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*Secretary of State*

**2014 Business Law Reform Study Groups  
Minutes of the Series Organizations Study Group**

**August 21, 2014**

Leann Thompson, Staff Attorney for the Mississippi Secretary of State's Division of Policy and Research, opened the meeting at The Secretary of State's Office, 125 S. Congress Street at 11:15 a.m. Participating in the meeting were Payne Atkinson (via phone), Stephen Burrow (via phone), Chad Davidson, Rusty Hawkins, Steve Hendrix, Ryan O'Beirne (via phone), Caryn Quilter, Ben Roberson, and Gwenn Tatum. Secretary of State staff in attendance included Drew Snyder, Cheryn Netz, Tom Riley, Nathan Upchurch, Bee McNamara, and Secretary of State Delbert Hosemann. Scott Ludwig, a partner in Bradley Arant Boult Cummings' Huntsville office, and Jimmy Long, an associate with Bradley Arant in Birmingham, participated via telephone and gave presentations to the group.

**Overview**

Snyder provided opening comments and noted that series LLCs provisions have been around for a number of years and that past study groups have considered adopting series provisions. Those groups tabled making a proposal with the idea of letting the Delaware statute mature in terms of liability and tax issues. Since the last study group considered series entities in 2011, several states have adopted series legislation. The National Conference of Commissioners on Uniform State Laws ("NCCUSL") is developing a draft uniform act for series unincorporated business entities. With these developments, the Secretary of State's Office thought it time to assemble a study group to consider whether series provisions would improve upon Mississippi's business laws.

Scott Ludwig provided an overview of Alabama's Limited Liability Act, which includes series provisions. Alabama adopted the current version of its LLC Act earlier this year. Alabama's premise in adopting series LLC provisions was two-fold: (1) to promote business growth in-state and (2) keeping costs down for businesses. When drafting its revised Act, Alabama relied on the American Bar Association's Revised Prototype Limited Liability Company Act in addition to Texas and Delaware's acts.

**Group Discussion**

Stephen Burrow with Heidelberg Steinberger Colmer & Burrow, P.A. noted from Ludwig's presentation it seemed that Alabama's decision to adopt series provisions in its LLC Act could be boiled down to economic development. Alabama, like Mississippi, wants to attract industries and businesses to conduct business here and must make state business laws more attractive to series entities in order to do that. Ludwig agreed that economic development was one of the reasons Alabama adopted series LLC provisions. Alabama had been issuing opinion letters on foreign series entities doing business in Alabama for a number of years and it was illogical to provide an opinion regarding whether a series entity would be recognized by Alabama when its law did not recognize series entities. He also noted there were home-

grown businesses that needed a means to securitize their loans and a series entity was a structure that could meet those needs.

Snyder asked Ludwig why NCCUSL had such a negative reaction to series entities. Despite the fact that NCCUSL is working on a uniform act, its drafting committee has said the series entity is a structure for which they have not been able to identify any unmet need. Ludwig thought the general inclination of NCCUSL in 2006 was that the group was not ready to tackle the issues of series entities because they are so complex. There are many unanswered questions that will need sorting out by the courts. He also opined that NCCUSL's other issue with series entities is the fact that the drafting group is attempting the daunting task of drafting an "omni-act" statute that addresses series provisions for LLCs, limited partnerships, and limited liability partnerships, regardless of the type of act which governs the company or partnership.

Steve Hendrix with Forman Perry did not see a reason not to provide for series entities in state law so that Mississippi can be competitive with other states that recognize series entities. Ludwig agreed with Hendrix and pointed out it would be up to each individual client whether it wanted to conduct business in a series organization. He also noted there were virtually no contractual risks associated with operating in a series entity because most of the appropriate uses for a series entity are contractual in nature.

Ben Roberson with Butler Snow thought the most compelling reason to adopt series provisions would be so that a foreign series LLCs interested in conducting business in Mississippi would have the security of having some statutory basis to acknowledge their existence in the state. He supported the adoption of series provisions because there are a growing number of states recognizing them and Mississippi should be on that list. Secretary Hosemann voiced similar support. If a business wants the option to do business as a series in Mississippi, it should have that option available to it. He would not want to see a missed opportunity to draw business here because Mississippi law does not provide for series entities.

When asked about liability to creditors, Ludwig responded that the liability to voluntary creditors is much clearer since a voluntary creditor has most likely acknowledged that it is doing business with a series and is only looking to the assets of that series for security. It is less clear how liability to an involuntary creditor would play out. He mentioned the Fifth Circuit case briefed in the meeting materials and a bankruptcy case, opining that the bankruptcy court would probably disregard the statutory internal shields because the law is not developed enough and consolidate all assets of the LLC.

Jimmy Long briefly addressed the tax treatment of series entities. As a result of proposed federal regulations, the ABA Tax Section formed a joint task force to solicit input from each state regarding how they would classify a series LLC for tax purposes, including income, employment and other state-levied taxes. The federal guidance has not been finalized, but it is on the IRS's action plan. It provides that each series is classified independently for federal tax purposes. Of the states responding to the ABA's survey, most (with the exception of Texas) answered that they would follow the federal guidance for their income tax purposes.

**Next Actions**

Drew Snyder ended the meeting, noting that the group seemed to be in favor of moving forward with drafting a proposal and that a discussion draft would be circulated to the group shortly.

Meeting concluded at 12:30 p.m.