

## MEMORANDUM

To: Business Organizations Study Group  
From: Preston Goff  
Date: July 22, 2013  
Subject: Amendments to Corporate/LLC Name Reservation and Registration Laws

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### **Summary of Issue:**

Mississippi law includes conflicting provisions regarding name reservation between Corporations and LLCs. Corporate names may be reserved for 180 days. The reservation is not renewable, but there is no prohibition to successive registration by the same party. LLC names are also reserved for 180 days, but the statute provides a 60-day waiting period before the name can again be reserved. Also, Mississippi has a statute providing for the registration of names of foreign corporations. This registration is good for one year and may be renewed between October 1 and December 31. There is no statute allowing for registration of foreign LLC names.

### **Other States:**

Mississippi's statutes are very close to the language used in the Model Business Corporations Act; however, the MBCA uses a 120 day reservation period. Most states laws are very similar to Mississippi, though a few do limit the number of successive reservations. Mississippi is also consistent with most other states regarding registration of foreign corporate names. Only 13 states and the District of Columbia lack similar statutes on registration, and only 2 states lack language explicitly allowing renewal of the registration. Some states have changed the statute to remove the requirement of filing the registration between October 1 and December 31. Of the states without registration statutes, and those without LLC registration statutes, most do not have a waiting period to re-reserve names.

The Revised Uniform Limited Liability Company Act, like the MBCA, provides for 120 day reservation and does not prohibit successive reservations by the same party. There is no registration provision in the uniform act, but several states have adopted provisions on registration mirroring those found in the MBCA.

### **Issues to be decided:**

1. How to treat name registration:
  - a. Should Mississippi amend the foreign corporation name registration statute to provide for filing year round?
  - b. Should Mississippi adopt provisions providing for name registration of foreign LLCs, similar to the language used for foreign corporations?
  - c. Should Mississippi repeal the statute providing for registration of foreign corporate names?
2. How the LLC name reservation statute and corporation name reservation statute should be harmonized:
  - a. Require waiting periods following expiration of the reservation for both LLCs and Corporations?
  - b. Amend the LLC statute to delete the 60 day waiting period for re-registration?

- c. Should limited partnerships be changed to match LLC and corporate name reservation (currently there is a 60 day waiting period, like LLCs, for limited partnership name reservations)?

**Suggested Action:**

Name registration:

Some states, though still a minority, have passed statutes providing for registration of foreign LLC names. Mississippi could pass a similar statute for so identical procedures are available for both corporations and LLCs. However, this could result in a number of names being held by foreign companies; therefore, the group should consider if a higher cost should apply to registration of foreign names. Increasing the fee may help prevent foreign companies from perpetually holding names and encourage only those who actually intend to do business here in the future to register their names.

An alternative to registration of foreign names is to delete the 60 day waiting period for reservation of names for LLCs and Limited Partnerships. This would allow a foreign LLC to successively reserve its name (for 6 months at a time) if it planned to do business in Mississippi, but could avoid having foreign LLCs perpetually renewing their registration and preventing in state businesses from using those names.

Name reservation:

To harmonize the corporate and LLC provisions on name reservation the group should consider removing the 60 day waiting period for re-reserving LLC names. In interest of uniformity, the group should also consider changing the same language in the limited partnership statute. While some states have placed limits on the number of successive reservations a party may have, most use language similar to the Revised Uniform Limited Liability Act and allow for unlimited re-reservation upon expiration.