

Table of Contents

Volume 1

PART I. ANALYSIS

CHAPTER 1. THE LIMITED LIABILITY COMPANY (LLC) AND CHOOSING AN ENTITY

- § 1:1 The concept of the limited liability company
- § 1:2 Choice of business organization
- § 1:3 Ethical considerations—The Rules of Professional Conduct
- § 1:4 —Forming the entity
- § 1:5 —Representing the entity
- § 1:6 —Equity interest in entity instead of fees
- § 1:7 Choice of jurisdiction for the formation of the LLC

CHAPTER 2. REVISED UNIFORM LIMITED LIABILITY COMPANY ACT (RULLCA)

- § 2:1 Scope of chapter
- § 2:2 RULLCA in perspective
- § 2:3 Operating agreement in concept
- § 2:4 Fiduciary duties
- § 2:5 Indemnification
- § 2:6 Administrative provisions
- § 2:7 Uniform Protected Series Act
- § 2:8 The Revised Prototype Limited Liability Company Act
(Revised Prototype)

CHAPTER 3. CORPORATENESS AND CORPORATE ENTITIES

- § 3:1 Scope of chapter
- § 3:2 The concept of corporateness
- § 3:3 C corporation
- § 3:4 Professional corporation
- § 3:5 S Corporation
- § 3:6 Non-profit corporation
- § 3:7 Tax considerations

CHAPTER 4. THE UNINCORPORATED ENTITY IN PERSPECTIVE

- § 4:1 Scope of chapter
- § 4:2 Development and attributes of the unincorporated entity
- § 4:3 Revised Uniform Partnership Act (RUPA) and limited liability partnership—Nature and scope of limited liability under RUPA/LLP statutes
- § 4:4 —Indemnification and contribution for RUPA/LLP
- § 4:5 Business trusts, cooperatives and other unincorporated entities
- § 4:6 Enabling statutes of unincorporated entities
- § 4:7 Sole proprietorship
- § 4:8 Agency
- § 4:9 Tax considerations
- § 4:10 —Business entities subject to tax classification
- § 4:11 Tax considerations—Self classification regulations
- § 4:12 Tax considerations—Classification of foreign LLCs under self classifications regulations

CHAPTER 5. THE OPERATING AGREEMENT

- § 5:1 The Operating Agreement

CHAPTER 6. THE LIMITED LIABILITY COMPANY IN PERSPECTIVE

- § 6:1 Scope of chapter
- § 6:2 LLC statutes in concept
- § 6:3 Development and attributes of the limited liability company
- § 6:4 Definition of LLC terms
- § 6:5 Formation
- § 6:6 Purposes
- § 6:7 Powers
- § 6:8 Organizers and members
- § 6:9 Certificate of organization
- § 6:10 Duration
- § 6:11 Name
- § 6:12 Principal or registered office
- § 6:13 Registered agent
- § 6:14 Foreign LLCs
- § 6:15 —Registration of foreign LLCs
- § 6:16 —Activities not deemed transacting business
- § 6:17 —Consequences of transacting business without registering

TABLE OF CONTENTS

- § 6:18 —Voluntary cancellation and revocation of registration
- § 6:19 —Governing law
- § 6:20 Wyoming Close Limited Liability Company
Supplement

CHAPTER 7. THE LIMITED LIABILITY COMPANY AND OTHER LAWS

- § 7:1 Scope of chapter
- § 7:2 Criminal activity and the Fifth Amendment privilege
- § 7:3 LLCs and partnerships under the Federal Elections and Campaign Act of 1976 as amended (FECA) and the Bipartisan Campaign Reform Act (BCRA)
- § 7:4 Attorney and accountant professional liability
- § 7:5 Opinions of counsel on LLCs
- § 7:6 Passive loss tax rules and LLC membership interests
- § 7:7 Low-Profit Limited Liability Companies (L3Cs)
- § 7:8 Non-profit LLCs and tax-exempt status under IRC § 501(c)(3)
- § 7:9 Limited liability investment companies in New York
- § 7:10 Self Employment Tax
- § 7:11 The decentralized autonomous organization (DAO) and blockchain technology
- § 7:12 Summary of the Tax Cuts and Jobs Act
- § 7:13 The Wayfair Supreme Court decision
- § 7:14 Foreign Corrupt Practices Act (FCPA)
- § 7:15 Foreign Agents Registration Act (FARA)
- § 7:16 Corporate Transparency Act

CHAPTER 8. FINANCIAL RIGHTS

- § 8:1 Scope of chapter
- § 8:2 Contributions by members
- § 8:3 Membership interest
- § 8:4 Distributions to members
- § 8:5 Wrongful distributions
- § 8:6 Property of a limited liability company
- § 8:7 Financial rights of a member who dissociates
- § 8:8 Preemptive rights
- § 8:9 Appraisal rights
- § 8:10 Capital accounts

CHAPTER 9. MANAGEMENT AND GOVERNANCE RIGHTS

- § 9:1 Scope of chapter
- § 9:2 Management by members
- § 9:3 Management by managers
- § 9:4 —Election and removal of managers

- § 9:5 —Duties and decision making by managers
- § 9:6 —Standards of conduct
- § 9:7 —Liability and indemnification of managers and members who act as managers
- § 9:8 Information and records to be maintained by an LLC
- § 9:9 Assignment or transfer of membership interest
- § 9:10 Transferee as member
- § 9:11 Rights and liabilities of assignor-members and assignees
- § 9:12 Rights of judgment creditors of members and charging orders
- § 9:13 Authority of members to act for and bind the LLC
- § 9:14 Oppression of minority members
- § 9:15 Single member LLCs
- § 9:16 Expulsion of a member
- § 9:17 Deadlock on governance and management issues
- § 9:18 Buy sell agreements
- § 9:19 LLC obligation secured by membership interests of LLC

CHAPTER 10. DISSOCIATION AND DISSOLUTION

- § 10:1 Scope of chapter
- § 10:2 Dissociation of a member
- § 10:3 Legal effects and consequences of dissociation of a member
- § 10:4 Dissolution
- § 10:5 —Continuation of business
- § 10:6 —Winding up
- § 10:7 —Liquidation of assets and distribution of proceeds
- § 10:8 —Filings for dissolution and termination
- § 10:9 Dissolution and events in dissolution—Contents of filings
- § 10:10 Dissociation and dissolution under the RULLCA
- § 10:11 Judicial dissolution

CHAPTER 11. FIDUCIARY DUTIES

- § 11:1 Scope of chapter
- § 11:2 Fiduciary duties in concept
- § 11:3 Fiduciary duties in LLCs
- § 11:4 Implied contractual covenant of good faith and fair dealing

CHAPTER 12. SERIES OF MEMBERSHIP INTERESTS

- § 12:1 Scope of chapter

TABLE OF CONTENTS

- § 12:2 The concept and attributes
- § 12:3 Forming and maintaining series
- § 12:4 Issues in law raised by the series concept
- § 12:5 ULC Uniform Protected Series Act
- § 12:6 Protected cell companies in non-U.S. jurisdictions

CHAPTER 13. UNINCORPORATED NONPROFIT ASSOCIATION

- § 13:1 Scope of chapter
- § 13:2 Unincorporated nonprofit association in perspective
- § 13:3 Attributes
- § 13:4 Litigation
- § 13:5 Governing principles
- § 13:6 Uses of UNAs

CHAPTER 14. LITIGATION

- § 14:1 Scope of chapter
- § 14:2 Capacity to sue or be sued
- § 14:3 Service of process; registered agent; venue
- § 14:4 Federal subject matter jurisdiction
- § 14:5 Personal jurisdiction
- § 14:6 Joinder of parties
- § 14:7 Derivative actions
- § 14:8 Arbitration
- § 14:9 Successor liability
- § 14:10 Attorney liability and disqualification

CHAPTER 15. PROFESSIONAL PRACTICE THROUGH UNINCORPORATED ENTITIES

- § 15:1 Scope of chapter
- § 15:2 Restrictions on professional practice through entities
- § 15:3 Limited liability in a professional practice entity
- § 15:4 Multi-jurisdictional practice
- § 15:5 Corporate and unincorporated entities compared
- § 15:6 Particular management and governance issues for professional practices

CHAPTER 16. ATTORNEY-CLIENT PRIVILEGE IN THE ENTITY CONTEXT

- § 16:1 Scope of chapter
- § 16:2 Attorney-client privilege and entities
- § 16:3 Attorney-client privilege and the corporation
- § 16:4 Attorney-client privilege and the UPA and ULPA partnerships

- § 16:5 Attorney-client privilege and the RUPA and RULPA partnerships
- § 16:6 Attorney-client privilege and the LLC
- § 16:7 Sarbanes Oxley Act of 2002
- § 16:8 ABA Amendments to Model Rules 1.6 and 1.13

CHAPTER 17. THE LEGAL EVOLUTION OF THE COMPANY

- § 17:1 Scope of chapter
- § 17:2 Earliest times to Romans
- § 17:3 Byzantines to medieval Italians
- § 17:4 Elizabethans to colonials
- § 17:5 Gilded Plutocrats to new dealers
- § 17:6 The rebirth of the contract theory of entity formation

CHAPTER 18. BANKRUPTCY

- § 18:1 Scope of chapter
- § 18:2 Bankruptcy in perspective and definition of terms
- § 18:3 Unincorporated entity under the bankruptcy laws
- § 18:4 Decision to seek protection of the bankruptcy laws
- § 18:5 Chapter 11 reorganization
- § 18:6 Improper transfers
- § 18:7 Bankruptcy of a member of an LLC
- § 18:8 Operating agreements and executory contracts
- § 18:9 Debt or equity characterization of contribution
- § 18:10 The Small Business Reorganization Act of 2019 (SBRA)

CHAPTER 19. SECURITIES LAWS AND FINANCING

- § 19:1 Scope of chapter
- § 19:2 Financing the business of the LLC
- § 19:3 —Debt financing
- § 19:4 —Equity financing
- § 19:5 Securities laws and the definition of a security
- § 19:6 Membership interest in an LLC as a security under federal securities laws
- § 19:7 Membership interest in an LLC as a security under state securities laws
- § 19:8 Offerings exempt from registration under federal laws
- § 19:9 —Limited offering under Rule 504
- § 19:10 —Private offering under Section 4(2)(a) and Rule 506
- § 19:11 —General conditions applicable to offerings under Rule 506
- § 19:12 LLCs as publicly traded partnerships
- § 19:13 Rule 507 and Rule 508

TABLE OF CONTENTS

- § 19:14 Jumpstart Our Business Startups Act (the “JOBS” Act)
- § 19:15 Amended Regulation A—Regulation A+
- § 19:16 Crowdfunding
- § 19:17 European Union securities laws
- § 19:18 Special Purpose Acquisition Company (SPAC)

CHAPTER 20. ENTITY TRANSACTIONS AND THE LLC

- § 20:1 Scope of chapter
- § 20:2 The Model Entity Transactions Act of 2007 (META)
- § 20:3 Merger
- § 20:4 Interest Exchange
- § 20:5 Conversion
- § 20:6 Domestication
- § 20:7 Division of Delaware LLCs

CHAPTER 21. THE DOCTRINE OF LIMITED LIABILITY

- § 21:1 Scope of chapter
- § 21:2 Concept of limited liability
- § 21:3 “Piercing the corporate veil” and disregard of limited liability protection
- § 21:4 The doctrine of limited liability and LLCs (and other unincorporated entities)
- § 21:5 Disregard of limited liability by statute

CHAPTER 22. THE COOPERATIVE AS A LEGAL ENTITY

- § 22:1 Scope of chapter
- § 22:2 The cooperative in perspective
- § 22:3 Attributes of a cooperative
- § 22:4 Uniform Limited Cooperative Association Act

CHAPTER 23. THE LLC AND DECENTRALIZED AUTONOMOUS ORGANIZATIONS (DAOS)

- § 23:1 Scope of chapter
- § 23:2 Commercial transactions in perspective
- § 23:3 Personal property and digital assets
- § 23:4 Blockchain
- § 23:5 Decentralized Autonomous Organizations (DAOs) in perspective
- § 23:6 The DAO wrapped in an LLC

§ 23:7 The DAO as a new form of business entity

CHAPTER 24. TAXATION OF LLC MEMBERS WHO ARE NON-U.S. PERSONS

- § 24:1 Scope of chapter
- § 24:2 Taxation of non-U.S. persons
- § 24:3 Tax Treaties
- § 24:4 Taxation of a non-U.S. person who is a member of an LLC
- § 24:5 Taxation of non-U.S. member of domestic LLC not engaged in trade or business within U.S.
- § 24:6 Tax issues for a non-U.S. LLC engaged in a trade of business in the U.S.

CHAPTER 25. BUSINESS OR COMMERCIAL TRUST

- § 25:1 Scope of chapter
- § 25:2 Trusts in concept
- § 25:3 Statutory business entity trusts
- § 25:4 Definition of terms
- § 25:5 Attributes of a business trust
- § 25:6 Formation and powers
- § 25:7 Limited liability of beneficial owners
- § 25:8 Trustees and administration of business trusts
- § 25:9 New York Limited Liability Trust Company
- § 25:10 Federal subject matter jurisdiction for business trusts
- § 25:11 International trusts

CHAPTER 26. BUSINESS ENTITIES IN OTHER COMMON-LAW COUNTRIES

- § 26:1 Scope of chapter
- § 26:2 Overview of common-law legal systems
- § 26:3 Cyprus International Business Trust
- § 26:4 —Attributes
- § 26:5 —Creating the IBT
- § 26:6 —Types of IBTs
- § 26:7 —Duration of the IBT
- § 26:8 —Trust instrument
- § 26:9 —Administration and operation of the IBT
- § 26:10 —Confidentiality relating to IBTs
- § 26:11 —Taxation of IBTs
- § 26:12 Corporate entities
- § 26:13 —Private company limited by shares
- § 26:14 —Exempt private company limited by shares
- § 26:15 —Public company limited by shares

TABLE OF CONTENTS

- § 26:16 —Company limited by guarantee
- § 26:17 —Non-resident company or International Business Company (IBC)
- § 26:18 —Business names
- § 26:19 —Formation of companies
- § 26:20 —Capital and shares
- § 26:21 —Meetings of shareholders
- § 26:22 —Management
- § 26:23 —Winding up
- § 26:24 Partnerships

CHAPTER 27. BUSINESS ENTITIES IN CIVIL LAW COUNTRIES

- § 27:1 Scope of chapter
- § 27:2 Civil law jurisdictions
- § 27:3 Corporate entities
- § 27:4 —Corporation (Anonymous Etairia)
- § 27:5 —Limited liability company (Etairia Periorismenis Efthinis)
- § 27:6 Partnerships
- § 27:7 Foreign legal entities
- § 27:8 Private company (Idiotiki Kefalaiouchiki Etairea)
- § 27:9 One Stop Shop

CHAPTER 28. EUROPEAN UNION COMPANY LAW

- § 28:1 Scope of chapter
- § 28:2 Societas Europaea
- § 28:3 European Court of Justice and Court of First Instance

CHAPTER 29. THE BENEFIT CORPORATION

- § 29:1 Scope of chapter
- § 29:2 The benefit corporation in perspective
- § 29:3 Formation
- § 29:4 General and specific benefit purpose
- § 29:5 Management
- § 29:6 Benefit director and benefit officer
- § 29:7 Annual benefit report
- § 29:8 Benefit enforcement action

Volume 2

PART II. THE ART OF DRAFTING THE OPERATING AGREEMENT

CHAPTER 30. INTRODUCTION TO THIS VOLUME

- § 30:1 The purpose of this volume
- § 30:2 Uniform Business Organization Code—Terminology and terms
- § 30:3 The art of choosing a form of business entity
- § 30:4 Organizational considerations and tax considerations
- § 30:5 Traditional distinctions between corporate entities and unincorporated entities
- § 30:6 Traditional distinctions eliminated

CHAPTER 31. THE OPERATING AGREEMENT IN PERSPECTIVE

- § 31:1 Business entities and entity agreements in perspective
- § 31:2 The operating agreement as a common law contract
- § 31:3 The LLC statutes and the operating agreement
- § 31:4 Organizing the operating agreement—Fundamental issues to consider

CHAPTER 32. CONTRACT DRAFTING PRINCIPLES AND TECHNIQUES

- § 32:1 The fundamentals of contract law
- § 32:2 Contract drafting principles
- § 32:3 Interpreting contracts
- § 32:4 Drafting techniques
- § 32:5 Ethical considerations

CHAPTER 33. THE DEFINITIONS

- § 33:1 Definitions—The basics
- § 33:2 Organizational definitions
- § 33:3 Tax definitions

CHAPTER 34. BASIC LLC INFORMATION

- § 34:1 Generic organizational facts
- § 34:2 Generic facts specific to LLC
- § 34:3 Identity of members and membership interests
- § 34:4 LLC bank accounts

TABLE OF CONTENTS

CHAPTER 35. LLC PROPERTY

- § 35:1 Items of LLC Property
- § 35:2 Banking matters
- § 35:3 Intellectual property

CHAPTER 36. CONTRIBUTIONS AND CAPITAL ACCOUNTS

- § 36:1 Contributions
- § 36:2 The concept of capital accounts

CHAPTER 37. FUNDAMENTAL ISSUES—MANAGEMENT RIGHTS AND OBLIGATIONS

- § 37:1 The role of managers
- § 37:2 Appointment and removal of the manager
- § 37:3 Manager as agent for the LLC
- § 37:4 Delegation of discretionary authority
- § 37:5 Delegation of approval authority
- § 37:6 Fiduciary duties

CHAPTER 38. FUNDAMENTAL ISSUES—GOVERNANCE RIGHTS

- § 38:1 Governance rights in perspective
- § 38:2 Contracting members
- § 38:3 The LLC ceases to exist
- § 38:4 Methods of decision making

CHAPTER 39. FUNDAMENTAL ISSUES—FINANCIAL RIGHTS

- § 39:1 Contributions
- § 39:2 Return of contributions
- § 39:3 Distributions to the members
- § 39:4 Decision to pay distributions

CHAPTER 40. DISPUTE RESOLUTION—DEADLOCK

- § 40:1 Methods of dispute resolution
- § 40:2 Resolving management disputes
- § 40:3 Resolving fundamental governance rights
- § 40:4 Resolving deadlock

CHAPTER 41. SERIES OF MEMBERSHIP INTEREST

- § 41:1 Authorizing series of membership interests

- § 41:2 Establishing and maintaining series
- § 41:3 Considerations for the series operating agreement
- § 41:4 Records of assets and the series “accounted for”
separately

CHAPTER 42. INVESTOR MEMBERS

- § 42:1 Public vs. private offering
- § 42:2 Special status of an investor member
- § 42:3 Private offering to investor members
- § 42:4 Private Offering Disclosure Document (PODD) and the
operating agreement

CHAPTER 43. SPECIAL PURPOSE ENTITY LLCS

- § 43:1 Business purpose
- § 43:2 SPE operating agreement

CHAPTER 44. TAX CONSIDERATIONS

- § 44:1 Taxation and the operating agreement
- § 44:2 Tax classification—Partnership Taxation vs. Corporate
Taxation
- § 44:3 Partnership representative
- § 44:4 Section 199A—qualified business income
- § 44:5 Allocations and distributions of profits and losses from
business operations

CHAPTER 45. GOVERNANCE PROVISIONS OF THE OPERATING AGREEMENT

- § 45:1 Governance provisions in perspective
- § 45:2 Common law contract principles
- § 45:3 Legal ground rules

CHAPTER 46. BLOCKCHAIN AND SMART CONTRACTS

- § 46:1 Blockchain
- § 46:2 Smart contracts in perspective
- § 46:3 Smart contract concept applied
- § 46:4 Drafting the smart contract

Volume 3

APPENDICES

- APPENDIX 1. Table of State Limited Liability Company
Acts

TABLE OF CONTENTS

| | |
|--------------|--|
| APPENDIX 2. | Revised Uniform Partnership Act (1997) |
| APPENDIX 3. | Uniform Limited Partnership Act |
| APPENDIX 4. | Revised Uniform Limited Partnership Act (1976) With 1985 Amendments |
| APPENDIX 5. | Uniform Limited Liability Company Act |
| APPENDIX 6. | Uniform Unincorporated Nonprofit Association Act (1996) |
| APPENDIX 7. | Maryland Business Trust Act |
| APPENDIX 8. | Delaware Business Trust Act |
| APPENDIX 9. | Revised Uniform Limited Liability Company Act |
| APPENDIX 10. | Uniform Business Organizations Code |
| APPENDIX 11. | Uniform Unincorporated Nonprofit Association Act (2008) |
| APPENDIX 12. | Uniform Statutory Trust Entity Act (2009) |
| APPENDIX 13. | Revised Prototype Limited Liability Company Act |

Table of Laws and Rules

Table of Cases

Index