

Date of Hearing: May 4, 2015

ASSEMBLY COMMITTEE ON BANKING AND FINANCE

Matthew Dababneh, Chair

AB 506 (Maienschein) – As Amended April 23, 2015

SUBJECT: Limited liability companies

SUMMARY: Makes changes to the California Revised Uniform Limited Liability Company Act (RULLCA) and the California Revised Uniform Limited Partnership Act of 2008 (RULPA).

Specifically, **this bill:**

- 1) Specifies that a limited partnership is formed when the partners enter into a partnership agreement before or after the filing of a certificate of a limited partnership.
- 2) Expands the definition of "person" to include a trustee of a trust including, but not limited to, a trust described under Division 9 of the Probate Code.
- 3) Amends the definition of "electronic transmission by the limited liability company."
- 4) Requires a limited liability company (LLC) to indemnify the agent of a LLC to the extent that the agent has been successful on the merits in defense or settlement of any claim, issue, or matter if the agent acted in good faith and in a manner that the agent reasonably believed to be in the best interests of the LLC and its members.
- 5) Limits the RULLCA to acts or transactions existing on or after January 1, 2014, or by members or managers of the LLCs existing on or before that date.
- 6) Eliminates the requirement requiring the consent of all members of the LLC to approve a merger or conversion, as well as, to amend the operating agreement.
- 7) Requires profits and losses of a LLC be allocated among the members, and among classes of members, in the manner provided in the operating agreement and would require that profits and losses be allocated in the proportion to the value of the contributions from each member if the operating agreement does not otherwise provide.
- 8) Modifies what an operating agreement may provide.
- 9) Specifies that upon dissociation, a person's right to vote as a member in the management and conduct of the LLCs activities terminates.
- 10) Authorizes, if a member dies or a guardian or general conservator is appointed for the member, the member's executor, administrator, guardian, conservator, or other legal representative to exercise all of the member's rights for the purpose of settling the member's estate or administering the member's property, including any power the member had under the articles of organization or an operating agreement to give a transferee the right to become a member.
- 11) Provides that specified provisions of the Labor Code, relating to consideration for employment and employment contracts, shall not apply to membership interests issued by any LLC or foreign LLC.
- 12) Makes other technical and clarifying changes.

EXISTING LAW:

- 1) Establishes the California RULLCA which governs all California LLCs. (Corporations Code, Sections 17701.01-17713.13).
- 2) Establishes the RULPA, modeled after the national Uniform Limited Partnership Act which governs California business partnerships. (Corporations Code, Sections 15900-15912.07)

FISCAL EFFECT: None.

COMMENTS:

An LLC is a hybrid between a corporation and a partnership. An LLC generally has the beneficial characteristics of a partnership for operational and taxation purposes, but its members enjoy the immunity provided by a corporation to its shareholders for contract debts or tort liability. The interest of a member in an LLC is an economic interest, in the same manner that a partnership interest or a corporate share is an economic interest, that may be transferred under terms and conditions provided by the LLC agreement, the partnership agreement, or the corporate structure.

Background:

On January 1, 2014, the Beverly-Killea Limited Liability Company Act (BKLLCA) (the law in California governing LLCs prior to January 1, 2014) was repealed and replaced by the RULLCA. Existing LLCs and those formed after January 1, 2014 are subject to the RULLCA. The RULLCA imposes significant changes in the way California LLCs are to be governed and inserts default provisions in LLC operating agreements if certain matters are not specifically addressed. The RULLCA applies to all LLCs, foreign and based in California that register with the Secretary of State (SOS). The RULLCA is based on the RULLCA adopted by the National Conference of Commissioners on Uniform State Laws (NCCUSL), with modifications to include certain aspects of existing California law.

The purpose of the RULLCA is to clarify the issues that existed under the (BKLLCA). The RULLCA provides a wider breadth of default rules that applies to all LLCs in situations where an operating agreement is silent as to a particular issue. The intended benefit of enacting the RULLCA was to coordinate California's LLC laws with the LLC laws of other states, thereby making it easier for businesses to operate across state lines.

AB 506 amends the California RULLCA and the California RULPA. RULLCA was enacted in in 2012 through SB 323 (Chapter 419). SB 323 did not replicate word-for-word the RULLCA as promulgated by the NCCUSL. RULLCA as enacted in California incorporates numerous provisions from the BKLLCA (Corporations Code, Sections 17000–17656) which were carried over to RULLCA for the purpose of improving the NCCUSL version. The carried-over provisions include: important topics (*e.g.*, meetings, officers, voting rights, and mergers and conversions) that were not covered in the NCCUSL version; particular requirements of the Business Programs Division of the SOS (*e.g.*, the requirement for filing biennial statements of information); certain investor protections (*e.g.*, member information rights and certain restrictions on operating agreement amendments); and other provisions (*e.g.*, for limited liability company (LLC) dissolutions)

Since the enactment of SB 323, a number of inconsistencies and conflicts have been found through the Corporations Code. SB 323 faced challenges in carrying over provisions from BKLLCA

because the statutory numbering convention was different, the organizational structure was different, and various defined terms in BKLLCA differed from the corresponding terms in the NCCUSL version of RULLCA which AB 506 is addressing.

Specifically, AB 506 amends the RULLCA transition rule in Corporations Code, section 17713.04 to clarify that the term “contracts” includes LLC operating agreements. Thus, the operating agreements of LLCs existing prior to January 1, 2014 are governed by BKLLCA and should not necessarily need to be amended after that date. RULLCA applies to all LLCs and operating agreements entered into on or after January 1, 2014. Whether the operating agreement of an existing LLC should be amended after January 1, 2014, *e.g.*, to take advantage of RULLCA provisions is an issue for practitioners to decide in consultation with their clients on a case-by-case basis.

In addition, AB 506 would resolve an ambiguity in RULPA that provides that a limited partnership is formed when a Certificate of Limited Partnership is filed and the parties have entered into a partnership agreement. Existing law provides that a partnership is formed when the SOS files the Certificate of Limited Partnership, but makes no mention of a partnership agreement. The bill would clarify that an agreement is paramount to forming a partnership and a critical part of the formation process.

Need for the bill:

According to the sponsor, The Partnership and Limited Liability Companies Committee of the Business Law Section of the State Bar of California,

"Since SB 323's enactment, the Committee has engaged in robust discussions with, and has received comments from, many experienced LLC law practitioners in California. As a result of those discussions, the Committee collected some further suggestions for clarification and improvement of RULLCA. This bill would correct the ambiguities and inconsistencies, and make some further improvements for the benefit of California attorneys and judges who must work with and interpret RULLCA in the future, as well as for the benefit of all California business enterprises that wish to conduct their business in the LLC form."

Previous Legislation:

SB 323 (Vargas, Statutes of 2012, Chapter 419) enacted the RULLC which recasts and reorganizes the existing BKLLCA.

REGISTERED SUPPORT / OPPOSITION:

Support

State Bar of California (Sponsor)
Conference of California Bar Association (CCBA)

Opposition

None on file.

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