

FIRST REGULAR SESSION, 2000

H. B. NO. 12-089

A BILL FOR AN ACT

To amend title 4 CMC of the Commonwealth Code by adding a new Part 3, entitled "Limited Liability Corporations", and for other purposes.

BE IT ENACTED BY THE TWELFTH NORTHERN MARIANAS COMMONWEALTH LEGISLATURE:

1 Section 1. Definition.

2 (1) "Article of organization" means initial, amended, and restated articles
3 of organization and articles of merger. In the case of a foreign limited liability
4 company, the term includes all records serving a similar function required to be
5 filed in the office of the Registrar of Corporations or other official having custody
6 of company records in the State, Commonwealth, territory or country under
7 whose law it is organized.

8 (2) "At-will company" means a limited liability company other than a term
9 company.

10 (3) "Business" includes every trade, occupation, profession, and other
11 lawful purpose, whether or not carried on for profit.

12 (4) "Debtor in bankruptcy" means a person who is the subject of an order
13 for relief under Title 11 of the United States Code or a comparable order under a
14 successor statute of general application or a comparable order under federal, state,
15 or foreign law governing insolvency.

16 (5) "Distribution" means a transfer of money, property, or other benefit
17 from a limited liability company to a member in the member's capacity as a
18 member or to a transferee of the member's distributional interest.

19 (6) "Distributional interest" means all of a member's interest in
20 distributions by the limited liability company.

21 (7) "Entity" means a person other than an individual.

1 (8) "Foreign limited liability company" means an unincorporated entity
2 organized under laws other than the laws of the Commonwealth which afford
3 limited liability to its owners comparable to the liability under Section 303 and is
4 not required to obtain a certificate of authority to transact business under any law
5 of the Commonwealth other than this Act.

6 (9) "Limited liability company" means a limited liability company
7 organized under this Act.

8 (10) "Manager" means a person, whether or not a member of a manager-
9 managed company, who is vested with authority under Section 301.

10 (11) "Manager-managed company" means a limited liability company
11 which is so designated in its articles of organization.

12 (12) "Member-managed company" means a limited liability company
13 other than a manager-managed company.

14 (13) "Operating agreement" means the agreement under Section 103
15 concerning the relations among the members, managers, and limited liability
16 company. The term includes amendments to the agreement.

17 (14) "Person" means an individual, corporation, business trust, estate,
18 trust, partnership, limited liability company, association, joint venture,
19 government, governmental subdivision, agency, or instrumentality, or any other
20 legal or commercial entity.

21 (15) "Principal office" means the office, whether or not in this
22 Commonwealth, where the principal executive office of a domestic or foreign
23 limited liability company is located.

24 (16) "Record" means information that is inscribed on a tangible medium
25 or that is stored in an electronic or other medium and is retrievable in perceivable
26 form.

27 (17) "Sign" means to identify a record by means of a signature, mark, or
28 other symbol, with intent to authenticate it.

29 (18) "State" means a State of the United States, the District of Columbia,
30 the Commonwealth of Puerto Rico, or any territory or insular possession subject
31 to the jurisdiction of the United States.

32 (19) "Term company" means a limited liability company in which its
33 members have agreed to remain members until the expiration of a term specified
34 in the articles of organization.

1 (20) "Transfer" includes an assignment, conveyance, deed, bill of sale,
2 lease, mortgage, security interest, encumbrance, and gift.

3 Section 2. Knowledge and Notice.

4 (a) A person knows a fact if the person has actual knowledge of it.

5 (b) A person has notice of a fact if the person:

6 (1) knows the fact;

7 (2) has received a notification of the fact; or

8 (3) has reason to know the fact exists from all of the facts known
9 to the person at the time in question.

10 (c) A person notifies or gives a notification of a fact to another by taking
11 steps reasonable required to inform the other person in ordinary course, whether
12 or not the other person knows the fact.

13 (d) A person receives a notification when the notification:

14 (1) comes to the person's attention; or

15 (2) is duly delivered at the person's place of business or at any other
16 place held out by the person as a place for receiving communications.

17 (e) An entity knows, has notice, or receives a notification of a fact for
18 purposes of a particular transaction when the individual conducting the
19 transaction for the entity knows, has notice, or receives a notification of
20 the fact, or in any event when the fact would have been brought to the
21 individual's attention had the entity exercised reasonable diligence. An
22 entity exercises reasonable diligence if it maintains reasonable routines for
23 communicating significant information to the individual conducting the
24 transaction for the entity to communicate information unless the
25 communication is part of the individual's regular duties or the individual
26 has reason to know of the transaction and that the transaction would be
27 materially affected by the information.

28 Section 3. Effect of operating agreement; nonwaivable provisions.

29 (a) Except as otherwise provided in subsection (b), all members of a
30 limited liability company may enter into an operating agreement, which need not
31 be in writing, to regulate the affairs of the company and the conduct of its
32 business, and to govern relations among the members, managers, and company.
33 To the extent the operating agreement does not otherwise provide, this Act
34 governs relations among the members, managers, and company.

1 (b) The operating agreement may not:

2 (1) unreasonably restrict a right to information or access to records
3 under Section 408;

4 (2) eliminate the duty of loyalty under Section 409(b) or 603(b)(3),
5 but the agreement may:

6 (i) identify specific types of categories of activities that do
7 not violate the duty of loyalty, if not manifestly unreasonable; and

8 (ii) specify the number of percentage of members or
9 disinterested managers that may authorize or ratify, after full
10 disclosure of all material facts, a specific act or transaction that
11 otherwise would violate the duty of loyalty;

12 (3) unreasonably reduce the duty of care under Section 409(c) or
13 603(b)(3);

14 (4) eliminate the obligation of good faith and fair dealing under
15 Section 409(d), but the operating agreement may determine the standards
16 by which the performance of the obligation is to be measured, if the
17 standards are not manifestly unreasonable;

18 (5) vary the right to expel a member in an event specified in
19 Section 601(6);

20 (6) vary the requirement to wind up the limited liability company's
21 business in a case specified in Section 801(a)(3) or (a)(4); or

22 (7) restrict rights of a person, other than a manager, member, and
23 transferee of a member's distributional interest, under this Act.

24 Section 4. Supplemental principles of law.

25 (a) Unless displaced by particular provisions of this Act the principles of
26 law and equity supplement this Act.

27 Section 5. Name.

28 (a) The name of a limited liability company must contain "limited liability
29 company" or "limited company" or the abbreviation "L.L.C.", "LLC", "L.C.", OR
30 "LC". "Limited" may be abbreviated as "Ltd.", and "company" may be
31 abbreviated as "Co."

32 (b) Except as authorized by subsections (c) and (d), the name of a limited
33 liability company must be distinguishable upon the records of the Registrar of
34 Corporations from:

1 (1) the name of any corporation, limited partnership, or company
2 incorporated, organized or authorized to transact business, in the
3 Commonwealth;

4 (2) a name reserved or registered under Section 106 or 107;

5 (3) a fictitious name approved under Section 1005 for a foreign
6 company authorized to transact business in the Commonwealth because its
7 real name is unavailable.

8 (c) A limited liability company may apply to the Registrar of Corporations
9 for authorization to use a name that is not distinguishable upon the records of the
10 Registrar of Corporations from one or more of the names described in subsection
11 (b). The Registrar of Corporations shall authorize use of the name applied for if:

12 (1) the present user, registrant, or owner of a reserved name
13 consents to the use in a record and submits an undertaking in form
14 satisfactory to the Registrar of Corporations to change the name to a name
15 that is distinguishable upon the records of the Registrar of Corporations
16 from the name applied for; or

17 (2) the applicant delivers to the Registrar of Corporations a
18 certified copy of the final judgment of a court of competent jurisdiction
19 establishing the applicant's right to use the name applied for in the
20 Commonwealth.

21 (d) A limited liability company may use the name, including a fictitious
22 name, of another domestic or foreign company which is used in the
23 Commonwealth if the other company is organized or authorized to transact
24 business in this Commonwealth and the company proposing to use the name has:

25 (1) merged with the other company;

26 (2) been formed by reorganization with the other company; or

27 (3) acquired substantially all of the assets, including the name, of
28 the other company.

29 Section 6. Reserved name.

30 (a) A person may reserve the exclusive use of the name of a limited
31 liability company, including a fictitious name for a foreign company whose name
32 is not available, by delivering an application to the Registrar of Corporations for
33 filing. The application must set forth the name and address of the applicant and
34 the name proposed to be reserved. If the Registrar of Corporations finds that the

1 name applied for is available, it must be reserved for the applicant's exclusive use
2 for a nonrenewable 120-day period.

3 (b) The owner of a name reserved for a limited liability company may
4 transfer the reservation to another person by delivering to the Registrar of
5 Corporations a signed notice of the transfer which states the name and address of
6 the transferee.

7 Section 7. Registered name.

8 (a) A foreign limited liability company may register its name subject to
9 the requirements of Section 1005, if the name is distinguishable upon the records
10 of the Registrar of Corporations from names that are not available under Section
11 105(b).

12 (b) A foreign limited liability company registers its name, or its name with
13 any addition required by Section 1005, by delivering to the Registrar of
14 Corporations for filing an application:

15 (1) setting forth its name, or its name with any addition required by
16 Section 1005, the State or country and date of its organization, and a brief
17 description of the nature of the business in which it is engaged; and

18 (2) accompanied by a certificate of existence, or a record of similar
19 import, from the State or country of organization.

20 (c) A foreign limited liability company whose registration is effective may
21 renew application complying with subsection (b) between October 1 and
22 December 31 of the preceding year. The renewal application renews the
23 registration for the following calendar year.

24 (d) A foreign limited liability company whose registration is effective may
25 qualify as a foreign company under its name or consent in writing to the use of its
26 name by a limited liability company later organized under this Act or by another
27 foreign company later authorized to transact business in the Commonwealth. The
28 registered name terminates when the limited liability company is organized or the
29 foreign company qualifies or consents to the qualification of another foreign
30 company under the registered name.

31 Section 8. Designated office and agent for service of process.

32 (a) A limited liability company and a foreign limited liability company
33 authorized to do business in the Commonwealth shall designate and continuously
34 maintain :

1 (1) an office, which need not be a place of its business in the
2 Commonwealth; and

3 (2) an agent and street address of the agent for service of process
4 on the company.

5 (b) An agent must be an individual resident of the Commonwealth, a
6 domestic corporation, another limited liability company, or a foreign corporation
7 or foreign company authorized to do business in the Commonwealth.

8 Section 9. Change of designated office or agent for service of process. A limited
9 liability company may change its designated office or agent for service of process by
10 delivering to the Registrar of Corporations for filing a statement of change which sets
11 forth:

12 (1) the name of the company;

13 (2) the street address of its current designated office;

14 (3) if the current designated office is to be changed, the street address of
15 the new designated office;

16 (4) the name and address of its current agent for service of process; and

17 (5) if the current agent for service of process or street address of that agent
18 is to be changed, the new address or the name and street address of the new agent
19 for service of process.

20 Section 10. Resignation of agent for service of process.

21 (a) An agent for service of process of a limited liability company may
22 resign by delivering to the Registrar of Corporations for filing a record of the
23 statement of resignation.

24 (b) After filing a statement of resignation, the Registrar of Corporations
25 shall mail a copy to the designated office and another copy to the limited liability
26 company at its principal office.

27 (C) An agency is terminated on the 31st day after the statement is filed in
28 the office of the Registrar of Corporations.

29 Section 111. Service of process.

30 (a) An agent for service of process appointed by a limited liability
31 company or a foreign limited liability company is an agent of the company for
32 service of any process, notice, or demand required or permitted by law to be
33 served upon the company.

1 (b) If a limited liability company or foreign limited liability company fails
2 to appoint or maintain an agent for service of process in the Commonwealth or
3 the agent for service of process cannot with reasonable diligence be found at the
4 agent's address, the Registrar of Corporations is an agent of the company upon
5 whom process, notice, or demand may be served.

6 (c) Service of any process, notice, or demand on the Registrar of
7 Corporations may be made by delivering to and leaving with the Registrar of
8 Corporations, the Assistant Registrar of Corporations, or clerk having charge of
9 the limited liability company department of the Registrar of Corporations office
10 duplicate copies of the process, notice, or demand. If the process, notice, or
11 demand is served on the Registrar of Corporations the Registrar of Corporations
12 shall forward one of the copies by registered or certified mail, return receipt
13 requested, to the company at its designated office. Service is effected under this
14 subsection at the earliest of:

15 (1) the date the company receives the process, notice, or demand;

16 (2) the date shown on the return receipt, if signed on behalf of the
17 company; or

18 (3) five days after its deposit in the mail, if mailed postpaid and
19 correctly addressed.

20 (d) The Registrar of Corporations shall keep a record of all processes,
21 notices, and demands served pursuant to this section and record the time of and
22 the action taken regarding the service.

23 (e) This section does not affect the right to serve process, notice, or
24 demand in any manner otherwise provided by law.

25 Section 12. Nature of business and powers.

26 (a) A limited liability company may be organized under this Act for any
27 lawful purpose, subject to any law of the Commonwealth governing or regulating
28 business.

29 (b) Unless its articles of organization provide otherwise, a limited liability
30 company has the same powers as an individual to do all things necessary or
31 convenient to carry on its business or affairs, including power to:

32 (1) sue and be sued, and defend in its name;

1 (2) purchase, receive, lease, or otherwise acquire, and own, hold,
2 improve, use, an otherwise deal with real or personal property, or any
3 legal or equitable interest in property, wherever located;

4 (3) sell, convey, mortgage, grant a security interest in , lease,
5 exchange, and otherwise encumber or dispose of all or any part of its
6 property;

7 (4) purchase, receive, subscribe for, or otherwise acquire, own,
8 hold, vote, use, sell, mortgage, lend, grant a security interest in, or
9 otherwise dispose of and deal in and with, shares or other interests in or
10 obligations of any other entity;

11 (5) make contracts and guarantees, incur liabilities, borrow money,
12 issue its notes, bonds, and other obligations, which may be convertible
13 into or include the option to purchase other securities of the limited
14 liability company, and secure any of its obligations by a mortgage on or a
15 security interest in any of its property, franchises, or income;

16 (6) lend money, invest and reinvest its funds, and receive and hold
17 real and personal property as security for repayment;

18 (7) be a promoter, partner, member, associate, or manager of any
19 partnership, joint venture, trust, or other entity;

20 (8) conduct its business, locate offices, and exercise the powers
21 granted by this Act within or without the Commonwealth;

22 (9) elect managers and appoint officers, employees, and agents of
23 the limited liability company, define their duties, fix their compensation,
24 and lend them money and credit;

25 (10) pay pensions and establish pension plans, pension trusts,
26 profit sharing plans, bonus plans, option plans, and benefit or incentive
27 plans for any or all of its current or former members, managers, officers,
28 employees, and agents;

29 (11) make donations for the public welfare or for charitable,
30 scientific, or educational purposes; and

31 (12) make payments or donations, or do any other act, not
32 inconsistent with law, that furthers the business of the limited liability
33 company.

1 Section 13. Limited liability company as legal entity. A limited liability
2 company is a legal entity distinct from its members.

3 Section 14. Organization.

4 (a) One or more persons may organize a limited liability company,
5 consisting of one or more members, by delivering articles of organization tot he
6 office of the Registrar of Corporations for filing.

7 (b) Unless a delayed effective date is specified, the existing of a limited
8 liability company begins when the articles of organization are filed.

9 (c) The filing of the articles of organization by the Registrar of
10 Corporations is conclusive proof that the organizers satisfied all conditions
11 precedent to the creation of a limited liability company.

12 Section 15. Articles of organization.

13 (a) Articles of organization of a limited liability company must set forth:

14 (1) the name of the company;

15 (2) the address of the initial designated office;

16 (3) the name and street address of the initial agent for service of
17 process;

18 (4) the name and address of each organizer;

19 (5) whether the company is to be a term company and, if so, the
20 term specified;

21 (6) whether the company is to be manager-managed, and, if so, the
22 name and address of each initial manager; and

23 (7) whether one or more of the members of the company are to be
24 liable for its debts and obligations under Section 303(c).

25 (b) Articles of organization of a limited liability company may set forth:

26 (1) provisions permitted to be set forth in an operating agreement;

27 or

28 (2) other matters not inconsistent with law.

29 (c) Articles of organization of a limited liability company may not vary
30 the nonwaivable provisions of Section 103(b). As to all other matters, if any
31 provision of an operating agreement is inconsistent with the articles of
32 organization:

33 (1) the operating agreement controls as to managers, members, and
34 members' transferees; and

1 (2) the articles of organization controls as to persons, other than
2 managers, members and their transferees, who reasonably rely on the
3 articles to their detriment.

4 Section 16. Amendment or restatement of articles of organization.

5 (a) Articles of organization of a limited liability company may be
6 amended at any time by delivering articles of amendment to the Registrar
7 of Corporation for filing. The articles of amendment must set forth the:

- 8 (1) name of the liability company;
9 (2) date of filing of the articles of organization; and
10 (3) amendment to the articles.

11 (b) A limited liability company may restate its articles of organization at
12 any time. Restated articles of organization must be signed and filed in the
13 same manner as articles of amendment. Restated articles of organization
14 must be designated as such in the heading and state in the heading or in an
15 introductory paragraph the limited liability company's present name and, if
16 is has been changed, all of its former names and the date of the filing of its
17 initial articles of organization.

18 Section 17. Signing of records.

19 (a) Except as otherwise provided in this Act a record to be filed by or on
20 behalf of a limited company in the office of the Registrar of Corporations must be
21 signed in the name of the company by a;

- 22 (1) manager of a manager-managed company;
23 (2) member of a member-managed company;
24 (3) person organizing the company, if the company has not been
25 formed; or
26 (4) fiduciary, if the company is in the hands of a receiver, trustee,
27 or other court-appointed fiduciary.

28 (b) A record signed under subsection (a) must state adjacent to the
29 signature the name and capacity of the signer.

30 (c) Any person may sign a record to be filed under subsection (a) by an
31 attorney-in-fact. Powers of attorney relating to the signing of records to be filed
32 under subsection (a) by an attorney-in-fact need not be filed in the office of the
33 Registrar of Corporations as evidence of authority by the person filing but must
34 be retained by the company.

1 Section 18. Filing in office of Registrar of Corporations

2 (a) Articles of organization or any other record authorized to be filed
3 under this Act must be in a medium permitted by the Registrar of Corporations
4 and must be delivered to the office of the Registrar of Corporations. Unless the
5 Registrar of Corporations determines that a record fails to comply as to form with
6 the filing requirements of this Act and if all filing fees have been paid, the
7 Registrar of Corporation shall file the record and send a receipt for the record and
8 the fees to the limited liability company or its representative.

9 (b) Upon request payment of a fee, the Registrar of Corporations shall
10 send to the requester a certified copy of the requested record.

11 (c) Except as otherwise provided in subsection (d) and Section 207(c), a
12 record accepted for filing by the Registrar of Corporations is effective:

13 (1) at the time of filing on the date it is filed, as evidenced by the
14 Registrar of Corporations date and time endorsement on the original
15 record; or

16 (2) at the time specified in the record as its effective time on the
17 date it is filed.

18 (d) A record may specify a delayed effective time and date, and if it does
19 so the record becomes effective at the time and date specified. If a delayed
20 effective date but no time is specified, the record is effective at the close of
21 business on that date. If a delayed effective date is later than the 90th day after
22 the record is filed, the record is effective on the 90th day.

23 Section 19. Correcting filed record.

24 (a) A limited liability company or foreign limited liability company may
25 correct a record filed by the Registrar of Corporations if the record contains a
26 false or erroneous statement or was defectively signed.

27 (b) A record is corrected:

28 (1) by preparing articles of correction that:

29 (i) describe the record, including its filing date, or attach a
30 copy of it to the articles of correction;

31 (ii) specify the incorrect statement and the reason it is
32 incorrect or the manner in which the signing was defective; and

33 (iii) correct the incorrect statement of defective signing;

34 and

1 (2) by delivering the corrected record to the Registrar of
2 Corporations for filing.

3 (c) Articles of correction are effective retroactively on the effective date of
4 the record they correct except as to persons relying on the uncorrected record and
5 adversely affected by the correction. As to those persons, articles of correction
6 are effective when filed.

7 Section 20. Certificate of existence or authorization.

8 (a) A person may request the Registrar of Corporations to furnish a
9 certificate of existence for a limited liability company or a certificate of
10 authorization for a foreign limited liability company.

11 (b) A certificate of existence for a limited liability company must set forth:

12 (1) the company's name;

13 (2) that it is duly organized under the laws of the Commonwealth,
14 the date of organization, whether its duration is at-will or for a specified
15 term, and, if the latter, the period specified;

16 (3) if payment is reflected in the records of the Registrar of
17 Corporations and if nonpayment affects the existence of the company, that
18 all fees, taxes, and penalties owed to the Commonwealth have been paid;

19 (4) whether its most recent annual report required by Section 211
20 has been filed with the Registrar of Corporations;

21 (5) that articles of termination have not been filed, and

22 (6) other facts of record in the office of the Registrar of
23 Corporations which may be requested by the applicant.

24 (c) A certificate of authorization for a foreign limited liability company
25 must set forth:

26 (1) the company's name used in the Commonwealth;

27 (2) that it is authorized to transact business in the Commonwealth;

28 (3) if payment is reflected in the records of the Registrar of
29 Corporations and if nonpayment affects the authorization of the company,
30 that all fees, taxes, and penalties owed to the Commonwealth have been
31 paid;

32 (4) whether its most recent annual report required by Section 211
33 has been filed with the Registrar of Corporations;

34 (5) that a certificate of cancellation has not been filed; and

1 (6) other facts of record in the office of the Registrar of
2 Corporations which may be requested by the applicant.

3 (d) Subject to any qualification stated in the certificate, a certificate of
4 existence or authorization issued by the Registrar of Corporations may be relied
5 upon as conclusive evidence that the domestic or foreign limited liability
6 company is in existence or is authorized to transact business in the
7 Commonwealth.

8 Section 21. Liability for false statement in filed record. If a record authorized or
9 required to be filed under this Act contains a false statement, one who suffers loss by
10 reliance on the statement may recover damages for the loss from a person who signed the
11 record or caused another to sign it on the person's behalf and knew the statement to be
12 false at the time the record was signed.

13 Section 22. Filing by judicial act. If a person required by Section 205 to sign any
14 record fails or refuse to do so, any other person who is adversely affected by the failure
15 or refusal may petition the designate the appropriate court] to direct the signing of the
16 record. If the court finds that it is proper for the record to be signed and that a person so
17 designated has failed or refused to sign the record, it shall order the Registrar of
18 corporations to sign and file an appropriate record.

19 Section 23. Annual report for Registrar of Corporations.

20 (a) A limited liability company, and a foreign limited liability company
21 authorized to transact business in the Commonwealth, shall deliver to the
22 Registrar of Corporations for filing an annual report that sets forth:

23 (1) the name of the company and the State or country under whose
24 law it is organized;

25 (2) the address of its designated office and the name and address of
26 its agent for service of process in the Commonwealth;

27 (3) the address of its principal office; and

28 (4) the names and business addresses of any managers.

29 (b) Information in an annual report must be current as of the date the
30 annual report is signed on behalf of the limited liability company.

31 (c) The first annual report must be delivered to the Registrar of
32 Corporations between January 1 and April 1 of the year following the calendar
33 year in which a limited liability company was organized or a foreign company
34 was authorized to transact business. Subsequent annual reports must be delivered

1 to the Registrar of Corporations January 1 and April 1 of the ensuing calendar
2 year.

3 (d) If an annual report does not contain the information required in
4 subsection (a), the Registrar of Corporations shall promptly notify the reporting
5 limited liability company or foreign limited liability company and return the
6 report to it for correction. If the report is corrected to contain the information
7 required in subsection (a) and delivered to the Registrar of Corporations within 30
8 days after the effective date of the notice, it is timely filed.

9 Section 24. Agency of members and managers.

10 (a) Subject to subsection (b) and (c):

11 (1) Each member is an agent of the limited liability company for
12 the purpose of its business, and an act of a member, including the signing
13 of an instrument in the company's business or business of the kind carried
14 on by the company binds the company, unless the member had no
15 authority to act for the company in the particular matter and the person
16 with whom the member was dealing knew or had notice that the member
17 lacked authority.

18 (2) An act of a member which is not apparently for carrying on in
19 the ordinary course the company's business or business of the kind carried
20 on by the company binds the company only if the act was authorized by
21 the other members.

22 (b) Subject to subsection (c), in a manager-managed company:

23 (1) A member is not an agent of the company for the purpose of its
24 business solely by reason of being a member. Each manager is an agent of
25 the company for the purpose of its business, and an act of a manager,
26 including the signing of an instrument in the company's name, for
27 apparently carrying on in the ordinary course the company's business or
28 business of the kind carried on by the company binds the company, unless
29 the manager had no authority to act for the company in the particular
30 matter and the person with whom the manager was dealing knew or had
31 notice that the manager lacked authority.

32 (2) An act of a manager which is not apparently for carrying on in
33 the ordinary course the company's business or business of the kind carried

1 on by the company binds the company only if the act was authorized
2 under Section 404.

3 (c) Unless the articles of organization limit their authority, any member of
4 a member-managed company or manager of a manager-managed company may
5 sign and deliver any instrument transferring or affecting the company's interest in
6 real property. The instrument is conclusive in favor of a person who gives value
7 without knowledge of the lack of the authority of the person signing and
8 delivering the instrument.

9 Section 25. Limited liability company liable for member's or managers actionable
10 conduct. A limited liability company is liable for loss or injury caused to a person, or for
11 a penalty incurred, as a result of a wrongful act or omission, or other actionable conduct,
12 of a member or manager acting in the ordinary course of business of the company or with
13 authority of the company.

14 Section 26. Liability of members and managers.

15 (a) Except as otherwise provided in subsection (c), the debts, obligations,
16 and liabilities of a limited liability company, whether arising in contract, tort, or
17 otherwise, are solely the debts, obligations, and liabilities of the company. A
18 member or manager is not personally liable for a debt, obligation, or liability of
19 the company solely by reason of being or acting as a member or manager.

20 (b) The failure of a limited liability company to observe the usual
21 company formalities or requirements relating to the exercise of its company
22 powers or management of its business is not a ground for imposing personal
23 liability on the members or managers for liabilities of the company.

24 (c) All or specified members of a limited liability company are liable in
25 their capacity as members for all or specified debts, obligations, or liabilities of
26 the company if:

27 (1) a provision to that effect is contained in the articles of
28 organization; and

29 (2) a member so liable has consented in writing to the adoption of
30 the provision or to be bound by the provision.

31 Section 27. Form of contribution. A contribution of a member of a limited
32 liability company may consist of tangible or intangible property or other benefit to the
33 company, including money, promissory notes, services performed, or other agreements to
34 contribute cash or property, or contracts for services to be performed.

1 Section 28. Member's liability for contributions.

2 (a) A member's obligation to contribute money, property, or other benefit
3 to, or to perform services for, a limited liability company is not excused by the
4 member's death, disability, or other inability to perform personally. If a member
5 does not make the required contribution of property or services, the member is
6 obligated at the option of the company to contribute money equal to the value of
7 that portion of the stated contribution which has not been made.

8 (b) A creditor of a limited liability company who extends credit or
9 otherwise acts in reliance on an obligation described in subsection (a), and
10 without notice of any compromise under Section 404(c)(5), may enforce the
11 original obligation.

12 Section 29. Member's and manager's rights to payments and reimbursement.

13 (a) A limited liability company shall reimburse a member or manager for
14 payments made and indemnify a member or manager for liabilities incurred by the
15 member or manager in the ordinary course of the business of the company or for
16 the preservation of its business or property.

17 (b) A limited liability company shall reimburse a member for an advance
18 to the company beyond the amount of contribution the member agreed to make.

19 (c) A payment or advance made by a member which gives rise to an
20 obligation of a limited liability company under subsection (a) or (b) constitutes a
21 loan to the company upon which interest accrues from the date of the payment or
22 advance.

23 (d) A member is not entitled to remuneration for services performed for a
24 limited liability company, except for reasonable compensation for services
25 rendered in winding up the business of the company.

26 Section 30. Management of limited liability company.

27 (a) In a member-managed company:

28 (1) each member has equal rights in the management and conduct
29 of the company's business; and

30 (2) except as otherwise provided in subsection (c), any matter
31 relating to the business of the company may be decided by a majority of
32 the members.

33 (b) In a manager-managed company:

1 (1) each manager has equal rights in the management and conduct
2 of the company's business;

3 (2) except as otherwise provided in subsection (c), any matter
4 relating to the business of the company may be exclusively decided by the
5 manager or, of there is more than one manager, by a majority of the
6 managers; and

7 (3) a manager;

8 (i) must be designated, appointed, elected, removed, or
9 replaced by a vote, approval, or consent of a majority of the
10 members; and

11 (ii) holds office until a successor has been elected and
12 qualified, unless the manager sooner resigns or is removed.

13 (c) The only matters of a member or manager-managed company's
14 business requiring the consent of all of the members are:

15 (1) the amendment of the operating agreement under Section 103;

16 (2) the authorization or ratification of acts or transactions under
17 Section 103(b)(2)(ii) which would otherwise violate the duty of loyalty;

18 (3) an amendment to the articles of organization under Section
19 204;

20 (4) the compromise of an obligation to make a contribution under
21 Section 402(b);

22 (5) the compromise, as among members, of an obligation of a
23 member to make a contribution or return money or other property paid or
24 distributed in violation of this Act;

25 (6) the making of interim distribution under Section 405(a),
26 including the redemption of an interest;

27 (7) the admission of a new member;

28 (8) the use of the company's property to redeem at interest subject
29 to a charging order;

30 (9) the consent to dissolve the company under Section 801(b)(2);

31 (10) a waiver of the right to have the company's business wound
32 up and the company terminated under Section 802(b);

33 (11) the consent of members to merge with another entity under
34 Section 904(c)(1); and

1 (12) the sale, lease, exchange, or other disposal of all, or
2 substantially all, of the company's property with or without goodwill.

3 (d) Action requiring the consent of members or managers under this Act
4 may be taken without a meeting.

5 (e) A member or manager may appoint a proxy to vote or otherwise act for
6 the member or manager by signing an appointment instrument, either personally
7 or by the member's or manager's attorney-in-fact.

8 Section 31. Sharing of and right to distribution.

9 (a) Any distributions made by a limited liability company before its
10 dissolution and winding up must be in equal shares.

11 (b) A member has no right to receive, and may not be required to accept, a
12 distribution in kind.

13 (c) If a member becomes entitled to receive a distribution, the member has
14 the status of, and is entitled to all remedies available to , a creditor of the limited
15 liability company with respect to the distribution.

16 Section 32. Limitations on distribution.

17 (a) A distribution may not be made if:

18 (1) the limited liability company would not be able to pay its debts
19 as they become due in the ordinary course of business; or

20 (2) the company's total assets would be less than the sum of its total
21 liabilities plus the amount that would be needed, if the company were to
22 be dissolved, wound up, and terminated at the time of the distribution, to
23 satisfy the preferential rights upon dissolution, winding up, and
24 termination of members whose preferential rights are superior to those
25 receiving the distribution.

26 (b) A limited liability company may base a determination that a
27 distribution is not prohibited under subsection (a) on financial statements
28 prepared on the bases of accounting practices and principles that are reasonable in
29 the circumstances or on a fair valuation or other method that is reasonable in the
30 circumstances.

31 (c) Except as otherwise provided in subsection (e), the effect of a
32 distribution under subsection (a) is measured:

33 (1) in the case of distribution by purchase, redemption, or other
34 acquisition of a distributional interest in a limited liability company, as of

1 the date money or other property is transferred or debt incurred by the
2 company; and

3 (2) in all other cases, as of the date the:

4 (i) distribution is authorized if the payment occurs within
5 120 days after the date of authorization; or

6 (ii) payment is made if it occurs more than 120 days after
7 the date of authorization.

8 (d) A limited liability company's indebtedness to a member incurred by
9 reason of a distribution made in accordance with this section is a parity with the
10 company's indebtedness to its general, unsecured creditors.

11 (e) Indebtedness of a limited liability company, including indebtedness
12 issued in connection with or as part of a distribution, is not considered a liability
13 for purpose of determinations under subsection (a) if its terms provided that
14 payment of principal and interest are made only if and to extent that payment of a
15 distribution to members could then be made under this section. If the
16 indebtedness is issued as a distribution, each payment of principal or interest on
17 the indebtedness is treated as a distribution, the effect of which is measured on the
18 date the payment is made.

19 Section 33. Liability for unlawful distribution.

20 (a) A member of a member-managed company or a member or manager of
21 a manager-managed company who votes for or assents to a distribution made in
22 violation of Section 406, the articles of organization, or the operating agreement
23 is personally liable to the company for the amount of the amount of the
24 distribution which exceeds the amount that could have been distributed without
25 violating section 406, the article of organization, or the operating agreement if it
26 is established that the member or manager did not perform the member's or
27 manager's duties in compliance with Section 409.

28 (b) A member of a manager-managed company who knew a distribution
29 was made in violation of Section 406, the articles of organization, or the operating
30 agreement is personally received by the member exceeded the amount that could
31 have been properly paid under Section 406.

32 (c) A member or manager against whom an action is brought under this
33 section may implead in the action all:

1 (1) other members or managers who voted for assented to the
2 distribution in violation of subsection (a) and may compel contribution
3 from them; and

4 (2) members who received a distribution in violation of subsection
5 (b) and may compel contribution from the member in the amount received
6 in violation of subsection (b).

7 (d) A proceeding under this section is barred unless it is commenced
8 within two years after the distribution.

9 Section 34. Member's right to information.

10 (a) A limited liability company shall provide members and their agents
11 and attorneys access to its records, if any, at the company's principal office or
12 other reasonable location specified in the operating agreement. The company
13 shall provide former members and their agents and attorneys access for proper
14 purposes to records pertaining to the period during which they were members.
15 The right of access provides the opportunity to inspect and copy records during
16 ordinary business hours. The company may impose a reasonable charge, limited
17 to the costs of labor and material, for copies of records furnished.

18 (b) A limited liability company shall furnish to a member, and to the legal
19 representative of a deceased member or member under legal disability:

20 (1) without demand, information concerning the company's
21 business or affairs reasonably required for the proper exercise of the
22 member's rights and performance of the member's duties under the
23 operating agreement or this Act and

24 (2) on demand, other information concerning the company's
25 business or affairs, except to the extent the demand or the information
26 demanded is unreasonable or otherwise improper under the circumstances.

27 (c) A member has the right upon written demand given to the limited
28 liability company to obtain at the company's expense a copy of any written
29 operating agreement.

30 Section 35. General standards of member's and manager's conduct.

31 (a) The only fiduciary duties a member owes to a member-managed
32 company and its other members are the duty of loyalty and the duty of care
33 imposed by subsection (b) and (c).

1 (b) A member's duty of loyalty to a member-managed company and its
2 other members is limited to the following:

3 (1) to account to the company and to hold as trustee for it any
4 property, profit, or benefit delivered by the member in the conduct or
5 winding up of the company's business or derived from a use by the
6 member of the company's property, including the appropriation of a
7 company's opportunity;

8 (2) to refrain from dealing with the company in the conduct or
9 winding up of the company's business as or on behalf of a party having an
10 interest adverse to the company; and

11 (3) to refrain from competing with the company in the conduct of
12 the company's business before the dissolution of the company.

13 (c) A member's duty of care to a member-managed company and its other
14 members in the conduct of and winding up of the company's business is limited to
15 refraining from engaging in grossly negligent or reckless conduct, intentional
16 misconduct, or a knowing violation of law.

17 (d) A member shall discharge the duties to a member-managed company
18 and its other members under this Act]or under the operating agreement and
19 exercise any rights consistently with the obligation of good faith and fair dealing.

20 (e) A member of a member-managed company does not violate a duty or
21 obligation under this Act or under the operating agreement merely because the
22 member's conduct further the member's own interest.

23 (f) A member of a member-managed company may lend money t and
24 transact other business with the company. As to each loan or transaction, the
25 rights and obligation s of the member are the same as those of a person who is not
26 a member, subject to other applicable law.

27 (g) This section applies to a person winding up the limited liability
28 company's business as the personal or legal representative of the last surviving
29 member as if the person were a member.

30 (h) In a manager-managed company:

31 (1) a member who is not also a manager owes no duties to the
32 company or to the other members solely by reason of being a member;

33 (2) a manager is held to the same standards of conduct prescribed
34 for members in subsections (b) through (f);

1 (3) a member who pursuant to the operating agreement exercises
2 some or all of the rights of a manager in the management and conduct of
3 the company's business is held to the standards of conduct in subsections
4 (b) through (f) to the extent that the member exercises the managerial
5 authority vested in a manager by this Act; and

6 (4) a manager is relieved of liability imposed by law for violation
7 of the standards prescribed by subsections (b) through (f) to the extent of
8 the managerial authority delegated to the members by the operating
9 agreement.

10 Section 36. Actions by members.

11 (a) A member may maintain an action against a limited liability company
12 or another member for legal or equitable relief, with or without an accounting as
13 to the company's business, to enforce:

14 (1) the member's rights under the operating agreement;

15 (2) the member's rights under this Act; and

16 (3) the rights and otherwise protect the interests of the member,
17 including rights and interest arising independently of the member's
18 relationship to the company.

19 (b) The accrual, and any time limited for the assertion, of a right of action
20 for remedy under this section is governed by other law. A right to an accounting
21 upon a dissolution and winding up does not revive a claim barred by law.

22 Section 37. Continuation of term company after expiration of specified term.

23 (a) If a term company is continued after the expiration of the specified
24 term, the rights and duties of the members and managers remain the same as they
25 were at the expiration of the term except to the extent inconsistent with rights and
26 duties of members and managers of an at-will company.

27 (b) If the members in a member-managed company or the managers in a
28 manager-managed company continue the business without any winding up of the
29 business of the company, it continues as an at-will company.

30 Section 38. Member's distributional interest.

31 (a) A member is not a co-owner of, and has no transferable interest in,
32 property of a limited liability company.

1 (b) A distributional interest in a limited liability company is personal
2 property and, subject to Section 502 and 503, may be transferred in whole or in
3 part.

4 (c) An operating agreement may provide that a distributional interest may
5 be evidenced by a certificate of the interest issued by the limited liability
6 company and, subject to Section 503, may also provide for the transfer of any
7 interest represented by the certificate.

8 Section 39. Transfer of distributional interest. A transfer of a distributional
9 interest does not entitle the transferee to become or to exercise any rights of a member.
10 A transfer entitles the transferee to receive, to the extent transferred, only the
11 distributions to which the transferor would be entitled.

12 Section 40. Rights of transferee.

13 (a) A transferee of a distributional interest may become a member of a
14 limited liability company if and to the extent that the transferor gives the
15 transferee the right in accordance with authority described in the operating
16 agreement or all other members consent.

17 (b) a transferee who has become a member, to the extent transferred, has
18 the rights and powers, and is subject to the restrictions and liabilities, of a member
19 under the operating agreement of a limited liability company and this Act. A
20 transferee who becomes a member also is liable for the transferor member's
21 obligations to make contributions under Section 402 and for obligations under
22 Section 407 to return unlawful distributions, but the transferee at the time the
23 transferee becomes a member.

24 (c) Whether or not a transferee of a distributional interest become a
25 member under subsection (a), the transferor is not released from liability to the
26 business, require access to information concerning the company's business,
27 require access to information concerning the company's transactions, or inspect or
28 copy any of the company's records.

29 (e) A transferee who does not become a member is entitled to:

30 (1) receive, in accordance with the transfer, distributions to which
31 the transferor would otherwise be entitled;

32 (2) receive, upon dissolution and winding up of the limited liability
33 company's business:

(i) in accordance with the transfer, the net amount otherwise distributable to the transferor;

(ii) a statement of account only from the date of the latest statement of account agreed to by all the members;

(3) seek under Section 801(a)(5) a judicial determination that it is equitable to dissolve and wind up the company's business.

(f) A limited liability company need not give effect to a transfer until it has notice of the transfer.

Section 41. Rights of creditor.

(a) On application by a judgment creditor of a member of a limited liability company or of a member's transferee, a court having jurisdiction may charge the distributional interest of the judgment debtor to satisfy the judgment. The court may appoint a receiver of the share of the distributions due or to become due to the judgment debtor and make all other orders, directions, accounts, and inquiries the judgment debtor might have made or which the circumstances may require to give effect to the charging order.

(b) A charging order constitutes a lien on the judgment debtor's distributional interest. The court may order a foreclosure of a lien on a distributional interest subject to the charging order at any time. A purchaser at the foreclosure sale has the rights of a transferee.

(c) At any time before foreclosure, a distributional interest in a limited liability company which is charged may be redeemed:

(1) by the judgment debtor;

(2) with property other than the company's property, by one or more of the other members; or

(3) with the company's property, but only if permitted by the operating agreement.

(d) This Act does not affect a member's right under exemption laws with respect to the member's distributional interest in a limited liability company.

(e) This section provides the exclusive remedy by which a judgment creditor of a member or a transferee may satisfy a judgment out of the judgment debtor's distributional interest in a limited liability company.

Section 42. Events causing member's dissociation. A member is dissociated from a limited liability company upon the occurrence of any of the following events:

1 (1) the company's having notice of the member's express will to withdraw
2 upon the date of notice or on a later date specified by the member;

3 (2) an event agreed to in the operating agreement as causing the member's
4 dissociation;

5 (3) upon transfer of all of a member's distributional interest, other than a
6 transfer for security purposes or a court order charging the member's
7 distributional interest which has not been foreclosed;

8 (4) the member's expulsion pursuant to the operating agreement;

9 (5) the member's expulsion by unanimous vote of the other members if:

10 (i) it is unlawful to carry on the company's business with the
11 member;

12 (ii) there has been a transfer of substantially all of the member's
13 distributional interest, other than a transfer for security purposes or a court
14 order charging the member's distributional interest which has not been
15 foreclosed;

16 (iii) within 90 days after the company notifies a corporate member
17 that will be expelled because it has filed a certificate of dissolution or the
18 equivalent, its charter has been revoked, or its right to conduct business
19 has been suspended by the jurisdiction of its incorporation, the member
20 fails to obtain a revocation of the certificate of dissolution or a
21 reinstatement of its charter or its right to conduct business; or

22 (iv) a partnership or a limited liability company that is a member
23 has been dissolved and its business is being wound up;

24 (6) on application by the company or another member, the member's
25 expulsion by judicial determination because the member:

26 (i) engaged in wrongful conduct that adversely and materially
27 affected the company's business;

28 (ii) willfully or persistently committed a material breach of the
29 operating agreement or of a duty owed to the company or the other
30 members under Section 409; or

31 (iii) engaged in conduct relating to the company's business which
32 makes it not reasonably practicable to carry on the business with the
33 member;

34 (7) the member's:

1 (i) becoming a debtor in bankruptcy;

2 (ii) executing an assignment for the benefit of creditors;

3 (iii) seeking, consenting to, or acquiescing in the appointment of a
4 trustee, receiver, or liquidator of the member or of all or substantially all
5 of the member's property; or

6 (iv) failing, within 90 days after the appointment, to have vacated
7 or stayed the appointment of a trustee, receiver, or liquidator of the
8 member or of all or substantially all of the member's property obtained
9 without the member's consent or acquiescence, or failing within 90 days
10 after the expiration of a stay to have the appointment vacated;

11 (8) in the case of a member who is an individual:

12 (i) the member's death;

13 (ii) the appointment of a guardian or general conservator for the
14 member; or

15 (iii) a judicial determination that the member has otherwise
16 become incapable of performing the member's duties under the operating
17 agreement;

18 (9) in the case of a member that is a trust or is acting as a member by
19 virtue of being a trustee of a trust, distribution of the trust's entire rights to receive
20 distributions from the company, but not merely by reason of the substitution of a
21 successor trustee;

22 (10) in the case of a member that is an estate or is acting as a member by
23 virtue of being a personal representative of an estate, distribution of the estate's
24 entire rights to receive distributions from the company, but not merely the
25 substitution of a successor personal representative; or

26 (11) termination of the existence of a member if the member is not an
27 individual, estate, or trust other than a business trust.

28 Section 43. Member's power to dissociate; wrongful dissociation.

29 (a) Unless otherwise provided in the operating agreement, a member has
30 the power to dissociate from a limited liability company at any time, rightfully or
31 wrongfully, by express will pursuant to Section 601(1).

32 (b) If the operating agreement has not eliminated a member's power to
33 dissociate, the member's dissociation from a limited liability company is wrongful
34 only if:

-
-
- 1 (1) it is in breach of an express provision of the agreement; or
2 (2) before the expiration of the specified term of a term company:
3 (i) the member withdraws by express will;
4 (ii) the member is expelled by judicial determination under
5 Section 601(6);
6 (iii) the member is dissociated by becoming a debtor in
7 bankruptcy; or
8 (iv) in the case of a member who is not an individual, trust
9 other than a business trust, or estate, the member is expelled or
10 otherwise dissociated because it will fully dissolved or terminated
11 its existence.

12 (c) A member who wrongfully dissociates from a limited liability
13 company is liable to the company and to the other members for damages caused
14 by the dissociation. The liability is in addition to any other obligation of the
15 member to the company or to the other members.

16 (d) If a limited liability company does not dissolve and wind up its
17 business as a result of a member's wrongful dissociation under subsection (b),
18 damages sustained by the company for the wrongful dissociation must be offset
19 against distributions otherwise due the member after the dissociation.

20 Section 44. Effect of member's dissociation.

21 (a) Upon a member's dissociation:

22 (1) in an at-will company, the company must cause the dissociated
23 member's distributional interest to be purchased under Article 7; and

24 (2) in a term company:

25 (i) if the company dissolves and winds up its business on or
26 before the expiration of its specified term, Article 8 applies to
27 determine the dissociated member's rights to distributions; and

28 (ii) if the company does not dissolve and wind up its
29 business on or before the expiration of its specified term, the
30 company must cause the dissociated member's distributional
31 interest to be purchased under Article 7 on the date of the
32 expiration of the term specified at the time of the member's
33 dissociation.

34 (b) Upon a member's dissociation from a limited liability company:

1 (1) the member's right to participate in the management and
2 conduct of the company's business terminates, except as otherwise
3 provided in Section 803, and the member ceases to be a member and is
4 treated the same as a transferee of a member;

5 (2) the member's duty of loyalty under Section 409(b)(3)
6 terminates; and

7 (3) the member's duty of loyalty under section 409(b)(1) and (2)
8 and duty of care under Section 409(c) continue only with regard to matters
9 arising and events occurring before the member's dissociation, unless the
10 member participates in winding up the company's business pursuant to
11 Section 803.

12 Section 45. Company purchase of distributional interest.

13 (a) A limited liability company shall purchase a distributional interest of a:

14 (1) member of an at-will company for its fair value determined as
15 of the date of the member's dissociation if the member's dissociation does
16 not result in a dissolution and winding up of the company's business under
17 Section 801; or

18 (2) member of a term company for its fair value determined as of
19 the date expiration of the specified term that existed on the date of the
20 member's dissociation if the expiration of the specified term does not
21 result in a dissolution and winding up of the company's business under
22 Section 801.

23 (b) A limited liability company must deliver a purchase offer to the
24 dissociated member whose distributional interest is entitled to be purchased not
25 later than 30 days after the date determined under subsection (a). The purchase
26 offer must be accompanied by:

27 (1) a statement of the company's assets and liabilities as of the date
28 determined under subsection (a);

29 (2) the latest available balance sheet and income statement, if any;
30 and

31 (3) an explanation of how the estimated amount of the payment
32 was calculated.

33 (c) If the price and other terms of a purchase of a distributional interest are
34 fixed or are to be determined govern the purchase unless the purchaser defaults.

1 If a default occurs, the dissociated member is entitled to commence a proceeding
2 to have the company dissolved under Section 801(a)(4)(iv).

3 (d) If an agreement to purchase the distributional interest is not made
4 within 120 days after the date determined under subsection (a), the dissociated
5 member, within another 120 days, may commence a proceeding against the
6 limited liability company to enforce the purchase. The company at its expense
7 shall notify in writing all of the remaining members, and any other person the
8 court directs, of the commencement of the proceeding. The jurisdiction of the
9 court in which the proceeding is commenced under this subsection is plenary and
10 exclusive.

11 (e) The court shall determine the fair value of the distributional interest in
12 accordance with the standards set forth in Section 702 together with the terms for
13 the purchase. Upon making these determinations, the court shall order the limited
14 liability company to purchase or cause the purchase of the interest.

15 (f) Damages for wrongful dissociation under Section 602(b), and all other
16 amounts owing, whether or not currently due, from the dissociated member to a
17 limited liability company, must be offset against the purchase price.

18 Section 46. Court action to determine fair value of distributional interest.

19 (a) In an action brought to determine the fair value of a distributional
20 interest in a limited liability company, the court shall:

21 (1) determine the fair value of the interest, considering among
22 other relevant evidence the going concern value of the company, any
23 agreement among some or all of the members fixing the price or
24 specifying a formula for determining value of distributional interests for
25 any other purpose, the recommendations of any appraiser appointed by the
26 court, and any legal constraints on the company's ability to purchase the
27 interest;

28 (2) specify the terms of the purchase, including, if appropriate,
29 terms for installment payments, subordination of the purchase obligation
30 to the rights of the company's other creditors, security for a deferred
31 purchase price, and a covenant not to compete or other restriction on a
32 dissociated member; and

1 (3) require the dissociated member to deliver an assignment of the
2 interest to the purchaser upon receipt of the purchase price or the first
3 installment of the purchase price.

4 (b) After the dissociated member delivers the assignment, the dissociated
5 member has no further claim against the company, its members, officers, or
6 managers, if any, other than a claim to any unpaid balance of the purchase price
7 and a claim under any agreement with the company or the remaining members
8 that is not terminated by the court.

9 (c) If the purchase is not completed in accordance with the specified
10 terms, the company is to be dissolved upon application under Section
11 801(b)(5)(iv). If a limited liability company is so dissolved, the dissociated
12 member has the same rights and priorities in the company's assets as if the sale
13 had not been ordered.

14 (d) If the court finds that a party to the proceeding acted arbitrarily,
15 vexatiously, or not in good faith, it may award one or more other parties their
16 reasonable expenses, including attorney's fees and the expenses of appraisers or
17 other experts, incurred in the proceeding. The finding may be based on the
18 company's failure to make an offer to pay or to comply with Section 701(b).

19 (e) Interest must be paid on the amount awarded from the date determined
20 under Section 701(a) to the date of payment.

21 Section 47. Dissociated member's power to bind limited liability company. For
22 two years after a member dissociates without the dissociation resulting in a dissolution
23 and winding up of a limited liability company's business, the company, including a
24 surviving company under Article 9, is bound by an act of the dissociated member which
25 would have bound the company under Section 301 before dissociation only if at the time
26 of entering into the transaction the other party:

- 27 (1) reasonably believed that the dissociated member was then a member;
28 (2) did not have notice of the member's dissociation; and
29 (3) is not deemed to have had notice under Section 704.

30 Section 48. Statement of dissociation.

31 (a) A dissociated member or a limited liability company may file in the
32 office of the Registrar of Corporations a statement of dissociation stating the
33 name of the company and that the member is dissociated from the company.

1 (b) For the purpose of Sections 301 and 703, a person not a member is
2 deemed to have notice of the dissociation 90 days after the statement of
3 dissociation is filed.

4 Section 49. Events causing dissolution and winding up of company's business.

5 (a) A limited liability company is dissolved, and its business must be
6 wound up, upon the occurrence of any of the following events:

7 (1) an event specified in the operating agreement;

8 (2) consent of the number or percentage of member specified in the
9 operating agreement;

10 (3) an event that makes it unlawful for all or substantially all of the
11 business of the company to be continued, but any cure of illegality within
12 90 days after notice to the company of the event is effective retroactively
13 to the date of the event for purpose of this section;

14 (4) on application by a member or a dissociated member, upon
15 entry of a judicial decree that:

16 (i) the economic purpose of the company is likely to be
17 unreasonably frustrated;

18 (ii) another member has engaged in conduct relating to the
19 company's business that makes it not reasonably practicable to
20 carry on the company's business with that member;

21 (iii) it is not otherwise reasonably practicable to carry on
22 the company's business in conformity with the articles of
23 organization and the operating agreement;

24 (iv) the company failed to purchase the petitioner's
25 distributional interest as required by Section 701; or

26 (v) the managers or member in control of the company
27 have acted, are acting, or will act in a manner that is illegal,
28 oppressive, fraudulent, or unfairly prejudicial to the petitioner;

29 (5) on application by a transferee of a member's interest, a judicial
30 determination that it is equitable to wind up the company's business:

31 (i) after the expiration of the specified term, if the company
32 was for a specified term at the time the applicant became a
33 transferee by member dissociation, transfer, or entry of a charging
34 order that gave rise to the transfer; or

1 (ii) at any time, if the company was at will at the time the
2 applicant became a transferee by member dissociation, transfer, or
3 entry of a charging order that gave rise to the transfer; or

4 (6) the expiration of the term specified in the articles of
5 organization.

6 Section 50. Limited liability company continues after dissolution.

7 (a) Subject to subsection (b), a limited liability company continues after
8 dissolution only for the purpose of winding up its business.

9 (b) At any time after the dissolution of a limited liability company and
10 before the winding up of its business is completed, the members, including a
11 dissociated member whose dissociation caused the dissolution, may unanimously
12 waive the right to have the company's business wound up and the company
13 terminated. In that case:

14 (1) the limited liability company resumes carrying on its business
15 as if dissolution had never occurred and any liability incurred by the
16 company or a member after the dissolution and before the waiver is
17 determined as if the dissolution had never occurred; and

18 (2) the right of a third party accruing under Section 804(a) or
19 arising out of conduct in reliance on the dissolution before the third party
20 knew or received a notification of the waiver are not adversely affected.

21 Section 51. Right to wind up limited liability company's business.

22 (a) After dissolution, a member who has not wrongfully dissociated may
23 participate in winding up a limited liability company's business, but on
24 application of any member, member's legal representative, or transferee, the
25 Commonwealth Superior Court, for good cause shown, may order judicial
26 supervision of the winding up.

27 (b) A legal representative of the last surviving member may wind up a
28 limited liability company's business.

29 (c) A person winding up a limited liability company's business may
30 preserve the company's business or property as a going concern for a reasonable
31 time, prosecute and defend actions and proceedings, whether civil, criminal, or
32 administrative, settle and close the company's business, dispose of and transfer
33 the company's property, discharge the company's liabilities, distribute the assets

1 of the company pursuant to Section 806, settle disputes by mediation or
2 arbitration, and perform other necessary acts.

3 Section 52. Member's or manager's power and liability as agent after dissolution.

4 (a) A limited liability company is bound by a member's or manager's act
5 after dissolution that:

6 (1) is appropriate for winding up the company's business; or

7 (2) would have bound the company under Section 301 before
8 dissolution, if the other party to the transaction did not have notice of the
9 dissolution.

10 (b) A member or manager who, with knowledge of the dissolution,
11 subjects a limited liability company to liability by an act that is not appropriate for
12 winding up the company's business is liable to the company for any damage
13 caused to the company arising from the liability.

14 Section 53. Articles of termination.

15 (a) At any time after dissolution and winding up, a limited liability
16 company may terminate its existence by filing with the Registrar of Corporations
17 articles of termination stating:

18 (1) the name of the company;

19 (2) the date of the dissolution; and

20 (3) that the company's business has been wound up and the legal
21 existence of the company has been terminated.

22 (b) The existence of a limited liability company is terminated upon the
23 filing of the articles of termination, or upon a later effective date, if specified in
24 the articles of termination.

25 Section 54. Distribution of assets in winding up limited liability company's
26 business.

27 (a) In winding up a limited liability company's business, the assets of the
28 company must be applied to discharge its obligations to creditors, including
29 members who are creditor. Any surplus must be applied to pay in money the net
30 amount distributable to members in accordance with their right to distributions
31 under subsection (b)

32 (b) Each member is entitled to a distribution upon the winding up of the
33 limited liability company's business consisting of a return of all contribution

1 which have not previously been returned and a distribution of any remainder in
2 equal shares.

3 Section 55. Known claims against dissolved limited liability company.

4 (a) A dissolved limited liability company may dispose of the known
5 claims against it by following the procedure described in this section.

6 (b) A dissolved limited liability company shall notify its known claimants
7 in writing of the dissolution. The notice must:

8 (1) specify the information required to be included in a claim;

9 (2) provide a mailing address where the claim is to be sent;

10 (3) state the deadline for receipt of the claim, which may not be
11 less than 120 days after the date the written notice is received by the
12 claimant; and

13 (4) state that the claim will be bared if not received by the
14 deadline.

15 (c) A claim against a dissolved limited liability company is barred if the
16 requirements of subsection (b) are met, and:

17 (1) the claim is not received by the specified deadline; or

18 (2) in the case of a claim that is timely received but rejected by the
19 dissolved company, the claimant does not commence a proceeding to
20 enforce the claim within 90 days after the receipt of the notice of the
21 rejection.

22 (d) For purpose of this section, "claim" does not include a contingent
23 liability or a claim based on an event occurring after the effective date of
24 dissolution.

25 Section 56. Other claims against dissolved limited liability company.

26 (a) A dissolved limited liability company may publish notice of its
27 dissolution and request persons having claims against the company to present
28 them in accordance with the notice.

29 (b) The notice must:

30 (1) be published at least once in a newspaper of general circulation
31 in the Commonwealth;

32 (2) describe the information required to be contained in a claim
33 and provide a mailing address where the claim is to be sent; and

1 (3) state that a claim against the limited liability company is barred
2 unless a proceeding to enforce the claim is commenced within five year
3 after publication of the notice.

4 (c) If a dissolved limited liability company publishes a notice in
5 accordance with subsection (b), the claim of each of the following claimants is
6 barred unless the claimant commences a proceeding to enforce the claim against
7 the dissolved company within five years after the publication date of the notice:

8 (1) a claimant who did not receive written notice under Section
9 807;

10 (2) a claimant whose claim was timely sent to the dissolved
11 company but not acted on; and

12 (3) a claimant whose claim is contingent or based on an event
13 occurring after the effective date of dissolution.

14 (d) A claim not barred under this section may be enforce:

15 (1) against the dissolved limited liability company, to the extent of
16 its undistributed assets; or

17 (2) if the assets have been distributed in liquidation, against a
18 member of he dissolved company to the extent of the member's
19 proportionate share of the claim or the company's assets distributed to the
20 member in liquidation, whichever is less, but a member's total liability for
21 all claims under this section may not exceed the total amount of asset
22 distributed to the member.

23 Section 57. Grounds for administrative dissolution. The Registrar of
24 Corporations may commence a proceeding to dissolve a limited liability company
25 administratively if the company does not:

26 (1) pay any fees, taxes, or penalties imposed by this Act or other law
27 within 60 days after they are due; or

28 (2) deliver its annual report to the Registrar of Corporations within 60
29 days after it is due.

30 Section 58. Procedure for and effect of administrative dissolution.

31 (a) If the Registrar of Corporations determines that a ground exists for
32 administratively dissolving a limited liability company, the Registrar of
33 Corporations shall enter a record of the determination and serve the company
34 with a copy of the record.

1 (b) If the company does not correct each ground for dissolution or
2 demonstrate to the reasonable satisfaction of the Registrar of Corporations that
3 each ground determined by the Registrar of Corporations does not exist within 60
4 days after service of the notice, the Registrar shall administratively dissolve the
5 company by signing a certification of the dissolution that recites the ground for
6 dissolution and its effective date. The Registrar of Corporations shall file the
7 original of the certificate and serve the company with a copy of the certification.

8 (c) A company administratively dissolved continue its existence but may
9 carry on only business necessary to wind up and liquidate its business and affairs
10 under Section 802 and to notify claimants under Section 807 and 808.

11 (d) The administrative dissolution of a company does not terminate the
12 authority of its agent for service of process.

13 Section 59. Reinstatement following administrative dissolution.

14 (a) A limited liability company administrative dissolved may apply to the
15 Registrar of Corporations for reinstatement within two years after the effective
16 date of dissolution. The application must:

17 (1) recite the name of the company and the effective date of its
18 administrative dissolution;

19 (2) state that the ground for dissolution either did not exist or have
20 been eliminate;

21 (3) state that the company's name satisfies the requirements of
22 Section 105; and

23 (4) contain a certification from the Secretary of Finance reciting
24 that all taxes owed by the company have been paid.

25 (b) If the Registrar of Corporations determines that the application
26 contains the information required by subsection (a) and that the information is
27 correct, the Registrar of Corporations shall cancel the certificate of dissolution
28 and prepare a certificate of reinstatement that recites this determination and the
29 effective date of reinstatement, file the original of the certificate, and serve the
30 company with a copy of the certificate.

31 (c) When reinstatement is effective, it relates back to and take effect as of
32 the effective date of the administrative dissolution and the company may resume
33 its business as if the administrative dissolution had never occurred.

34 Section 60. Appeal from denial of reinstatement.

1 (a) If the Registrar of Corporations denies a limited liability company's
2 application for reinstatement following administrative dissolution, the Registrar
3 of Corporations shall serve the company with a record that explains the reason or
4 reasons for denial.

5 (b) The company may appeal the denial of reinstatement to the Superior
6 Court within 30 days after service of the notice of denial is perfected. The
7 company appeals by petitioning the court to set aside the dissolution and attaching
8 to the petition copies of the certificate of dissolution, the company's application
9 for reinstatement, and the Registrar of Corporations notice of denial.

10 (c) The court may summarily order the Registrar of Corporations to
11 reinstate the dissolved company or may take other action the court consider
12 appropriate.

13 (d) The court's final decision may be appealed as in other civil
14 proceedings.

15 Section 60. Definitions. In this Act:

16 (1) "Corporation" mean a corporation under the State Corporation Act, a
17 predecessor law, or comparable law of another jurisdiction.

18 (2) "General partner" means a partner in a partnership and a general
19 partner in a limited partnership.

20 (3) "Limited partner" means a limited partner in a limited partnership.

21 (4) "Limited partnership" means a limited partnership created under a
22 State Limited Partnership Act, a predecessor law, or comparable law of another
23 jurisdiction.

24 (5) "Partner" includes a general partner and a limited partner.

25 (6) "Partnership" means a general partnership under Commonwealth law,
26 or comparable law of another jurisdiction.

27 (7) "Partnership agreement" means an agreement among the partners
28 concerning the partnership or limited partnership.

29 (8) "Shareholder" means a shareholder in a corporation.

30 Section 61. Conversion of partnership or limited partnership to limited liability
31 company.

32 (a) A partnership or limited partnership may be converted to a limited
33 liability company pursuant to this section.

1 (b) The terms and condition of a conversion of a partnership or limited
2 partnership to a limited liability company must be approved by all of the partners
3 or by a number or percentage of the partners required for conversion in the
4 partnership agreement.

5 (c) An agreement of conversion must set forth the terms and conditions of
6 the conversion of the interests of partnership or of a limited partnership, as the
7 case may be, into interests in the converted limited liability company or the cash
8 or other consideration to be paid or delivered as a result of the conversion of the
9 interests of the partners, or a combination thereof.

10 (d) After a conversion is approved under subsection (b), the partnership or
11 limited partnership shall file articles of organization in the office of the Registrar
12 of Corporations which satisfy the requirements of Section 203 and contain:

13 (1) a statement that the partnership or limited partnership was
14 converted to a limited liability company from a partnership or limited
15 partnership, as the case may be;

16 (2) its former name;

17 (3) a statement of the number of votes cast by the partners entitled
18 to vote for and against the conversion and, if the vote is less than
19 unanimous, the number or percentage required to approve the conversion
20 under subsection (b); and

21 (4) in the case of a limited partnership, a statement that the
22 certificate of limited partnership is to be canceled as of the date the
23 conversion took effect.

24 (e) In the case of a limited partnership, the filing of articles of organization
25 under subsection (d) cancels its certificate of limited partnership as of the date the
26 conversion took effect.

27 (f) A conversion takes effect when the articles of organization are filed in
28 the office of the Registrar of Corporations or at any later date specified in the
29 articles of organization.

30 (g) A general partner who becomes a member of a limited liability
31 company as a result of a conversion remains liable as a partner for an obligation
32 incurred by the partnership or limited partnership or limited partnership before the
33 conversion takes effect.

1 (h) A general partner's liability for all obligations of the limited liability
2 company incurred after the conversion takes effect is that of a member of the
3 company. A limited partner who becomes a member as a result of a conversion
4 remains liable only to the extent the limited partner was liable for an obligation
5 incurred by the limited partnership before the conversion takes effect.

6 Section 62. Effect of conversion; entity unchanged.

7 (a) A partnership or limited partnership that has been converted pursuant
8 to this Act is for all purposes the same entity that existed before the conversion.

9 (b) When a conversion takes effect:

10 (1) all property owned by the converting partnership or limited
11 partnership vests in the limited liability company;

12 (2) all debts, liabilities, and other obligations of the converting
13 partnership or limited partnership continue as obligations of the limited
14 liability company;

15 (3) an action or proceeding pending by or against the converting
16 partnership or limited partnership may be continued as if the conversion
17 had not occurred;

18 (4) except as prohibited by other law, all of the rights, privileges,
19 immunities vest in the limited liability company; and

20 (5) except as otherwise provided in the agreement of conversion
21 under Section 902(c), all of the partners of the converting partnership
22 continue as members of the limited liability company.

23 Section 63. Merger of entities.

24 (a) Pursuant to a plan of merger approved under subsection (c), a limited
25 liability company may be merged with or into one or more limited liability
26 companies, foreign limited liability companies, corporations, foreign
27 corporations, partnerships, foreign partnerships, limited partnerships, foreign
28 limited partnerships, or other domestic or foreign entities.

29 (b) A plan of merger must set forth:

30 (1) the name of each entity that is a party to the merger;

31 (2) the name of the surviving entity into which the other entities
32 will merge;

33 (3) the type of organization of the surviving entity;

34 (4) the terms and conditions of the merger;

1 (5) the manner and basis for converting the interests of each party
2 to the merger into interests or obligations of the surviving entity, or into
3 money or other property in whole or in part; and

4 (6) the street address of the surviving entity's principal place of
5 business.

6 (c) A plan of merger must be approved:

7 (1) in the case of a limited liability company that is a party to the
8 merger, by all of the members or by a number or percentage of members
9 specified in the operating agreement;

10 (2) in the case of a foreign limited liability company that is a party
11 to the merger, by the vote required for approval of a merger by the law of
12 the State or foreign jurisdiction in which the foreign limited liability
13 company is organized;

14 (3) in the case of a partnership or domestic limited partnership that
15 is a party to the merger, by the vote required for approval of a conversion
16 under Section 902(b); and

17 (4) in the case of any other entities that are parties to the merger,
18 by the vote required for approval of a merger by the law of the
19 Commonwealth or of the State or foreign jurisdiction in which the entity is
20 organized and, in the absence of such a requirement, by all the owners of
21 interests in the entity.

22 (d) After a plan of merger is approved and before the merger takes effect,
23 the plan may be amended or abandoned as provided in the plan.

24 (e) The merger of effective upon the filing of the articles of merger with
25 the Registrar of Corporations or at such later date as the articles may provide.

26 Section 64. Articles of merger.

27 (a) After approval of the plan of merger under Section 904(c), unless the
28 merger is abandoned under Section 904(d), articles of merger must be signed on
29 behalf of each limited liability company and other entity that is a party to the
30 merger and delivered to the Registrar of Corporation for filing. The articles must
31 set forth:

32 (1) the name and jurisdiction of formation or organization of each
33 of the limited liability companies and other entities that are parties to the
34 merger;

1 (2) for each limited liability company that is to merge, the date its
2 articles of organization were filed with the Registrar of Corporations;

3 (3) that a plan of merger has been approved and signed by each
4 limited liability company and other entity that is to merge;

5 (4) the name and address of the surviving limited liability company
6 or other surviving entity;

7 (5) the effective date of the merger;

8 (6) If a limited liability company is the surviving entity, such
9 changes in its articles of organization as are necessary by reason of the
10 merger;

11 (7) if a party to a merger is a foreign limited liability company, the
12 jurisdiction and date of filing of its initial articles of organization and the
13 date when its application for authority was filed by the Registrar of
14 Corporation or, if an application has not been filed, a statement to that
15 effect; and

16 (8) if the surviving entity is not a limited liability company, an
17 agreement that the surviving entity may be served with process in the
18 Commonwealth and is subject to liability in any action or proceeding for
19 the enforcement of any liability or obligation of any limited liability
20 company previously subject to suit in the Commonwealth which is to
21 merge, and for the enforcement, as provided in this Act, of the right of
22 members of any limited liability company to receive payment for their
23 interest against the surviving entity.

24 (b) If a foreign limited liability company is the surviving entity of a
25 merger, it may not do business in the Commonwealth until an application for that
26 authority is filed with the Registrar of Corporations.

27 (c) The surviving limited liability company or other entity shall furnish a
28 copy of the plan of merger, on request and without cost, to any member of any
29 limited liability company or any person holding an interest in any other entity that
30 is to merge.

31 (d) Articles of merger operate as an amendment to the limited liability
32 company's articles of organization.

33 Section 65. Effect of merger.

34 (a) When a merger takes effect:

1 (1) the separate existence of each limited liability company and
2 other entity that is a party to the merger, other than the surviving entity,
3 terminates;

4 (2) all property owned by each of the limited liability companies
5 and other entities that are party to the merger vests in the surviving entity;

6 (3) all debts, liabilities, and other obligations of each limited
7 liability company and other entity that is party to the merger become the
8 obligations of the surviving entity;

9 (4) an action or proceeding pending by or against a limited liability
10 company or other party to a merger may be continued as if the merger had
11 not occurred or the surviving entity may be substituted as a party to the
12 action or proceeding; and

13 (5) except as prohibited by other law, all the rights, privileges,
14 immunities, powers, and purposes of every limited liability company and
15 other entity that is a party to a merger vest in the surviving entity.

16 (b) The Registrar of Corporations is an agent for service of process in an
17 action or proceeding against the surviving foreign entity to enforce an obligation
18 of any party to a merger if the surviving foreign entity fails to appoint or maintain
19 an agent designated for service of process in the Commonwealth or the agent for
20 service of process cannot with reasonable diligence be found at the designated
21 office. Upon receipt of process, the Registrar of Corporations shall send a copy
22 of the process by registered or certified mail, return receipt requested, to the
23 surviving entity at the address set forth in the articles of merger. Service is
24 effected under this subsection at the earliest of:

25 (1) the date the company receives the process, notice, or demand;

26 (2) the date shown on the return receipt, if signed on behalf of the
27 company; or

28 (3) five days after its deposit in the mail, if mailed postpaid and
29 correctly addressed.

30 (c) A member of the surviving limited liability company is liable for all
31 obligations of a party to the merger for which the member was personally liable
32 before the merger.

33 (d) Unless otherwise agreed, a merger of a limited liability company that
34 is not the surviving entity in the merger does not require the limited liability

1 company to wind up its business under this Act or pay its liabilities and distribute
2 its assets pursuant to this Act.

3 (e) Articles of merger serve as articles of dissolution for a limited liability
4 company that is not the surviving entity in the merger.

5 Section 66. Non exclusively. This Act does not preclude an entity from being
6 converted or merged under other law.

7 Section 67. Law governing foreign limited liability companies.

8 (a) The laws of the State or other jurisdiction under which a foreign
9 limited liability company is organized govern its organization and internal affairs
10 and the liability of its managers, members, and their transferees.

11 (b) A foreign limited liability company may not be denied a certificate of
12 authority by reason of any difference between the laws of another jurisdiction
13 under which the foreign company is organized and the laws of the
14 Commonwealth.

15 (c) A certificate of authority does not authorize a foreign limited liability
16 company to engage in any business or exercise any power that a limited liability
17 company may not engage in or exercise in the Commonwealth.

18 Section 68. Application for certificate of authority.

19 (a) A foreign limited liability company may apply for a certificate of
20 authority to transact business in the Commonwealth by delivering an application
21 to the Registrar of Corporations for filing. The application must set forth:

22 (1) the name of the foreign company or, if its name is unavailable
23 for use in the Commonwealth, a name that satisfies the requirements of
24 Section 1005;

25 (2) the name of the State or country under whose law it is
26 organized;

27 (3) the street address of its principal office;

28 (4) the address of its initial designated office in the
29 Commonwealth;

30 (5) the name and street address of its initial agent for service of
31 process in the Commonwealth;

32 (6) whether the duration of the company is for a specified term
33 and, if so, the period specified;

1 (7) whether the company is manager-managed, and, if so, the name
2 and address of each initial manager; and

3 (8) whether the members of the company are to be liable for its
4 debts and obligations under a provision similar to Section 303(c).

5 (b) A foreign limited liability company shall deliver with the completed
6 application a certificate of existence or a record of similar import authenticated by
7 the secretary of state or other official having custody of company records in the
8 State or country under whose law it is organized.

9 Section 69. Activities not constituting transacting business.

10 (a) Activities of a foreign limited liability company that do not constitute
11 transacting business in the Commonwealth within the meaning of this Act
12 include:

13 (1) maintaining, defending, or settling an action or proceeding;

14 (2) holding meetings of its members or managers or carrying on
15 any other activity concerning its internal affairs;

16 (3) maintaining bank accounts;

17 (4) maintaining offices or agencies for the transfer, exchange, and
18 registration of the foreign company's own securities or maintaining
19 trustees or depositories with respect to those securities;

20 (5) selling through independent contractors;

21 (6) soliciting or obtaining orders, whether by mail or through
22 employees or agents or otherwise, if the orders require acceptance outside
23 the Commonwealth before they become contracts;

24 (7) creating or acquiring indebtedness, mortgages, or security
25 interests in real or personal property;

26 (8) securing or collecting debts or enforcing mortgages or other
27 security interests in property securing the debts, and holding, protecting,
28 and maintaining property so acquired;

29 (9) conducting an isolated transaction that is completed within 30
30 days and is not one in the course of similar transactions of a like manner;
31 and

32 (10) transacting business in interstate commerce.

33 (b) For purposes of this Act, the ownership in the Commonwealth of
34 income-producing real property or tangible personal property, other than property

1 excluded under subsection (a), constitutes transacting business in the
2 Commonwealth.

3 (c) This section does not apply in determining the contacts or activities
4 that may subject a foreign limited liability company to service of process,
5 taxation, or regulation under any other law of the Commonwealth.

6 Section 70. Issuance of certificate of authority. Unless the Registrar of
7 Corporations determines that an application for a certificate of authority fails to comply
8 as to form with the filing requirements of this Act, the Registrar of Corporations, upon
9 payment of all filing fees, shall file the application and send a receipt for it and the fees to
10 the limited liability company or its representative.

11 Section 71. Name of foreign limited liability company.

12 (a) If the name of a foreign limited liability company does not satisfy the
13 requirements of Section 105, the company, to obtain or maintain a certificate of
14 authority to transact business in the Commonwealth, must use a fictitious name to
15 transact business in the Commonwealth if its real name is unavailable and it
16 delivers to the Registrar of Corporations for filing a copy of the resolution of its
17 managers, in the case of a manager-managed company, or of its members, in the
18 case of a member-managed company, adopting the fictitious name.

19 (b) Except as authorized by subsections (c) and (d), the name, including a
20 fictitious name to be used to transact business in the Commonwealth, of a foreign
21 limited liability company must be distinguishable upon the records of the
22 Registrar of Corporations from:

23 (1) the name of any corporation, limited partnership, or company
24 incorporated, organized, or authorized, or authorized to transact business
25 in the Commonwealth;

26 (2) a name reserved or registered under Section 106 or 107; and

27 (3) the fictitious name of another foreign limited liability company
28 authorized to transact business in the Commonwealth.

29 (c) A foreign limited liability company may apply to the Registrar of
30 Corporations for authority to use in the Commonwealth a name that is not
31 distinguishable upon the records of the Registrar of Corporations from a name
32 described in subsection (b). The Registrar of Corporations shall authorize use of
33 the name applied for if:

1 (1) the present user, registrant, or owner of a reserved name
2 consents to the use in a record and submits an undertaking in form
3 satisfactory to the Registrar of Corporations to change its name to a name
4 that is distinguishable upon the records of the Registrar of Corporations
5 from the name of the foreign applying limited liability company; or

6 (2) the applicant delivers to the Registrar of Corporations a
7 certified copy of a final judgment of a court establishing the applicant's
8 right use the name applied for in the Commonwealth.

9 (d) A foreign limited liability company may use in the Commonwealth the
10 name, including the fictitious name, of another domestic or foreign entity that is
11 used in the Commonwealth if the other entity is incorporated, organized, or
12 authorized to transact business in the Commonwealth and the foreign limited
13 liability company:

14 (1) has merged with the other entity;

15 (2) has been formed by reorganization of the other entity; or

16 (3) has acquired all or substantially all of the assets, including the
17 name, of the other entity.

18 (e) If a foreign limited liability company authorized to transact business in
19 the Commonwealth changes its name to one that does not satisfy the requirements
20 of Section 105, it may not transact business in the Commonwealth under the name
21 as changed until it adopts a name satisfying the requirements of Section 105 and
22 obtains an amended certificate of authority.

23 Section 72. Revocation of certificate of authority.

24 (a) A certificate of authority of a foreign limited liability company to
25 transact business in the Commonwealth may be revoked by the Registrar of
26 Corporations in the manner provided in subsection (b) if:

27 (1) the company fails to:

28 (i) pay any fees, taxes, and penalties owed to the
29 Commonwealth;

30 (ii) deliver its annual report required under Section 211 to
31 the Registrar of Corporation within 60 days after it is due;

32 (iii) appoint and maintain an agent for service of process as
33 required by this act; or

1 (iv) file a statement of a change in the name or business
2 address of the agent as required by this act; or

3 (2) a misrepresentation has been made of any material matter in
4 any application, report, affidavit, or other record submitted by the
5 company under this Act.

6 (b) The Registrar of Corporations may not revoke a certificate of authority
7 of a foreign limited liability company unless the Registrar of Corporations send
8 the company notice of the revocation, at least 60 days before its effective date, by
9 a record addressed to its agent for service of process in the Commonwealth,
10 addressed to the office required to be maintained by Section 108. The notice must
11 specify the cause for the revocation of the certificate of authority. The authority
12 of the company to transact business in the Commonwealth ceases on the effective
13 date of the revocation unless the foreign limited liability company cures the
14 failure before that date.

15 Section 73. Cancellation of authority. A foreign limited liability company may
16 cancel its authority to transact business in the Commonwealth by filing in the office of
17 the Registrar of Corporations a certificate of cancellation. Cancellation does not
18 terminate the authority to the Registrar of Corporations to accept service of process on
19 the company for any claims arising out of the transaction of business in the
20 Commonwealth.

21 Section 74. Effect of failure to obtain certificate of authority.

22 (a) A foreign limited liability company transacting business in the
23 Commonwealth may not maintain an action or proceeding in the Commonwealth
24 unless it has a certificate of authority to transact business in the Commonwealth.

25 (b) The failure of a foreign limited liability company to have a certificate
26 of authority to transact business in the Commonwealth does not impair the
27 validity of a contract or act of the company or prevent the foreign limited liability
28 company from defending an action or proceeding in the Commonwealth.

29 (c) Limitations on personal liability of managers, members, and their
30 transferees are not waived solely by transacting business in the Commonwealth
31 without a certificate of authority.

32 (d) If a foreign limited liability company transacts business in the
33 Commonwealth without a certificate of authority, it appoints the Registrar of

1 Corporations as its agent for service of process for claims for relief arising out of
2 the transaction of business in the Commonwealth.

3 Section 75. Action by Attorney General. The Attorney General may maintain an
4 action to restrain a foreign limited liability company from transacting business in the
5 Commonwealth in violation of this Act.

6 Section 76. Right of action. A member of a limited liability company may
7 maintain an action in the right of the company if the member or managers having
8 authority to do so have refused to commence the action or an effort to cause those
9 members or managers to commence the action is not likely to succeed.

10 Section 77. Proper plaintiff. In a derivative action for a limited liability
11 company, the plaintiff must be a member of the company when the action is commenced;
12 and:

13 (1) must have been a member at the time of the transaction of which the
14 plaintiff complains; or

15 (2) the plaintiff's status as a member must have devolved upon the plaintiff
16 by operation of law or pursuant to the terms of the operating agreement from a
17 person who was a member at the time of the transaction.

18 Section 78. Pleading. In a derivative action for a limited liability company, the
19 complaint must set forth with particularity the effort of the plaintiff to secure initiation of
20 the action by a member or manager or the reasons for not making the effort.

21 Section 79. Expenses. If a derivative action for a limited liability company is
22 successful, in whole or in part, or if anything is received by the plaintiff as a result of a
23 judgment, compromise, or settlement of an action or claim, the court may award the
24 plaintiff reasonable expenses, including reasonable attorney's fees, and shall direct the
25 plaintiff to remit to the limited liability company the remainder of the proceeds received.

26 Section 80. Uniformity of application and construction. The act shall be applied
27 and construed to effectuate its general purpose to make uniform the law with respect to
28 the subject of this Act among States Territories Commonwealth enacting it.

29 Section 81. Short Title. This act may be cited as the Uniform Limited
30 Liability Company Act of 2000.

31 Section 82. Severability. If any provision of this Act or the application of any
32 such provision to any person or circumstance should be held invalid by a court of
33 competent jurisdiction, the remainder of this Act or the application of its provisions to

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1 persons or circumstances other than those to which it is held invalid shall not be affected
2 thereby.

3 Section 83. Savings Clause. This Act and any repealer contained herein shall not
4 be construed as affecting any existing right acquired under contract or acquired under
5 statutes repealed or under any rule, regulation or order adopted under the statutes.
6 Repealers contained in this Act shall not affect any proceeding instituted under or
7 pursuant to prior law. The enactment of this Act shall not have the effect of terminating,
8 or in any way modifying, any liability civil or criminal, which shall already be in
9 existence at the date this Act becomes effective.

10 Section 84. Effective Date. This Act shall take effect upon its approval by the
11 Governor or upon its becoming law without such approval.

Date: 02/23/00

Introduced By: /s/ Rep. Oscar M. Babauta

Reviewed for Legal Sufficiency by:

/s/ Steve Mackenzie
House Legal Counsel