a limited partnership is formed.”⁵⁸

A limited partnership was formed under the IULPA “if there had been substantial compliance in good faith with the requirements of [the act].”⁵⁹ Controversies could arise whether there had been such compliance if the limited partnership did business in several counties and its certificate was not filed in each county recorder’s office where the limited partnership did substantial business.⁶⁰ This problem was eliminated by the central filing approach of the IRULPA.

The IRULPA requires the filing of a certificate of amendment to a limited partnership certificate within sixty days after certain events,⁶¹ and at any time for any other proper purpose the general partners may determine.⁶² Filing a certificate of amendment within the sixty-day period “absolves a person from any liability that might arise because the limited partnership certificate did not reflect the occurrence of the event before the filing of the amendment.”⁶³ The IRULPA goes beyond the Model Act and the Delaware Act in this respect. The Model Act only absolves persons from liability where the amended certificate is required because a new general partner has been admitted, a general partner has withdrawn, or the partnership continues after a nonjudicial dissolution.⁶⁴ The IRULPA extends the protection to situations where a general partner becomes aware that a statement in the certificate was false when made or has become inaccurate. This difference can be beneficial to the interests of

57. *Id.* § 23-16-3-2(b).

58. *Id.*

59. *Id.* § 23-4-2-2(2) (repealed effective 1993).

60. See CRANE & BROMBERG, *supra* note 5, § 26(b) at 145-46.

61. IND. CODE § 23-16-3-3(b) (1988). These include:

- (1) The admission of a new general partner.
- (2) The withdrawal of a general partner.
- (3) The continuation of the business under [IND. CODE] § 23-16-9-1 after an event of withdrawal of a general partner.
- (4) The discovery by a general partner that any statement in the certificate of limited partnership was false when made.
- (5) The discovery by a general partner that any facts or arrangements described in the certificate of limited partnership have changed, making the certificate inaccurate in any respect.

62. *Id.* § 23-16-3-3(d).

63. *Id.* § 23-16-3-3(c).

64. REV. UNIF. LIMITED PARTNERSHIP ACT § 202(e), 6 U.L.A. 265 (Supp. 1988).

the partners, and, conversely, detrimental to the interests of creditors or claimants of a limited partnership.⁶⁵

The IRULPA also requires that a certificate of limited partnership be cancelled by "filing a certificate of cancellation upon the dissolution and the commencement of winding up of the partnership or at any other time there are no limited partners."⁶⁶ A certificate of cancellation is filed in the office of the Secretary of State.⁶⁷

The old Act required all partners, including the limited partners, to sign the limited partnership certificate. The Model Act as originally drafted in 1976 continued this requirement.⁶⁸ The current version of the Model Act, on which the IRULPA is based, eliminated the requirement that limited partners sign the certificate. All general partners must sign the original limited partnership certificate,⁶⁹ and all new general partners, and at least one existing general partner if there is one, must sign a certificate of amendment or restatement of a limited partnership certificate.⁷⁰ All general partners must sign a cancellation certificate, but if there are no general partners, the cancellation certificate "must be signed by a majority in interest of the limited partners."⁷¹ The execution of

65. For example, it is not impossible that a limited partner could escape liability by having the certificate amended to change the name of the partnership where the limited partner knowingly permitted his or her name to be used in the name of the limited partnership, and who as a consequence would be liable to creditors who extended credit to the limited partnership thinking the limited partner was a general partner because of the "erroneous certificate," if the creditors had no actual knowledge that the person was not a general partner. Of course, a court may prevent this result by characterizing it as fraud, and it might constitute perjury if the general partners who signed the certificate knew of the deception. IND. CODE § 23-16-3-5(a)(3) (1988).

66. *Id.* § 23-16-3-4.

67. The certificate of cancellation must contain:

- (1) The name of the limited partnership.
- (2) The date of filing of its certificate of limited partnership.
- (3) The reason for filing the certificate of cancellation.
- (4) The effective date or time (which must be a date or time certain) of cancellation if it is not to be effective upon the filing of the certificate.
- (5) Any other information the person filing the certificate of cancellation determines.

Id.

68. REV. UNIF. LIMITED PARTNERSHIP ACT § 204 comment, 6 U.L.A. 272-73 (Supp. 1988).

69. IND. CODE § 23-16-3-5(a)(1) (1988). A person may sign a limited partnership certificate, a limited partnership agreement or an amendment to a certificate or agreement by an attorney-in-fact. *Id.* § 23-16-3-5(b). The Delaware Act also permits this, DEL. CODE ANN. tit. 6, § 17-204(b), but the Model Act limits this right to the execution of certificates. REV. UNIF. LIMITED PARTNERSHIP ACT § 204(b), 6 U.L.A. 272 (Supp. 1988).

70. IND. CODE § 23-16-3-5(a)(2) (1988).

71. *Id.* § 23-16-3-5(a)(3).

a certificate constitutes an "oath or affirmation under the penalties of perjury that to the best of the [signer's] knowledge and belief the statements made in the certificate are true."⁷² Any person adversely affected by the failure of a person required to execute a certificate to do so may petition the appropriate circuit or superior court for an order directing the Secretary of State to file a certificate.⁷³

It is no longer necessary for a person executing a certificate as an agent or fiduciary to exhibit evidence of authority as a prerequisite to filing the certificate with the Secretary of State.⁷⁴ A certificate is filed unless the Secretary of State finds that it does not conform to law.⁷⁵ The fact that a certificate of limited partnership is on file in the office of the Secretary of State is notice that the partnership is a limited partnership and is notice of all other facts that are required to be set forth in a limited partnership certificate under the IRULPA and that are thus set forth in the certificate.⁷⁶

The Model Act contains explicit statutory recognition of the practice of restating an amended limited partnership certificate.⁷⁷ However, the Model Act provision is not nearly as detailed as the IRULPA,⁷⁸ which is patterned on the Delaware Act.⁷⁹

Unlike the old Act, the IRULPA does not require disclosure of the limited partners' capital contributions and their participation in the profits of the enterprise. This increases the desirability of the limited partnership as a business form where the participants wish to keep confidential the amount of their investments.

The IRULPA also does not require publication or notification other than the required filing to form a limited partnership.⁸⁰ Unlike the old Act, the new Act does require the name of a limited partnership to include words indicating its nature,⁸¹ which is the most effective manner

72. *Id.* § 23-16-3-5(c). The Model Act provides that the execution of a certificate constitutes an affirmation under the penalties of perjury that the facts are true and not merely true to the best of the person's knowledge and belief. REV. UNIF. LIMITED PARTNERSHIP ACT § 204(c), 6 U.L.A. 272 (Supp. 1988).

73. IND. CODE § 23-16-3-6 (1988).

74. *Id.* § 23-16-3-7(a).

75. *Id.* General partners are obligated to deliver a copy of the filed limited partnership certificate to the limited partners unless the limited partnership agreement provides otherwise. *Id.* § 23-16-3-1.

76. *Id.* § 23-16-3-9.

77. REV. UNIF. LIMITED PARTNERSHIP ACT § 2027(f), 6 U.L.A. 265 (Supp. 1988).

78. IND. CODE § 23-16-3-11 (1988).

79. DEL. CODE ANN. tit. 6, § 17-210 (Supp. 1986).

80. The organizers of a limited partnership, however, must comply with the Indiana Assumed Business Names Act, IND. CODE §§ 23-15-1-1 to -4 (1988), which requires the filing of certificates in the office of the county recorder of each county where the partnership has an office or a place of business.

81. IND. CODE § 23-16-2-1(a)(1) (1988).

of communicating the status of the firm to third persons. As previously noted, the IRULPA prohibits the name of a limited partner from appearing in the partnership name unless it is also the name of a general partner, or the corporate name of a corporate general partner,⁸² or the business had been carried on under a name containing the name before the limited partner was admitted.⁸³ The IULPA expressly provided that a limited partner whose name appeared in the partnership name was liable as a general partner to creditors who extended credit to the partnership without actual knowledge that the person was not a general partner.⁸⁴

At one time, there was some question whether a corporation could be a partner, either general or limited.⁸⁵ However, a corporation can be a partner under the IBCL,⁸⁶ and could be under the predecessor Indiana General Corporation Act.⁸⁷ The fact that a corporation can be the general partner in a limited partnership can defeat the assumption that a limited partnership will have a solvent general partner with unlimited liability. A corporate general partner is liable only to the extent of its assets, unless circumstances exist where a court may be willing to disregard the corporate fiction or "pierce the corporate veil" and hold the shareholders personally liable.⁸⁸ Of course, there is no assurance that an individual who is a general partner is and always will be solvent.

The various limited partnership statutes do not restrict the number of general or limited partners and there are many large publicly-held limited partnerships. Limited partnership interests can be considered securities and the public sale of such interests may require compliance with both federal⁸⁹ and state securities laws.⁹⁰

82. *Id.* § 23-16-2-1(a)(2)(A).

83. *Id.* § 23-16-2-1(a)(2)(B).

84. IND. CODE § 23-4-2-5(2) (repealed effective 1993).

85. *See, e.g.*, *Mallory v. Hanover Oil Works*, 86 Tenn. 598, 8 S.W. 396 (1888); *Whittenton Mills v. Upton*, 76 Mass. (10 Gray) 582 (1858). *See generally* Note, *The Corporation as Managing Partner in a Limited Partnership*, 55 N.D.L. REV. 271 (1979).

86. IND. CODE § 23-1-22-2(9) (1984). The partnership business must be within the scope of the corporation's articles. *Lurie v. Arizona Fertilizer & Chem. Co.*, 11 Ariz. 482, 421 P.2d 330 (1966).

87. IND. CODE § 23-1-2-2(a)(14) (repealed 1987). Before the IGCA was amended, a corporation could be a partner if the power was granted in the articles of incorporation.

88. *Compare* *Delaney v. Fidelity Lease Ltd*, 526 S.W.2d 543 (Tex. 1975), *with* *Frigidaire Sales Corp. v. Union Properties, Inc.*, 14 Wash. App. 634, 544 P.2d 781 (1975), *aff'd*, 88 Wash. 2d 400, 562 P.2d 244 (1977).

89. *See, e.g.*, *SEC v. Murphy*, 626 F.2d 633, 640-41 (9th Cir. 198); *Beaty v. Basic Resources Int'l, SA*, 1985-86 Fed. Sec. L. Rptr (CCH) ¶ 92,452 (S.D.N.Y. 1986). *See also* *Rode v. Gillman*, 1985-86 Fed. Sec. L. Rptr. (CCH) ¶ 92,547 (7th Cir. 1986) (limited partnership interest a security despite option to buy-out general partners).

90. *See, e.g.*, *Garbo v. Hilleary Franchise Sys., Inc.*, 479 S.W.2d 491 (Mo. Ct. App. 1972).

Section 207⁹¹ of the Model Act both expands and narrows liability for false statements in the certificate of limited partnership over the comparable provision in the predecessor Uniform Limited Partnership Act.⁹² The IRULPA is less expansive than the Model Act. It does provide explicitly that a person who signs a certificate as an agent under a power of attorney, as well as those for whom the agent signs who knew a statement was false at the time the certificate was executed, is liable to persons who are damaged by reasonable reliance on a false statement.⁹³ The new Act does extend potential liability for false statements to general partners who should have known of the false statement as well as those who knew the statement was false,⁹⁴ and to any general partner who:

after the execution of [a limited partnership certificate], but at least sixty (60) days before the statement was reasonably relied upon, knew or should have known that any arrangement or other fact described in a statement in the certificate had changed, . . . and failed to cancel or amend the certificate or to file a petition for the cancellation or amendment of the certificate under section [23-16-3-6 of the IRULPA] before the statement was reasonably relied upon.⁹⁵

Again, however, the liability is limited to those who suffered loss by reasonable reliance on the false statement.⁹⁶

As stated earlier, the IRULPA gives general partners an escape clause from liability for false statements in certificates.

A general partner is not liable for failing to cancel or amend a certificate or for failing to file a petition for the amendment or cancellation of a certificate under [section 23-16-3-8(a)(2)] if a certificate of amendment, certificate of cancellation, or petition for amendment or cancellation is filed within sixty (60) days after the general partner knew or should have known to the

91. See REV. UNIF. LIMITED PARTNERSHIP ACT § 207, 6 U.L.A. 281 (Supp. 1988).

92. See *id.* § 207 comment, 6 U.L.A. 281.

93. IND. CODE § 23-16-3-8(a)(1) (1988). The Model Act does not contain a requirement that the reliance be "reasonable." The Delaware Act does. DEL. CODE ANN. tit. 6, § 17-27(a) (Supp. 1988). This approach reduces, at least in theory, the universe of potential plaintiffs by eliminating those who "rely" but whose reliance is not "reasonable," presumably using some objective standards.

94. IND. CODE § 23-16-3-8(a)(2) (1988).

95. *Id.* § 23-16-3-8(a)(3).

96. Section 23-16-3-8 narrows potential liability for false statements by confining to general partners the obligation to amend a certificate of limited partnership where future events have made a statement in a certificate inaccurate. All partners were subject to liability under the IULPA. *Id.* § 23-4-2-6.

extent provided in section [23-16-3-8(a)] that the statement in the certificate was false in any material respect.⁹⁷

Another major difference between the old and new Acts is that the IRULPA permits the merger of Indiana limited partnerships with other Indiana limited partnerships or partnerships organized under the laws of another state, with one partnership being the surviving partnership as provided by the merger agreement.⁹⁸ A domestic limited partnership that is not the surviving partnership must file a certificate of cancellation with an effective date not later than the effective date of the merger.⁹⁹ If the surviving limited partnership in a merger is a foreign limited partnership, it must attach a certificate to the Indiana limited partnership's certificate of cancellation stating that the foreign limited partnership agrees to be served with process in Indiana in any action to enforce an obligation of the nonsurviving Indiana limited partnership, that it consents to the Secretary of State as agent for service of process, and that it is providing an address to which the process may be mailed.¹⁰⁰ The IRULPA merger provision also spells out the consequences of a merger of limited partnerships with respect to such matters as continued liability for obligations, title to property, and similar rights and duties.¹⁰¹

C. *Rights and Duties of Limited Partners*

The provisions relating to the rights, duties and liabilities of limited partners are contained in chapter 4 of the IRULPA. The most significant concern of a limited partner is the possibility of losing limited liability status. There are two situations where the availability of limited liability is an issue: (1) where there has been a failure to comply fully with the statutory requirements; and (2) where the limited partner has taken part in "the control of the business."

(1) *Failure to comply fully with the statutory requirements.*—One purpose of the drafters of the original Uniform Limited Partnership Act was to prevent limited partners from losing limited liability for trivial failures to comply with the statute. The Model Act continues this approach.¹⁰² The IRULPA, not surprisingly, goes further. As noted, the process of forming a limited partnership has been simplified,¹⁰³ and a

97. *Id.* § 23-16-3-8(b).

98. *Id.* § 23-16-3-12(a). The statute does not permit mergers with limited partnerships organized under the laws of a foreign country.

99. *Id.* § 23-16-3-12(b).

100. *Id.* § 23-16-3-12(c).

101. *Id.* § 23-16-3-12(d).

102. *See* REV. UNIF. LIMITED PARTNERSHIP ACT §§ 201, 304, 6 U.L.A. 257, 297 (Supp. 1988).

103. *See* IND. CODE § 23-16-3-2 (1988).

limited partnership is formed when there has been "substantial compliance" with the section of the statute pertaining to the limited partnership certificate,¹⁰⁴ even if the partnership does not comply with other provisions of the statute.

More importantly, the IRULPA provides a broader escape clause for limited partners facing potential unlimited liability as a result of an improperly organized limited partnership than did the IULPA.¹⁰⁵ Section 23-16-4-4 provides that

except as provided in [section 23-16-4-4(b)], a person who makes a contribution to a partnership and erroneously but in good faith believes that the person has become a limited partner in the partnership is not a general partner in the partnership, and is not bound by its obligations by reason of making the contribution, receiving distributions from the partnership, or exercising any rights of a limited partner, if, within sixty (60) days after ascertaining the mistake, that person:

- (1) . . . causes an appropriate certificate of limited partnership or a certificate of amendment to be executed and filed, [if the person wishes to be a limited partner];¹⁰⁶ or
- (2) takes such action as may be necessary to withdraw[, if a person wishes to withdraw from the partnership].¹⁰⁷

Section 23-16-4-4(b) further reduces the likelihood of actual liability to a third party by providing that a person who contributes to a partnership erroneously believing himself or herself to be a limited partner, is liable as a general partner to any third party who transacts business with the partnership before an appropriate limited partnership certificate is filed or the person withdraws from the partnership only if the third party actually believed in good faith that the person was a general partner at the time of the transaction; acted in reasonable reliance on that belief; and extended credit to the partnership in reasonable reliance on the credit of that person.¹⁰⁸

The prospect of liability under these circumstances is somewhat greater under the Model Act than under the IRULPA.¹⁰⁹ However, because limited partners do not have to be named in the limited partnership certificate, the only time liability under section 23-16-4-4(a) is

104. *Id.* § 23-16-3-2(b).

105. *See id.* § 23-16-4-4.

106. *Id.* § 23-16-4-4(a)(1).

107. *Id.* § 23-16-4-4(a)(2).

108. *Id.* § 23-16-4-4(b).

109. REV. UNIF. LIMITED PARTNERSHIP ACT § 304 comment, 6 U.L.A. 297 (Supp. 1988).

likely to occur is in the rare situation where a person intending to be a limited partner is erroneously identified as a general partner in the certificate.

(2) *Participating in the control of the business.*—The *quid pro quo* for limited liability under the IRULPA is the limited partner's sacrificing the right to control the management of the firm that is inherent to partners in a general partnership. Section 23-16-4-3(a) of the Act specifically provides that a limited partner is not liable for the obligations of a limited partnership unless "(1) the limited partner is also a general partner; or, (2) the limited partner, in addition to exercising the rights and powers of a limited partner, participates in the control of the business."¹¹⁰ The IULPA had a similar provision.¹¹¹ One of the problems with the Uniform Limited Partnership Act was that it was unclear exactly how much review, advisory, management selection, or veto powers a limited partner could exercise without crossing the vague line of participating in the control of the business. This uncertainty was perhaps the greatest drawback of the limited partnership form of business under the IULPA.¹¹²

Many if not most of these problems have been remedied by the "safe harbor" provisions of the IRULPA. These provisions enumerate certain activities in which a limited partner may engage without being deemed to be participating in the control of the business.¹¹³ These safe harbors are not exclusive, and the possession or exercise of any other powers by a limited partner does not automatically constitute participation by that limited partner in the control of the business of the limited partnership.¹¹⁴ Of course, a limited partner cannot knowingly permit

110. IND. CODE § 23-16-4-3(a) (1988). However, a limited partner who participates in the control of the business is liable only to persons who transact business with the limited partnership reasonably believing, based upon the limited partner's conduct, that the limited partner is a general partner. *See generally* Abrams, *Imposing Liability for "Control" Under Section 7 of the Uniform Limited Partnership Act*, 28 CASE W. RES. L. REV. 785 (1978).

111. IND. CODE § 23-4-2-7 (repealed effective 1993).

112. *See generally* CRANE & BROMBERG, *supra* note 5, § 26 at 147.

113. IND. CODE § 23-16-4-3(b) (1988). One of the most important safe harbors is section 23-16-4-3(b)(1) which permits a limited partner to be an officer, director or shareholder of a corporate general partner. This provision prevents the result reached in *Delaney v. Fidelity Lease Ltd.*, 526 S.W.2d 543 (Tex. 1975), where the Texas Supreme Court held that if three limited partners had taken part in the control of the business within the meaning of section 7 of the ULP by acting as officers of the corporate general partner, then they would be liable as general partners. Not all courts reached this result. *See* *Frigidaire Sales Corp. v. Union Properties, Inc.*, 14 Wash. App. 634, 544 P.2d 781 (1975), *aff'd*, 88 Wash. 2d 400, 562 P.2d 244 (1977). *See generally* Note, *supra* note 85, at 271.

114. IND. CODE § 23-16-4-3(c) (1988).

“the partner’s name to be used in the name of the limited partnership, except under circumstances permitted” by the IRULPA, without incurring liability “to creditors who extend credit to the limited partnership without actual knowledge that the limited partner is not a general partner,” although this liability might be avoided by changing the name of the partnership.¹¹⁵ In essence, the IRULPA imposes liability on a limited partner who permits a situation to exist where third parties can be misled as to the limited partner’s true status, but confines that liability to those who actually have been misled.

The IRULPA contains other provisions that affect the rights, duties and liabilities of limited partners. Most of these provisions are based on the Model Act but differ to some degree in form or substance. For example, like the Model Act, the IRULPA clarifies prior law by explicitly recognizing that unanimous consent of all partners is required for admission of new limited partners unless the partnership agreement provides otherwise.¹¹⁶ However, unlike the Model Act,¹¹⁷ the IRULPA does not require a limited partnership to maintain a record of the date a person becomes a limited partner.

The Model Act explicitly recognizes the not uncommon practice of a limited partnership agreement granting voting rights to either all or a specified group of limited partners.¹¹⁸ The provision permits voting on matters that go beyond those for which a specific safe harbor is provided. The comparable provision in the IRULPA goes much further in authorizing the partnership agreement to provide for classes or groups of limited partners, and in specifying the rights, powers and duties of limited partners.¹¹⁹ In this respect, the Delaware Act was the model.¹²⁰ One of the most significant aspects of section 23-16-4-2 is that it permits the drafters of limited partnership agreements to provide “for the future creation, in the manner provided in the partnership agreement, of additional classes or groups of limited partners 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 limited partners),”¹²¹ and, subject to section 23-16-4-3, permits the drafters to

grant to all the limited partners, to certain identified limited partners, or to a specified class or group of the limited partners

115. *Id.* § 23-16-4-4(d).

116. *Id.* § 23-16-4-1.

117. REV. UNIF. LIMITED PARTNERSHIP ACT § 301 comment, 6 U.L.A. 255 (Supp. 1988).

118. *Id.* § 302 comment, 6 U.L.A. 255 (Supp. 1988).

119. IND. CODE § 23-16-4-2 (1988).

120. See DEL. CODE ANN. tit. 6, § 17-405 (Supp. 1988).

121. IND. CODE § 23-16-4-2(a) (1988).

the right to vote (on a per capita or other basis), separately or with all or any class or group of the limited partners or the general partners, on any matter.¹²²

These provisions doubtlessly will reassure general partners that they can establish defenses against a possible "takeover" of an Indiana limited partnership. However, such provisions should cause concern among investors who might find themselves relegated to third class status by the creation of "senior" limited partners. Finally, section 23-16-4-5 of the IRULPA is similar in substance but differs in form from section 305 of the Model Act.¹²³ Section 23-16-4-5 changes as compared to the old Act, and restates the rights of limited partners to information about the partnership.

D. Financing, Derivative Actions and the Rights and Duties of General Partners

Section 23-16-6-1¹²⁴ of the IRULPA in conjunction with the definition of "contribution" in section 23-16-1-3,¹²⁵ makes it clear that contributions of services are permissible forms of contribution to a limited partnership even by limited partners. The IRULPA continues the obligation of a partner to fulfill any promised contribution, if the obligation is set out in a writing signed by the limited partner.¹²⁶ A partner who is unable to perform promised services because of death or disability, as well as by default, is required to pay the cash value of the services except as otherwise provided in the partnership agreement.¹²⁷

Like the Model Act,¹²⁸ the IRULPA permits a creditor to enforce an original obligation of a partner, both limited and general, to contribute to the partnership where credit is extended in reliance on the obligation before it is compromised by the partners.¹²⁹ This right is limited to creditors only to the extent that in extending the credit, the creditor reasonably relied on the obligation of a partner to make the contribution.¹³⁰ This is a departure from the Model Act and demonstrates

122. *Id.* § 23-16-4-2(b).

123. Compare *id.* § 23-16-3-5 with REV. UNIF. LIMITED PARTNERSHIP ACT § 305, 6 U.L.A. 300 (Supp. 1988).

124. IND. CODE § 23-16-6-1 (1988).

125. *Id.* § 23-16-1-3.

126. *Id.* § 23-16-6-2(a).

127. *Id.* § 23-16-6-2(b). This option is in addition to, and is not in lieu of, any other rights, including the right to specific performance, that the limited partnership may have against such a partner under the partnership agreement or applicable law.

128. REV. UNIF. LIMITED PARTNERSHIP ACT § 502(c), 6 U.L.A. 311-12 (Supp. 1988).

129. IND. CODE § 23-16-6-2(c) (1988).

130. *Id.*

how persons dealing with Indiana limited partnerships who do not insist on examining the partnership agreement do so at their peril. The promised contribution of a limited partner does not have to be stated in the limited partnership certificate. Moreover, the IRULPA explicitly authorizes the partnership agreement to provide for the consequences and penalties if a partner fails to make a contribution.¹³¹

The IULPA did not specifically authorize a limited partner to bring a derivative suit on behalf of the partnership. However, it was generally recognized that a limited partner could bring a derivative action on behalf of a limited partnership,¹³² by analogizing the position of a limited partner to that of a corporate shareholder.¹³³ The IRULPA expressly authorizes a limited partner to bring a derivative action¹³⁴ and specifies the appropriate procedures.¹³⁵ A limited partner whose suit is successful can recover expenses and fees from the award, the balance of which is remitted to the limited partnership.¹³⁶

The IRULPA does not provide for a "litigation committee" that can consider the propriety, or lack thereof, of pursuing a derivative action filed on behalf of a limited partnership as does the IBCL with respect to Indiana corporations.¹³⁷ Interestingly, the drafters of the IRULPA did provide that if the damages awarded a plaintiff in such a suit are insufficient to reimburse the plaintiff's reasonable expenses, the court can direct that part or all of the reasonable expenses be paid by the partnership.¹³⁸

A limited partner is entitled to a return of the partner's contribution before any claims of general partners are paid under the IULPA.¹³⁹ Under the IRULPA general and limited partners rank on the same level except as otherwise provided in the partnership agreement.¹⁴⁰

Section 23-16-6-3 of the IRULPA specifies the basis on which partners share profits and losses in the absence of a written agreement.¹⁴¹ The

131. *Id.* § 23-16-6-2(d).

132. *See, e.g.,* Moore v. 1600 Downing Street, Ltd., 668 P.2d 16 (Colo. Ct. App. 1983); Partnership Equities, Inc. v. Marten, 15 Mass. App. Ct. 42, 443 N.E.2d 134 (1982).

133. *See generally* Hecker, *Limited Partners' Derivative Suits Under the Revised Uniform Limited Partnership Act*, 33 VAND. L. REV. 343 (1980); Reuschlein, *Limited Partnership Derivative Suits*, 9 ST. MARY'S L.J. 443 (1978).

134. IND. CODE § 23-16-11-1 (1988).

135. There is a contemporaneous ownership requirement, *id.* § 23-16-11-2, and a limited partner must attempt to have the action initiated by a general partner or plead reasons for not making the effort. *Id.* § 23-16-11-3.

136. *See* REV. UNIF. LIMITED PARTNERSHIP ACT § 1004, 6 U.L.A. 356 (Supp. 1988).

137. IND. CODE § 23-1-32-4 (1988).

138. *Id.* § 23-16-11-4(b).

139. *Id.* § 23-4-2-23 (repealed effective 1993).

140. *Id.* § 23-16-9-4(3).

141. *Id.* § 23-16-6-3.

IRULPA differs from the Model Act which requires that the allocation be in writing to be effective.¹⁴² Section 23-16-6-4 permits partners to choose to share distributions on a different basis than they share profits and losses by so providing in the partnership agreement.¹⁴³ The "default" provisions, if the agreement does not so provide, are "the agreed value . . . of the contributions made by each partner to the extent they have been received by the partnership and have not been returned."¹⁴⁴ Again the IRULPA differs from the Model Act which requires that the allocation of distributions be in writing.¹⁴⁵

Chapter 5 of the IRULPA pertaining to general partners contains many provisions derived from the old Act. First, a general partner of an Indiana limited partnership has substantially the same rights and powers and is subject to all the restrictions of a partner in an ordinary general partnership.¹⁴⁶ Second, general partners manage the business of the limited partnership and are personally liable for all of the debts of the partnership to persons other than the partnership and other partners.¹⁴⁷ Third, they have the same liabilities to the partnership and other partners as partners in a general partnership, except as provided in the IRULPA or the partnership agreement.¹⁴⁸ Finally, because a corporation can be a general partner in a limited partnership, it is possible to limit the overall liability of a limited partnership enterprise.¹⁴⁹

The Model Act expanded greatly the authority of general partners *vis a vis* the partnership and the limited partners. As initially promulgated, it continued the unwaivable requirement that all limited partners must consent in writing to the admission of an additional general partner and that the consent must specifically identify the general partner involved. However, in 1985 the relevant provision was amended to require written

142. REV. UNIF. LIMITED PARTNERSHIP ACT § 503, 6 U.L.A. 314 (Supp. 1988). The IRULPA tracks the Delaware Act in this respect. DEL. CODE ANN. tit. 6, § 17-503 (Supp. 1986). The Model Act requirement that matters of substantial importance be in writing is to avoid fraud.

143. *Id.* § 23-16-6-4.

144. IND. CODE § 23-16-6-4 (1988).

145. REV. UNIF. LIMITED PARTNERSHIP ACT § 504, 6 U.L.A. 316 (Supp. 1988). Again the IRULPA follows the Delaware Act in this respect. DEL. CODE ANN. tit. 6 § 17-504 (Supp. 1986).

146. IND. CODE § 23-16-5-3(a) (1988).

147. *Id.* § 23-16-5-3(b). A general partner's liability to a third party does not change even if the general partner subsequently becomes a limited partner. *Hartford Fin. Serv. v. Florida Software Serv., Inc.*, 550 F. Supp. 1079 (D. Me. 1982), *appeal dismissed*, 712 F.2d 724 (1st Cir. 1983).

148. IND. CODE § 23-16-5-3(c) (1988).

149. It is also possible for a limited partnership to be the general partner of another limited partnership. *See, e.g., Radio Picture Show Partnership v. Exclusive Int'l Pictures*, 482 N.E.2d 1159 (Ind. Ct. App. 1985).

consent only if the partnership agreement does not provide in writing for the admission of additional general partners.¹⁵⁰ This language was adopted by the drafters of the IRULPA.¹⁵¹

Section 23-16-5-2 of the IRULPA expands the provisions of the old Act as to when a person ceases to be a general partner.¹⁵² The old Act provided for dissolution of the partnership on the retirement, death or insanity of a general partner, unless the business was continued by remaining general partners under a right so stated in the limited partnership certificate or with the consent of all partners.¹⁵³ The IRULPA recognizes as does the Model Act, that other events can cause the dissolution of a limited partnership, albeit possibly giving rise to a breach of contract action against a general partner who dissolves it in contravention of the partnership agreement.¹⁵⁴ Section 23-16-5-2 further recognizes that limited partners should be able to replace a general partner who is in financial dire straights and that a general partner which is not a natural person, such as a corporation, can "die" just as a natural person.¹⁵⁵

The IRULPA continues the basic approach of the IULPA that, except as provided in the Act, a general partner in a limited partnership has the same rights and powers and is subject to the same restrictions as a partner in a general partnership.¹⁵⁶ As initially adopted in 1976, the Model Act could have been read as authorizing a provision in a limited partnership agreement limiting general partners' liability to creditors of the partnership. However, the language of IRULPA sections 23-16-5-3(b) and (c), like the current version of section 403 of the Model Act, makes it clear that the partnership agreement can modify the relationship of the general partner to the partnership and other partners, but that the agreement cannot limit the liability of general partners to third persons.¹⁵⁷

150. REV. UNIF. LIMITED PARTNERSHIP ACT § 401, 6 U.L.A. 302 (Supp. 1988).

151. IND. CODE § 23-16-5-1 (1988).

152. *Id.* § 23-16-5-2.

153. *Id.* § 23-4-2-20 (repealed effective 1993).

154. REV. UNIF. LIMITED PARTNERSHIP ACT § 402 comment, 6 U.L.A. 304 (Supp. 1988).

155. IND. CODE § 23-16-5-2(6)-(10) (1988). For example, a corporation "dies" when it is dissolved or its articles of incorporation are revoked. Interestingly, the IRULPA is phrased in terms of a certificate of dissolution although a corporation is dissolved under the IBCL on the effective date of its articles of dissolution which generally is when they are filed with the Secretary of State. *Id.* § 23-1-45-3(b).

156. *Id.* § 23-16-5-3.

157. *Id.* § 23-16-5-3(b), (c); REV. UNIF. LIMITED PARTNERSHIP ACT § 403(b), 6 U.L.A. 306 (Supp. 1988). The ability to limit the liability of general partners would probably result in a determination that the enterprise possessed the corporate characteristic of limited liability for income tax purposes.

It is possible for a person to be both a general partner and a limited partner in a limited partnership under the IRULPA.¹⁵⁸ A general partner who is also a limited partner, in the partner's capacity as a limited partner, has the powers of and is subject to the restrictions of a limited partner except as provided in the partnership agreement.¹⁵⁹ Section 405 was added to the Model Act to clarify that the partnership agreement can specify the voting rights of both general and limited partners.¹⁶⁰ The IRULPA goes much further than the Model Act in authorizing classes and groups of general partners and their respective rights, powers and duties. The agreement can even permit the creation of additional classes and groups of general partners with rights, powers and duties senior to existing classes and groups of general partners.¹⁶¹ It is not clear who exactly would create these classes, however.

As under the IULPA, the acts of a general partner bind the limited partnership under agency law principles if the acts are within the scope of the partnership's business.¹⁶² The scope of the general partner's authority and the business of the partnership will be determined by the partnership agreement and, to a lesser degree, the limited partnership certificate.¹⁶³

Also under existing law, a general partner owes a fiduciary duty to other general partners as well as to the limited partners.¹⁶⁴ It also has been held that a limited partnership has enough attributes of an entity apart from its members that a general partner can be convicted of embezzling partnership funds.¹⁶⁵ An attorney who is a general partner in a limited partnership is not automatically precluded from representing the partnership in legal proceedings.¹⁶⁶ The IRULPA should not change any of these rules.

158. IND. CODE § 23-16-5-4 (1988). This was also possible under the IULPA. *Id.* § 23-4-2-12 (1982).

159. *Id.* § 23-16-5-4(b).

160. REV. UNIF. LIMITED PARTNERSHIP ACT § 405 comment, 6 U.L.A. 301 (Supp. 1988). However, if limited partners are entitled to vote on partnership matters, they do not have a right to vote as a separate class unless provided in the agreement. *Id.*

161. IND. CODE § 23-16-5-5(a) (1988). The IRULPA tracks the Delaware Act in this respect. DEL. CODE ANN. tit. 6, § 17-405 (Supp. 1986).

162. IND. CODE § 23-4-1-9 (repealed effective 1993). See *Mishawaka Fed. Sav. & Loan v. Brademas*, 162 Ind. App. 423, 319 N.E.2d 674 (1974).

163. The interpretation of provisions in a limited partnership agreement pertaining to the scope of a general partner's authority is subject to the general rules for interpreting powers of attorney. See *Klein v. Weiss*, 284 Md. 36, 395 A.2d 126 (1978).

164. See *JRY Corp. v. LeRoux*, 18 Mass. App. Ct. 153, 464 N.E.2d 82 (1984); *Alpert v. Haimes*, 64 Misc. 2d 608, 315 N.Y.S.2d 532 (1970).

165. *State v. Siers*, 197 Neb. 51, 248 N.W.2d 1 (1976).

166. See *Gorovitz v. Planning Bd. of Nantucket*, 394 Mass. 246, 475 N.E.2d 377 (1985).

E. Distributions and Withdrawals

Chapter 7 of the IRULPA, which is based on article 6 of the Model Act, made some significant changes from the prior law with respect to distributions and withdrawals from limited partnerships. The IRULPA permits interim distributions to partners before they withdraw from the partnership and before the partnership is dissolved and wound up.¹⁶⁷ A general partner can now withdraw from a limited partnership at any time by giving written notice, but is subject to suit for breach of contract if the withdrawal violates the partnership agreement.¹⁶⁸ The IRULPA permits a limited partner to withdraw at the time or upon the happening of events specified in the agreement, or on six months written notice, if the agreement does not specify in writing such time or events or specify a definite time for the dissolution and winding up of the limited partnership.¹⁶⁹ The distributive share of a withdrawing partner is fixed by the IRULPA in the absence of an agreement.¹⁷⁰ The IRULPA provides that except as provided in the partnership agreement, which does not have to be in writing as under the Model Act,¹⁷¹ a partner has no right to demand a distribution in any form other than cash.¹⁷² At the same time, it limits the amount a partner can be compelled to accept as a distribution of assets in kind, to the same proportion as the partner's share in the distributions of the partnership unless otherwise provided in the agreement.¹⁷³

It is now clear that any partner of a limited partnership who is entitled to receive a distribution becomes a creditor of the limited partnership with respect to the distribution.¹⁷⁴ The extraordinary remedy contained in the IULPA, whereby a limited partner who was unsuccessful in demanding a return of his contribution could seek dissolution of the partnership,¹⁷⁵ was eliminated in the IRULPA. A partner entitled to a distribution will have to sue as an ordinary creditor.¹⁷⁶

167. IND. CODE § 23-16-7-1 (1988).

168. *Id.* § 23-16-7-2.

169. *Id.* § 23-16-7-3.

170. *Id.* § 23-16-7-4.

171. REV. UNIF. LIMITED PARTNERSHIP ACT § 605, 6 U.L.A. 322 (Supp. 1988).

172. IND. CODE § 23-16-7-5(a) (1988).

173. *Id.* § 23-16-7-5(b).

174. *Id.* § 23-16-7-6. A partner may not receive a distribution from a partnership where, after the distribution, all liabilities of the limited partnership, other than liabilities to partners on account of their partnership interests, exceed the fair value of the partnership assets. *Id.* § 23-16-7-7.

175. *Id.* § 23-4-2-16(4) (repealed effective 1993).

176. See REV. UNIF. LIMITED PARTNERSHIP ACT § 606 comments, 6 U.L.A. 323 (Supp. 1988).

The IRULPA creates a statute of limitations on the right of a limited partnership to recover all or part of a contribution that has been returned to a limited partner under certain circumstances.¹⁷⁷ The IULPA did not have any comparable provisions. The new Act defines the return of a partner's contribution as that portion of a distribution which "reduces the partner's share of the fair value of the net assets of the limited partnership below the agreed value (as stated in the records of the limited partnership) of the partner's contribution that has not been distributed to the partner."¹⁷⁸ The IULPA treated a partner holding money or property wrongfully returned to him as a trustee.¹⁷⁹ This provision was eliminated in the Model Act.

F. Assignments

Chapter 8 of the IRULPA, which is based on Article 7 of the Model Act,¹⁸⁰ relates to the assignment of partnership interests. A partnership interest is personal property,¹⁸¹ and is assignable in whole or in part unless otherwise provided in the partnership agreement.¹⁸² This eliminates the ambiguity in prior law whether any limitations on the right of assignment were permitted.¹⁸³ The IRULPA continues the rule that the assignment of a partnership interest neither dissolves the limited partnership nor makes the assignee a partner.¹⁸⁴ Rather, "the assignee [is entitled] to share in the profits and losses, to receive the distribution or distributions, and to receive the allocation of income, gain, loss, deduction, or credit or similar item to which the assignor was entitled, to the extent assigned."¹⁸⁵ A partner ceases to be a partner when all of the partner's partnership interest is assigned.¹⁸⁶

Section 23-16-8-3 of the IRULPA authorizes a judgment creditor to seek a charging order against the interest of a debtor partner.¹⁸⁷ A judgment creditor has only the rights of an assignee.¹⁸⁸ The rights of

177. IND. CODE § 23-16-7-8(a), (b) (1988).

178. *Id.* § 23-16-7-8(c). There was some question under the IULPA whether a distribution to a limited partner was his share of income or a return of his contributions.

179. IND. CODE § 23-4-2-17(2) (repealed effective 1993).

180. REV. UNIF. LIMITED PARTNERSHIP ACT §§ 701-705, 6 U.L.A. 325 (Supp. 1988).

181. IND. CODE § 23-16-8-1 (1988). A partner has no interest in specific limited partnership property. *Id.*

182. *Id.* § 23-16-8-2(1).

183. *Id.* § 23-4-2-19(1) (1982). See REV. UNIF. LIMITED PARTNERSHIP ACT § 702 comments, 6 U.L.A. 326 (Supp. 1988).

184. IND. CODE § 23-16-8-2(2) (1988).

185. *Id.* § 23-16-8-2(3).

186. *Id.* § 23-16-8-2(4).

187. *Id.* § 23-16-8-3.

188. *Id.*

judgment creditors under the IRULPA are similar to the rights available under the IULPA except that the new Act has eliminated provisions considered to be superfluous.¹⁸⁹

An assignee may become a limited partner if the partnership agreement allows the assignee to become a limited partner or with the written consent of all partners.¹⁹⁰ The obligations of the assignor automatically assumed by an assignee who becomes a limited partner have been narrowed as compared to the prior uniform law.¹⁹¹ An assignor is not released from liability to the limited partnership if the assignee becomes a limited partner, unless such liabilities are specifically assumed by the assignee.¹⁹²

The IRULPA statutory rules dealing with the estate of a deceased or incompetent partner are substantially the same as they are under the IULPA.¹⁹³ The personal representative of a deceased limited partner becomes a limited partner for the purpose of settling the estate, and has any power the deceased limited partner had to make an assignee a substituted limited partner.¹⁹⁴ The estate of a deceased limited partner also is liable for all the limited partner's liabilities, although the specific provision of the IULPA to that effect has been eliminated.¹⁹⁵

G. Dissolution

The statutory provisions relating to the dissolution and winding up of limited partnerships and the distribution of assets are contained in chapter 9 of the IRULPA, which is based on article 8 of the Model Act.¹⁹⁶ One major difference between the old and new Acts is that under the IRULPA a limited partnership that would otherwise be dissolved upon the withdrawal of a general partner, or even all general partners,

189. See REV. UNIF. LIMITED PARTNERSHIP ACT § 703 comment, 6 U.L.A. 327 (Supp. 1988).

190. IND. CODE § 23-16-8-4(a) (1988). The Model Act does not require that the partners' consent be in writing. REV. UNIF. LIMITED PARTNERSHIP ACT § 704(a), 6 U.L.A. 328 (Supp. 1988).

191. IND. CODE § 23-16-8-4(b) (1988).

192. *Id.* § 23-16-8-4(c). The assignor is not relieved of such obligations if the assignee becomes bound under either the Model Act, REV. UNIF. LIMITED PARTNERSHIP ACT § 704(c), 6 U.L.A. (Supp. 1988), or the Delaware Act, DEL. CODE ANN. tit. 6, § 17-704(c) (Supp. 1986).

193. IND. CODE § 23-4-2-21 (repealed effective 1993).

194. *Id.* § 23-16-8-5(a) (1988).

195. *Id.* § 23-4-2-21(2). See REV. UNIF. LIMITED PARTNERSHIP ACT § 705 comment, 6 U.L.A. 330 (Supp. 1988). The relevant IRULPA provision states: The powers of a partner that is a corporation, trust or other entity which is dissolved may be exercised by the partner's legal representation or successor. IND. CODE § 23-16-8-5(b) (Supp. 1988).

196. IND. CODE §§ 23-16-9-1 to -4 (1988). REV. UNIF. LIMITED PARTNERSHIP ACT §§ 801-804, 6 U.L.A. 331 (Supp. 1988).

may be continued, if all of the remaining partners, or a lesser percentage as provided in the partnership agreement, agree in writing within 90 days of the withdrawal and the appointment of one or more additional general partners if necessary or desired.¹⁹⁷ There are other causes of dissolution specified in the IRULPA. These include reaching the time for dissolution specified in the certificate of limited partnership;¹⁹⁸ the occurring of events specified in the partnership agreement;¹⁹⁹ "the written consent of all general partners and the affirmative vote of two-thirds in interest of each class of limited partners," subject to any "requirement in the partnership agreement requiring the approval by a greater or lesser percentage of limited partners and general partners;"²⁰⁰ and the entry of a decree of judicial dissolution.²⁰¹ A partner is also authorized to seek judicial dissolution of a limited partnership by order of an appropriate court whenever it is not reasonably practical to carry on the business in conformity with the partnership agreement.²⁰²

The IRULPA contains a detailed provision regulating the winding up of partnership affairs,²⁰³ and the distribution of its assets.²⁰⁴ One of the major distinctions between the old Act and the new Act is that the IRULPA ranks general and limited partners on the same level except as otherwise provided in the partnership agreement.²⁰⁵ A certificate of limited partnership must be cancelled when a limited partnership is dissolved.²⁰⁶

H. Foreign Limited Partnerships and Miscellaneous Provisions

The IULPA did not recognize expressly the existence of limited partnerships formed in other states.²⁰⁷ The failure of the IULPA to deal with limited partnerships with multistate operations is a great weakness

197. *Id.* § 23-16-9-1(a)(4), (b).

198. *Id.* § 23-16-9-1(a)(1).

199. *Id.* § 23-16-9-1(a)(2).

200. *Id.* § 23-16-9-1(a)(3). The Model Act requires the written consent of all partners, REV. UNIF. LIMITED PARTNERSHIP ACT § 801(3), 6 U.L.A. 331 (Supp. 1988), as does the Delaware Act, DEL. CODE ANN. tit. 6, § 17-801(2) (Supp. 1986).

201. IND. CODE § 23-16-9-1(a)(5) (1988).

202. *Id.* § 23-16-9-2.

203. *Id.* § 23-16-9-3.

204. *Id.* § 23-16-9-4. Partners who are creditors are treated equally with other creditors, except as to their partnership interests. Accrued obligations to make a distribution are given priority over other equity distributions. *Id.* § 23-16-9-4(2).

205. *Id.* § 23-16-9-4(3). Some courts have held that under the prior uniform act, the order of distribution cannot be changed by agreement. *See Pine Grove Dev. Corp. v. Dade Sav. & Loan Ass'n*, 478 So. 2d 80 (Fla. Dist. Ct. App. 1985); *Consolidated Amalgamated Dev. Ltd. v. Gup*, 428 So. 2d 750 (Fla. Dist. Ct. App. 1983).

206. IND. CODE § 23-16-3-4 (1988).

207. *See Radio Picture Show Partnership v. Exclusive Int'l Pictures*, 482 N.E.2d 1159 (Ind. Ct. App. 1985).

of that statute. One of the important advances of the IRULPA is that it clarifies the status of foreign limited partnerships.²⁰⁸ A few states enacted procedures for recognizing foreign limited partnerships before the Model Act was promulgated,²⁰⁹ and some courts recognized such enterprises by applying choice of law rules.²¹⁰

The IRULPA expressly authorizes foreign limited partnerships to transact business in Indiana.²¹¹ Foreign limited partnerships are those organized under the laws of another state or another country.²¹² Before transacting business in Indiana, a foreign limited partnership must file an application for registration as a foreign limited partnership.²¹³ The Model Act does not define what constitutes transacting business. The IRULPA adopts the now common approach to determining when a foreign business organization can be subjected to state regulation without violating the commerce clause, by specifying activities, among others, that do not constitute transacting business.²¹⁴ The use of the phrase "among others" in section 23-16-10-2(b) indicates that the listing is not exclusive and the fact that a foreign limited partnership has engaged in an activity not set forth in the statute does not necessarily mean that it has to register as a foreign limited partnership.

The IRULPA provides that a foreign limited partnership may register with the Secretary of State under any name that includes the words "limited partnership" or the abbreviation "L.P." and which could be

208. IND. CODE §§ 23-16-1-1 to -9. See generally Sell, *An Examination of Articles 3, 4 and 9 of the Revised Uniform Limited Partnership Act*, 9 ST. MARY'S L.J. 459, 471-77 (1978).

209. See, e.g., CAL. CORP. CODE § 15,700 (Deering Supp. 1974); TEX. REV. CIV. STAT. ANN. art. 6132a (Vernon 1970 & Supp. 1988).

210. See, e.g., *Cheyenne Oil Corp. v. Oil & Gas Ventures, Inc.*, 42 Del. Ch. 106, —, 204 A.2d 743, 746 (1964); *Gilman Paint & Varnish Co. v. Legum*, 197 Md. 66,580 —, A.2d 906, 907-08, (1951); *King v. Sarria*, 69 N.Y. 24, 30-31 (1877). See also *Plaza Realty Investors v. Bailey*, 484 F. Supp. 335 (S.D.N.Y. 1979) (the United States District Court for the Southern District of New York applied Indiana law to an Indiana limited partnership in a diversity action); *Partnership Equities v. Marten*, 15 Mass. App. Ct. 42, 443 N.E.2d 134 (1982). See generally CRANE & BROMBERG, *supra* note 5, § 26 n.30.

211. IND. CODE § 23-16-1-1 (1988). This chapter of the IRULPA became effective on July 1, 1988.

212. *Id.* § 23-16-10-1(a)(1). A foreign limited partnership may not be denied registration because of any differences between the law under which it was organized and the law of Indiana. *Id.* § 23-16-10-1(a)(2). Indiana limited partnerships may merge with limited partnerships organized under the laws of other states but not other countries. *Id.* § 23-16-3-12.

213. *Id.* §§ 23-16-10-2(a), -3. The IRULPA specifies the information that must be included in the application. *Id.* §§ 23-16-10-2(a)(1) to (8). An original and a duplicate copy of the application signed and sworn to by a general partner of the foreign limited partnership under penalties of perjury is filed with the Secretary of State. *Id.*

214. *Id.* § 23-16-10-2(b)(1) to (11).

registered by an Indiana limited partnership.²¹⁵ A foreign limited partnership must maintain an office in Indiana, which is the equivalent of the registered office of a corporation under the IBCL, and a registered agent.²¹⁶ The registered agent is the foreign limited partnership's agent for service of process, although service on a registered agent is not the only means or necessarily the required means for serving a foreign limited partnership.²¹⁷

A foreign limited partnership is required to correct statements in its application for registration that were false when made or where arrangements or other facts described in the application are false in any respect.²¹⁸ A foreign limited partnership that ceases to transact business in Indiana may cancel its registration by filing a certificate of cancellation with the Secretary of State.²¹⁹

The IRULPA authorizes the Attorney General to sue to restrain a foreign limited partnership from transacting business in Indiana in violation of the statute, and to enjoin the limited partnership or any of its agents from doing business in Indiana if it has failed to register or its registration was procured on the basis of false or misleading representations.²²⁰ A more effective sanction against an unregistered foreign limited partnership transacting business in Indiana is the provision denying it access to Indiana courts to maintain any action until it has registered and paid all fees and penalties for the years during which it was transacting business without having registered.²²¹ A third party, however, can maintain an action against the unregistered limited partnership and the partnership can defend actions brought against it in Indiana courts.²²² The failure to register in Indiana does not impair the validity of any contract or act of the foreign limited partnership,²²³ and a limited partner of a foreign limited partnership is not liable as a general partner solely because the partnership has transacted business without registration.²²⁴ A limited partner of a foreign limited partnership can be held liable for the obligations of the partnership by participating in the control of the

215. *Id.* § 23-16-10-4(a), (b).

216. *Id.* § 23-16-10-4(c) to (f).

217. *Id.* § 23-16-10-5. The Secretary of State is the agent for the service of process for a foreign limited partnership transacting business in Indiana without registration. *Id.* § 23-16-10-2(c).

218. *Id.* § 23-16-10-6.

219. *Id.* § 23-16-10-7.

220. *Id.* § 23-16-10-9.

221. *Id.* § 23-16-10-8.

222. *Id.* § 23-16-10-8(b)(2), (3).

223. *Id.* § 23-16-10-8(b)(1).

224. *Id.* § 23-16-10-8(c).

business. The Secretary of State is the agent of such a limited partnership for purposes of serving process.²²⁵

Chapter 12 of the IRULPA contains miscellaneous provisions dealing with construction and application of the statute, such as severability and the effective dates.²²⁶ These provisions are self-explanatory and should be consulted by persons contemplating a limited partnership.

225. *Id.* §§ 23-16-10-2(c), -8(d).

226. *Id.* §§ 23-16-12-1 to -6.