



DELBERT HOSEMANN
Secretary of State

**2014 Business Law Reform Study Groups
Minutes of the Limited Partnerships Study Group**

August 13, 2014

The first meeting of the Limited Partnership Study Group was convened at 11:03 a.m. at the Secretary of State's Office, 125 S. Congress Street in Jackson, Mississippi, by Assistant Secretary of State Drew Snyder. Participating in the meeting were Stephen Hirn, Bradley Lum, Jim Pettis, Jody Varner, Louis Watson, Trip Barnes (via phone), Donna Davis (via phone), Andy Garner (via phone), Aileen Thomas (via phone), David Webb (via phone), Kap Primos (via phone), Will Wilkins (via phone), Daniel Kleinberger (via phone), David Walker (via phone), Lindsay Beaver (via phone), Doug Davis, Bee McNamara, Tom Riley, Leann Thompson, Nathan Upchurch, and Secretary of State Delbert Hosemann.

Overview

The objective of this study meeting was to review Mississippi's limited partnership laws and to recommend any needed reforms. Professor Daniel Kleinberger with the William Mitchell College of Law and Professor David Walker with Drake Law School provided an overview of the development of limited partnership law. Mississippi limited partnerships are currently governed by the Mississippi Limited Partnership Act (Miss. Code Ann. §§ 79-14-101 to 79-14-1107). The MSLPA closely resembles the Revised Uniform Limited Partnership Act (RULPA 1978/1985), a uniform act developed by the Uniform Law Commission (also referred to as ULC or NCCUSL). Mississippi's limited partnership laws last underwent a major revision in 1987. At that time, limited partnerships were still used extensively, but limited liability companies and limited liability partnerships have overtaken limited partnerships in popularity. The Uniform Partnership Act (1997) weakened the link between the limited partnership and general partnership statutes by excluding limited partnership from the definition of "partnership".

The Uniform Law Commission promulgated the revised Uniform Limited Partnership Act (ULPA 2001). These revisions focused on modern uses of limited partnerships and sought enterprises beyond the scope of LLPs and LLCs. To date, 49 states have enacted a uniform partnership act, with 19 states following the 2001 ULPA and the remaining states following the 1978/1985 RULPA.

Considerations

The following options were proposed for the study group to consider in addressing Mississippi's limited partnership law:

- Enact new law using the ULPA (2001) as a foundation (Overhaul)
- Preserve the Mississippi Limited Partnership Act and address the necessary amendments within the existing structure (Surgical Strike)
- Take no action and keep the Mississippi Limited Partnership Act as it currently stands.

Group Discussion

Drew Snyder asked Professor Kleinberger if the annual reporting requirement was new to the ULPA (2001). Professor Kleinberger answered affirmatively and added that it was included at the behest of the International Association of Commercial Administrators. Most filing offices like the annual reporting requirement because it encourages accurate record-keeping. Excluding the reporting requirement should have no impact on Mississippi's overall approach.

Snyder asked about the benefit of a family limited partnership versus creating a family LLC as some people have done. Professor Kleinberger said anything that has been done to customize the statute to increase the discount will be disregarded. It is hard to customize effectively. Whether to choose a LLC or a LP depends on statutory provisions. When there is an LLC that is set up to look for discounts, the default rules will run contrary to what most business people expect the rights might be.

Professor Kleinberger mentioned many attorneys still prefer limited partnerships because investors understand them better. There are a number of venture capital funds that structure limited partnerships around LLCs.

Secretary Hosemann asked about the practicality of the series LLC and other series organizations. Professor Kleinberger explained quite some time, you could organize master trusts with multiple series among statutory trusts registered under the Investment Company Act of 1940, but the idea of a series within a LLC or limited partnership came recently from Delaware. Professor Kleinberger further explained that a series is a set of assets within an entity. Those assets may or may not have particular owners getting their benefits. There are about 14 or 15 states with these, but there has yet to be a court ruling that has upheld the internal shields. There is currently a case pending where the court is struggling with whether these different series are separate, and whether a decision against one is collateral estoppel against another. The ULC has a drafting project and is attempting to create a uniform act for series organizations. Drafting committee members have yet to be able to find a good explanation as to why people use series LLCs.

David Walker with Drake Law School stated that one of the reasons to consider modernization of limited partnership laws is to present an integrated and modernized business code to lawyers and investors. ULPA makes good, clear statements of the law and presents a cleaner approach. The only investors that can be held personally liable without piercing are limited partners who step across a line or those that may have to get involved in lengthy litigation. Shareholders, officers, directors, and LLC managers do not have to face this issue. The Iowa Secretary of State's Office has dealt with the issue of duration, and has changed to perpetual duration.

Jody Varner with Brunini, Grantham, Grower & Hewes, P.A. expressed it was time to move forward with changes to the limited partnership act. Secretary Hosemann then questioned the group on what to prioritize.

Steve Hirn with Haddox, Reid Eubank Betts, PLLC stated that he has seen eight to ten LPs formed this year in certain sectors because the large investors are used to limited partnerships.

Louis Watson with Wise Carter Child & Caraway, P.A. acknowledged that his experience had been that people comfortable with LPs were often involved in a large business with many assets. Unsophisticated investors have trouble getting their hands around the concept of an LP. Attitudes towards LLCs seem to be more informal, and this can often be problematic.

Snyder asked whether it is better to move forward with a standalone act, or whether only amendments would be necessary.

Vарner expressed that it would be easier to simply redo the entire statute.

David Webb stated that his preference would be the “overhaul” option based on the 2001 Uniform Limited Partnership Act. He mentioned the uniform act’s adoption in many states and the endorsement by the ABA. He said it can be difficult to piecemeal statutes together.

Snyder asked the group if anyone had concerns with requiring annual or periodic filing, the liability shield, perpetual duration, or the “any lawful purpose” language. There were no objections stated.

Snyder then polled the group on which approach Mississippi should take – overhaul, amendments within existing code section, or no action. All present group members voiced that the “overhaul” option was in the best interest for the state.

Next Steps

Based on the group discussion, Snyder announced the Secretary of State’s Office would start drafting a proposal to circulate to study group members for comments and feedback. Snyder stated additional meeting may be needed to once the proposal was drafted and initial feedback was received.

The meeting ended at 12:47 p.m.