

To: ULC Unincorporated Organization Acts Committee (Members, Advisors, Observers)

From: Lisa R. Jacobs, Chair
Daniel S. Kleinberger, Reporter

Subject: First Meeting of the Drafting Committee

Date: December 1, 2020, updated December 8, 2020

This memo provides background information for the first meeting of the ULC drafting committee on the Unincorporated Organization Acts (the “Committee”).

As previously announced (via a meeting notice from the ULC), the first meeting will take place via Zoom on Wednesday, December 9, 2020, from 9:00 AM-11:00 AM (Central).

General Background

As explained on the committee’s webpage on the ULC website:

This drafting committee will develop amendments to the to the Uniform Partnership Act, the Uniform Limited Partnership Act, and the Uniform Limited Liability Company Act, with understanding that the update does not include wholesale policy revisions. This project was proposed by the JEBUUA.

In particular, the ULC Executive Committee established the Committee in response to Proposal 1 of the June 28, 2020 Report from the Joint Editorial Board on Uniform Unincorporated Organization Acts to the ULC Executive Committee (“JEB Report”). The substance of that report forms the basis for the modifications we have been instructed to evaluate. Accordingly, please read (or re-read) the JEB Report before our first meeting. For your convenience, a copy of the JEB Report accompanies this memo. If you would like any further background information, please contact the Reporter (daniel.kleinberger@mitchellhamline.edu; 651 341-7246).

The agenda for the Committee’s first meeting is as follows:

Agenda for the December 9, 2020 Meeting

1. Welcome/introduction (Chair)
 - a. who’s who around “the table”
 - b. Committee’s “charter” and current list of issues
 - c. overview of the process
 - i. frequency, anticipated length(s), and approximate number of drafting committee meetings

- ii. projected dates and deadlines for presentations to ULC annual meetings
 - iii. typical structure of drafting committee meetings, including:
 - roles for commissioners, advisors, observers (“participants”)
 - decision making process
 - the role of the “nothing is final until its final” rule
 - iv. the useful, dichotomous composition of the participants – old hands and new blood
 - d. access to documents (“records”) used by the Committee
 - i. initial dissemination – by email to the participants
 - ii. simultaneously and subsequently available on the Committee’s page on the ULC website: <https://uniformlaws.org/committees/community-home/community-members?communitykey=721aeb0d-b7bc-40e6-93af-02e21a5164e5&tab=communitymembersdashboard&Execute=1>
 - e. how additional issues may come before the Committee
2. Principal developments in the uniform acts on unincorporated business organizations since 1986 (a brief overview) (Reporter)
3. Brief introduction/overview of the current list of issues to be considered by the Committee - (Chair and Reporter)
- a. Dissolution; Rescission: UPA (2013) § 803 [JEB Report, Issue # 2]
 - b. Competition; Taking of Entity Opportunity: ULLCA (2013) § 409(b) [JEB Report, Issue # 5]
 - c. Language of the liability shield (per Commissioner Geu re: SD litigation) [JEB Report, Issue # 12]
 - d. The Terms “Protected Series” and “Series”: Conforming to the usage of the Protected Series Act (“protected series”) throughout the Unincorporated Organization Acts (perhaps including USTEA) [JEB Report, Issue # 10]
 - e. Protected Agreements: META § 102(37). Review use of “protected agreements” in various statutes and consider elimination or modification [JEB Report, Issue # 11]
 - f. Definition of Domestication (and related definitions): META (2013) § 102 (and housed within each entity Act for a jurisdiction that has not enacted UBOC) [JEB Report, Issue # 4].
 - g. Definition of “partnership” and related issues in UPA: UPA (2013) §§ 102(11); 302(d) [JEB Report, Issue # 1]
 - h. UPA (2013) §§ 807-810: Notice to creditors/discharge during dissolution; how the act should deal with obligations incurred when the dissolved partnership was not an LLP [JEB Report, Issue # 9]
 - i. Sharing of profits and losses in a general partnership [JEB Report, Issues ## 6 and 7]
 - i. Harmonization tried to export to UPA (2013) the “Frost” approach of eliminating reference to profits and losses and retaining only the right to share in distributions; relatedly, UPA (2013) eliminated the capital account construct introduced in UPA (1997)

- ii. however:
 - a right to share profits is the most fundamental factor in determining whether a general partnership exists
 - allocation of losses is necessary as to any obligation incurred when the partnership is not an LLP
 - j. Definitions of Domestic and Foreign Entities: UPA (2013) §§ 102 (5), (6), (9), (11) and analogs for ULPA (2013) and ULLCA (2013) [JEB Report, Issue # 3]
 - i. which, if any, provisions currently pertaining to the domestic entity should also encompass the analogous foreign entity
 - ii. salient example: should enacting state apply to a foreign entity the charging order provisions of the state's act (currently applicable only to domestic entities)
 - k. Charging Orders: Should charging orders in a multiple-member entity be the sole remedy when all the interests are owned by debtors of the same creditor? Other charging order issues and inconsistencies? [JEB Report, Issue # 8]
 - l. Merger Provisions: There is a potential conflict between Uniform Protected Series Act §§ 602(3) and 607(2). Section 602(3) states that a protected series may not be established in a transaction substantially similar to a merger. Then, Section 607(2) states that when a merger becomes effective, any protected series to be established as a result of the merger is "established". Dan Kleinberger, reporter for the UPSA, and the reporter for this drafting committee, previously noted that there should be an exception in § 602(3) that accommodates the necessary result of §607(2).
4. First substantive discussion: Issue # 2 of the JEB Report – rescinding dissolution of a general partnership
- a. if dissolution occurs at the behest of a person that has rightfully dissociated as a partner, does rescission of dissolution require consent from that person?
 - i. UPA (1997) did not provide for rescinding dissolution
 - ii. UPA (2013) does so provide but does not require the consent of the former partner
 - b. Reporter's summary explanation and recommendation
 - i. summary explanation (please also refer to the JEB Report, Issue #2)
 - Harmonization did not take into account that on this point, UPA differs from both ULPA (2013) and ULLCA (2013); neither of those two acts provides for dissolution at the behest of a person that has dissociated
 - ULPA (2013) does provide for dissolution following the dissociation of a person as general partner, but that person has no role in the decision to dissolve
 - ii. Reporter's recommendation -- revise UPA (2013) to take into account the former partner issue (which is uniquely pertinent to UPA
 - iii. reference materials (attached as Word file) – for each act [UPA, ULPA, ULLCA (2013)], provisions pertaining to dissolution and rescission of dissolution; for UPA (2013), definition of partner

5. Next meeting and any other housekeeping matters