

ULLCPSA Drafting Committee
Agenda for Internet Meeting –
Wednesday October 5, 2016, ~~1:30~~-3:30 PM Central
note earlier start time

Agenda

Issues Relating to Recordkeeping

1. Should the Section 301 recordkeeping requirements be further relaxed or are they now sufficient? The October 28 meeting deleted subsection (b)(4) and (5). Subsection (b) now provides:

(b) An asset of a protected series is an associated asset of the protected series only if the series limited liability company that established the protected series creates and maintains a record or set of records that identifies the protected series and:

(1) describes the asset with sufficient specificity to permit a disinterested, reasonable individual to identify the asset and distinguish it from:

(A) other assets of the protected series, whether or not the other assets are associated assets of the protected series;

(B) assets of any other protected series of the series limited liability company, whether or not the assets are associated assets of the other protected series; and

(C) assets of the company, whether or not the assets are associated assets of the company;

(2) states when and from what person the protected series acquired the asset; and

(3) if the protected series acquired the asset from the company or another protected series of the company, states the consideration paid, the payer, and the payee; .

~~(4) if the protected series transfers the asset, or any part of the asset, states when and to what person the protected series made the transfer; and~~

~~(5) if the protected series transferred the asset to the company or another protected series of the company, states the consideration received, the payee, and the payer.~~

2. Should the recordkeeping requirement be assigned to each protected series, with a VERY STRONG COMMENT warning of the dangers if recordkeeping is not centralized by agreement? Should the ability to assign this requirement be explicit in the Act?

The “Too Tough/Too Strict” Issue

3. Further consideration of the strictures noted by Harry Haynsworth's memo (comparing this act to the traditional, multi-entity structure.

Issues with Article 6

4. Discussion of Article 6 and, in particular, Sections 601(b) and Section 603.

The current text to Article 6 follows:

[ARTICLE] 6
FOREIGN PROTECTED SERIES
SECTION 601. GOVERNING LAW.

(a) The law of the jurisdiction of formation of a foreign series limited liability company governs:

- (1) the internal affairs of a foreign protected series of the company;
- (2) relations between the protected series and:
 - (A) the company;
 - (B) another protected series of the company;
 - (C) a member of the company which is not an associated member of the protected series;
 - (D) a protected series transferee of another protected series of the company;
 - (E) a transferee of a transferable interest of the company; and
- (3) subject to subsection (b), the liability of a person for a debt, obligation, or other liability of a foreign protected series of a foreign series limited liability company if the debt, obligation, or other liability is asserted solely by reason of the person being or acting as:
 - (A) an associated member, series transferee, or protected series manager of the protected series;
 - (B) a member of the company not an associated member of the protected series;
 - (C) a series transferee of another protected series of the company;
 - (D) a protected series manager of another protected series of the company;
 - (E) a person managing the company; or
 - (F) a transferee of a transferable interest of the company;
- (4) subject to subsection (b) and section 502:
 - (A) the liability of the company for a debt, obligation, or other liability of a protected series if the debt,

obligation, or other liability is asserted solely by reason of the company:

- (i) having established the protected series;
- (ii) being or acting as a protected series manager of the protected series;
- (iii) having the protected series manage the company; or
- (iv) owning a protected series transferable interest in the protected series; and

(B) the liability of a foreign protected series for a debt, obligation, or other liability of the company or another protected series of the company if the debt, obligation, or other liability is asserted solely by reason of the protected series:

- (i) being a protected series of the company or having the company or another protected series of the company be or act as protected series manager of the protected series; or
- (ii) managing the company or being or acting as a series manager of another protected series of the company.

(b) In determining a claim under subsection (a)(4), a court may apply the law of this state instead of the law of the foreign jurisdiction of the foreign series limited liability company if the court determines that applying the law of the foreign jurisdiction advances a policy or produces a result repugnant to the public policy of this state. In making the determination, the court shall consider:

- (1) the specificity, clarity, and forcefulness with which the law of this state reflects a contrary public policy;
- (2) whether the claimant is a resident of this state or for another reason reasonably might expect the law of this state to apply; and
- (3) any relevant choice-of-law rule of law of this state.

SECTION 602. TRANSACTING OF BUSINESS IN STATE BY FOREIGN LIMITED LIABILITY COMPANY OR FOREIGN PROTECTED SERIES; JURISDICTION. In determining whether a foreign limited liability company or foreign protected series of the company has transacted business in this state or is subject to the jurisdiction of the courts of this state:

- (1) the activities and affairs of the company are not attributable to a protected series of the company solely because the company established the protected series; and
- (2) the activities and affairs of a protected series are not attributable to the company or another protected series of the company solely because the company established the protected series or the other protected series.

SECTION 603. APPLICATION OF SECTIONS 301 AND 402 TO FOREIGN SERIES LIMITED LIABILITY COMPANY AND FOREIGN PROTECTED SERIES. Sections 301 and 402 apply to any asset located in this state owned by a foreign series limited liability company or foreign protected series subject to the personal jurisdiction of the courts of this state.

SECTION 604. REGISTRATION OF FOREIGN PROTECTED SERIES.

(a) Except as otherwise provided in this section and subject to Section 602, the law of this state governing the registration of a foreign limited liability company to do business in this state applies to a foreign protected series as if the foreign protected series were a foreign limited liability company organized separately from the foreign series limited liability company that established the foreign protected series and distinct from the foreign company and any other foreign protected series of the foreign company.

(b) An application by a foreign protected series for registration to do business in this state must include:

(1) the name and jurisdiction of formation of the foreign series limited liability company that established the foreign protected series applying for registration; and

(2) if the company has other protected series, the name, street, mailing, and electronic mail address of an individual who knows the name, street, mailing and electronic mail address of each other foreign protected series and the protected series manager of and agent for process for each other foreign protected series.

(c) The name of a foreign protected series applying for registration or registered to do business in this state must comply with Section 202. A foreign protected series may comply with Section 202 pursuant to [fictitious name statute].

(d) The requirement in [cite to the relevant provision the limited liability company statute – see, e.g., Uniform Limited Liability Company Act (2013), Section 904] to amend a statement of registration to update information applies to the information required by subsection (b).

SECTION 605. DISCLOSURE REQUIRED WHEN FOREIGN SERIES LIMITED LIABILITY COMPANY OR FOREIGN PROTECTED SERIES SUBJECT TO PROCEEDING.

(a) Not later than [30] days after becoming a party to a proceeding before a civil, criminal, administrative, or other adjudicative tribunal of this state or a tribunal of the United States located in this state:

(1) a foreign series limited liability company shall disclose to each other party the name, street, mailing, and electronic mail address of:

(A) each foreign protected series of the company;
and

(B) each protected series manager of and an agent for service of process for each foreign protected series of the company;
and

(2) a foreign protected series shall disclose to each other party the name, street, mailing, and electronic mail address of:

(A) the foreign series limited liability company that established the foreign protected series, each person managing the company, and an agent for service of process for the company; and

(B) each other foreign protected series, if any, and the protected series manager of and an agent for service of process for each other protected series.

(b) The time to make disclosure under subsection (a) is tolled if the foreign series limited liability company or foreign protected series challenges the personal jurisdiction of the tribunal. If the tribunal rules in favor of its jurisdiction, the tolling ends.

(c) If a foreign series limited liability company or foreign protected series does not comply with subsection (a), a party to the proceeding may:

(1) move the tribunal to treat the noncompliance as a failure to comply with the tribunal's discovery rules; or

(2) bring a separate proceeding in [appropriate court] to enforce the requirements stated subsection (a).

5. The group working on mergers is continuing its discussions, but we will not discuss that topic as a committee until they have reached tentative conclusions.