

are clearly insufficient to satisfy the judgment, that exhaustion of limited partnership assets is excessively burdensome, or that the grant of permission is an appropriate exercise of the court's equitable powers; or

(5) liability is imposed on the general partner by law or contract independent of the existence of the limited partnership.

Comment

Source – RUPA Section 307.

If a limited partnership is a limited liability limited partnership throughout its existence, this section will bar a creditor of a limited partnership from impleading, suing or reaching the assets of a general partner unless the creditor can satisfy subsection (c)(5).

SECTION 406. MANAGEMENT RIGHTS OF GENERAL PARTNER.

(a) Each general partner has equal rights in the management and conduct of the limited partnership's activities. Except as expressly provided in this [Act], any matter relating to the activities of the limited partnership may be exclusively decided by the general partner or, if there is more than one general partner, by a majority of the general partners.

(b) The consent of each partner is necessary to:

- (1) amend the partnership agreement;
- (2) amend the certificate of limited partnership to add or, subject to Section 1110, delete a statement that the limited partnership is a limited liability limited partnership; and

(3) sell, lease, exchange, or otherwise dispose of all, or substantially all, of the limited partnership's property, with or without the good will, other than in the usual and regular course of the limited partnership's activities.

(c) A limited partnership shall reimburse a general partner for payments made and indemnify a general partner for liabilities incurred by the general partner in the ordinary course of the activities of the partnership or for the preservation of its activities or property.

(d) A limited partnership shall reimburse a general partner for an advance to the limited partnership beyond the amount of capital the general partner agreed to contribute.

(e) A payment or advance made by a general partner which gives rise to an obligation of the limited partnership under subsection (c) or (d) constitutes a loan to the limited partnership which accrues interest from the date of the payment or advance.

(f) A general partner is not entitled to remuneration for services performed for the partnership.

Comment

Source – RUPA Section 401 and ULLCA Section 404.

Subsection (a) – As explained in the Prefatory Note, this Act assumes that, more often than not, people utilizing the Act will want (i) strong centralized management, strongly entrenched, and (ii) passive investors with little control over the entity. Section 302 essentially excludes limited partners from the ordinary management of a limited partnership's activities. This subsection states affirmatively the general partners' commanding role. Only the partnership agreement and the express provisions of this Act can limit that role.

The authority granted by this subsection includes the authority to delegate. Delegation does not relieve the delegating general partner or partners of their duties under Section 408. However, the fact of delegation is a fact relevant to any breach of duty analysis.

Example: A sole general partner personally handles all “important paperwork” for a limited partnership. The general partner neglects to renew the fire insurance coverage on the a building owned by the limited partnership, despite having received and read a warning notice from the insurance company. The building subsequently burns to the ground and is a total loss. The general partner might be liable for breach of the duty of care under Section 408(c) (gross negligence).

Example: A sole general partner delegates responsibility for insurance renewals to the limited partnership’s office manager, and that manager neglects to renew the fire insurance coverage on the building. Even assuming that the office manager has been grossly negligent, the general partner is not necessarily liable under Section 408(c). The office manager’s gross negligence is not automatically attributed to the general partner. Under Section 408(c), the question is whether the general partner was grossly negligent (or worse) in selecting the general manager, delegating insurance renewal matters to the general manager and supervising the general manager after the delegation.

For the consequences of delegating authority to a person that is a limited partner, see the Comment to Section 305.

The partnership agreement may also provide for delegation and, subject to Section 110(b)(5) – (7), may modify a general partner’s Section 408 duties.

Subsection (b) – This subsection limits the managerial rights of the general partners, requiring the consent of each general and limited partner for the specified actions. The subsection is subject to change by the partnership agreement, except as provided in Section 110(b)(12) (pertaining to consent rights established by Section 1110).

Subsection (c) – This Act does not include any parallel provision for limited partners, because they are assumed to be passive. To the extent that by contract or other arrangement a limited partner has authority to act on behalf of the limited partnership, agency law principles will create an indemnity obligation. In other situations, principles of restitution might apply.

Subsection (f) – Unlike RUPA Section 401(h), this subsection provides no compensation for winding up efforts. In a limited partnership, winding up is one of the tasks for which the limited partners depend on the general partner. There is no reason for the Act to single out this particular task as giving rise to compensation.