

Materials for the Third Meeting of
the ULC Unincorporated Organization Acts Committee
(February 16, 2021)
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First Issue

Rescinding Dissolution of a General Partnership
The Issue of the Person Dissociated as a Partner

Issue # 2 of the JEB Report of June 28, 2020 (“JEB Report – June 2020”)

Objective: To reinstate one of the hallmarks of the “partnership at will” (a dissociating partner can force dissolution and winding up) by modifying UPA (2013) § 803(b). Under that provision as currently written, a partner in an at-will partnership could express the will to withdraw and the remaining partners could rescind the dissolution and tender that former partner the buyout amount under Article 7. The dissociating partner could no longer force dissolution and winding up.

Carryover¹ Issue: How does the language proposed for UPA (2013) § 803(b) compare with UPA (1997) § 802(b) (consent required to waive winding up)?

New Issue: UPA (2013) § 803(c) fails to address liability consequences for partners and a person dissociated as a partner with regard to the period after dissolution and before recission.

Analysis: UPA (1997) § 802(b) is functionally equivalent to UPA (2013) § 803 (rescinding dissolution). These materials propose a new draft which: (i) follows the UPA (1997) the language of to the extent possible;² and (ii) revises UPA (2013) § 803(c) to address the liability issues for partners and persons dissociated as a partner

Recommended revision: Section 803

(b) Rescinding dissolution under this section requires:

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

(2) if the dissolution resulted from the dissociation of a
person as a partner under Section 801(1) and the dissociation was not
wrongful, the affirmative vote or consent of the person;

and

¹ Carryover = pending from previous meeting(s). In this instance – pending from the second meeting.

² “Person dissociated as a partner” has replaced “dissociating partner” as the term of art.

(~~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 person dissociated as a partner after the dissolution and before the rescission has become effective is determined as if dissolution had never occurred; and

(3) the rights of a third party arising out of conduct in reliance on the dissolution before the third party knew or had notice of the rescission may not be adversely affected.

(Official comment to be revised accordingly, including clear (but diplomatic) reference to 2013 error.)

Second Issue

Merger Provisions in UPSA

Issue 2(e) in JEB Report dated November 14, 2020
(Meeting of October 15, 2020)

Objective: To resolve the arguable conflict between Uniform Protected Series Act (“UPSA”) § 602(3) (which states that a protected series may not be established in a transaction substantially similar to a merger) and UPSA § 607(2) (which states that when a merger becomes effective, any protected series to be established as a result of the merger is “established”).

Carryover Issues: What does “substantially like” mean in this context? Can we hypothesize a transaction that is substantially like, for example, a merger but is not in fact a merger. If not, does that fact matter in providing a prophylactic rule?

New Issue: Should a legislative note address those jurisdictions whose law authorizes a

division?

Recommended Revision: eliminate the apparent contradiction; eliminate duplication; contemplate step transactions; retain the concept of “substantially like” but revise the language to clarify that the focus is on the effect of the transaction (adding a comment to clarify; add for the Committee’s consideration a list characteristics that will catch any transaction that meets the Committee’s sense of what “substantially likes” means). (To date this list does not encompass interest exchanges. If the Committee approves the list idea, the reporter will add one or more items to the list.)

SECTION 602. PROTECTED SERIES MAY NOT BE PARTY TO ENTITY

TRANSACTION. Except as otherwise stated in Sections 605(d)(2) and 607(2), a~~A~~ protected series may not:

~~(1) be an acquiring, acquired, converting, converted, merging, or surviving entity;~~

~~—— (2) participate in a domestication; or~~

~~(3)~~ be a party to, participate in, or be formed, organized, established, or created in a

transaction ~~substantially like~~ which, whether in one step or a series of steps is:

(1) a merger, interest exchange, conversion, or domestication;

(2) a transaction that {is substantially like} {achieves the same substantive effect as} any one or more of the transactions listed in Section 602(1);³ or

(3) an arrangement through which, by operation of law:

- i. the obligations of one legal person become, vest in, or continue as the obligations or another legal person;
- ii. an entity of one type becomes an entity of another type; or

³ Brackets indicate alternative language.

- iii. an entity organized under, or whose internal affairs governed,⁴ the laws of one jurisdiction becomes organized under, or its internal affairs governed by, the laws of another jurisdiction.
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Third Issue

Definition of Domestication (and related definitions)

JEB Report – June 2020, Issue # 4

Objective: To draft language that functions as efficiently as possible to address the use by a foreign entity’s jurisdiction of formation of a term for a transaction that has the same effect as a transaction otherwise denominated in the enacting State’s act.

Carryover Issues: Does the language recommended by the reporter work correctly without requiring additional, similar language in other provisions in the same statute? In any event, can language be drafted that appears in one place rather than four?

Recommended revision:

SECTION 1002. RELATIONSHIP OF [ARTICLE] TO OTHER LAWS⁵

* * *

(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 {is substantially like} {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:

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

(ii) includes within a denomination two or more transactions which this [article] authorizes separately; and

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

⁴ “Governed by” is intended to capture a general partnership. However, query how this language relates to California’s “sticky fingers” approach (purporting to govern particular internal affairs of a foreign corporation with substantial, defined nexus to California).

⁵ This language is drafted in reference to ULLCA (2013). If the Committee approves the approach, the reporter will propose conforming revisions to UPA, ULPA, UBOC, and META (Model Entity Transactions Act).

Fourth Issue
Protected Agreements
JEB Report– June 2020, Issue # 11

Objective: Revise the protected agreement construct to take into account the extent to which the novelty of conversions, domestications, and interest exchanges has waned in the past 20 years.

Carryover Issue: Based on the consensus the Committee reached at the second meeting, reporter to revise the statutory text delineating the temporal scope of the protected agreement provision; revision to use bracketed language and to be accompanied by a legislative note explaining the issues and suggesting an approach for an enacting jurisdiction to use in deciding what, if any, statutory text to adopt and, if relevant, how to determine a date certain.

Recommended revision:

[UBOC] SECTION 2-102. DEFINITIONS

(a)

[(19) “Protected agreement” means:

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

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

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

(D) an agreement that is binding on any of the governors or interest
holders of an entity on [~~the effective date of this [article]~~ date certain]].

Outline of Legislative Note

- explain the protected agreement construct and its rationale;

- in light of the rationale and its waning relevance: suggest that:
 - each enacting jurisdiction should determine, for each once-novel type of entity transaction, the date by which the transaction became generally known to competent legal practitioners within the jurisdiction; and
 - that date:
 - may vary by transaction type;
 - will not necessarily be:
 - the date on which the jurisdiction included or otherwise recognized the construct in the predecessor statute to the uniform act under consideration; or
 - the date on which the jurisdiction included or otherwise recognized the construct in any statute or reported case.

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