



## **BUSINESS LAW SECTION**

### **PARTNERSHIPS AND LIMITED LIABILITY COMPANIES COMMITTEE**

THE STATE BAR OF CALIFORNIA  
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### ***AMENDMENTS TO CALIFORNIA REVISED UNIFORM LIMITED LIABILITY COMPANY ACT ("RULLCA") AND CALIFORNIA REVISED UNIFORM LIMITED PARTNERSHIP ACT ("RULPA")***

#### **LEGISLATIVE PROPOSAL (BLS-2015-04)**

**TO:** Office of Governmental Affairs

**FROM:** Partnerships and Limited Liability Companies Committee ("PLLC") State Bar of California, Business Law Section

**DATE:** August 29, 2014

**RE:** Proposal to Amend California Revised Uniform Limited Liability Company Act ("RULLCA") (Cal. Corp. Code §§ 17701.01 – 17713.13) and California Revised Uniform Limited Partnership Act ("RULPA") (Cal. Corp. Code §§ 15900 – 15912.07)

#### **Business Law Section Action:**

Date of Approval by Business Law Section Executive Committee: August 27, 2014  
Approval Vote: For: 11 Against: 0

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## **I. History, Digest and Purpose**

The mission of the PLLC Committee (the “Committee”) of the Business Law Section is to consider and take a position on, among other things, “[n]eeded changes to the California Corporations Code” and “[o]ther statutory changes that would promote efficiency or effectiveness in practice if made. . . .” The Committee believes that certain amendments to RULLCA and RULPA are needed to address ambiguities and inconsistencies, and to make further improvements, as described more fully in this memorandum.

### **History**

The ambiguities and inconsistencies exist largely because RULLCA as enacted in California (SB 323, Stats. 2012, ch. 419) does not replicate word-for-word the Revised Uniform Limited Liability Company Act as promulgated by the National Conference of Commissioners on Uniform State Laws (“NCCUSL”). RULLCA as enacted in California incorporates numerous provisions from the Beverly Killea Limited Liability Company Act (Cal. Corp. Code §§ 17000–17656) (“Beverly Killea”), which were carried over to RULLCA for the purpose of improving the NCCUSL version. The carried-over provisions include (i) important topics (*e.g.*, meetings, officers, voting rights, and mergers and conversions) that were not covered in the NCCUSL version; (ii) particular requirements of the Business Programs Division of the California Secretary of State (*e.g.*, the requirement for filing biennial statements of information); (iii) certain investor protections (*e.g.*, member information rights and certain restrictions on operating agreement amendments); and (iv) other provisions (*e.g.*, for limited liability company (“LLC”) dissolutions) that the Committee believed were more comprehensive and substantially better than what was included in the NCCUSL version on the same topic. In general, the Committee believes that NCCUSL’s version was overly slanted in favor of LLC management, but that RULLCA as enacted in California is a more balanced law that more effectively protects the interests of LLC members.

Challenges were involved, however, in carrying over provisions from Beverly Killea into SB 323 because the statutory numbering convention was different, the organizational structure was different, and various defined terms in Beverly Killea differed from the corresponding terms in the NCCUSL version of RULLCA. Although the Committee worked hard at the time to eliminate inconsistencies, some inconsistencies and conflicts have been discovered since SB 323’s enactment.

In addition, since SB 323’s enactment, the Committee has engaged in robust discussions with, and has received comments from, many experienced LLC law practitioners in California. As a result of those discussions, the Committee has collected some further suggestions for clarification and improvement of RULLCA. The Committee now wishes to correct the ambiguities and inconsistencies, and make some further improvements for the benefit of California attorneys and judges who must work with and interpret RULLCA in the future, as well as for the benefit of all California business enterprises that wish to conduct their business in the LLC form.

The Committee also wishes to amend RULLCA's transition rule in Cal. Corp. Code § 17713.04 to clarify that the term "contracts" in § 17713.04(b) includes LLC operating agreements. Thus, the operating agreements of LLCs existing prior to January 1, 2014 are governed by Beverly Killea and should not necessarily need to be amended after that date. RULLCA applies to all LLCs and operating agreements entered into on or after January 1, 2014. Whether the operating agreement of an existing LLC should be amended after January 1, 2014, *e.g.*, to take advantage of RULLCA provisions, is an issue for practitioners to decide in consultation with their clients on a case-by-case basis.

Further, the Business Law Section's Opinions Committee has pointed out an ambiguity in RULPA § 15902.01. Subdivision (a) provides that a limited partnership is formed when a Certificate of Limited Partnership is filed and the parties have entered into a partnership agreement. Subdivision (c) provides that a partnership is formed when the Secretary of State files the Certificate of Limited Partnership, but makes no mention of a partnership agreement. The Committee believes that an agreement is paramount to forming a partnership and a critical part of the formation process.

### **Relevant Existing Code Sections and Proposed RULLCA Amendments with Rationale**

Following are the RULLCA provisions that the Committee wishes to have amended, showing each amendment desired as a tracked change in the existing statutory text, together with a statement of the rationale for each particular amendment. The text to be added is indicated in underscore, and the text to be deleted is indicated by ~~strikethrough~~.

1. Cal. Corp. Code § 17701.02(i)(1)(C). Other means of electronic communication to which both of the following apply:

(i) The communication is delivered to a recipient who has provided an unrevoked consent to the use of those means of transmission.

(ii) The communication creates a record that is capable of retention, retrieval and review; and that may thereafter be rendered in a clearly legible tangible form. ~~However, an electronic transmission by a limited liability company to an individual member is not authorize unless, in addition to satisfying the requirements of this section, the transmission satisfies requirements applicable to consumer consent to electronic records set forth the federal electronic signature in Global and National Government Act (15 U.S.C. Sec. 7001(e)(i)).~~

Rationale for Change: Most LLC members will not meet the definition of "consumer" so this provision causes confusion with respect to member consents.

2. Cal. Corp. Code § 17701.02(k). "Limited liability company," except in the phrase "foreign limited liability company," means an entity formed under this title or ~~an~~ a domestic entity that becomes subject to this title pursuant to Article 13 (commencing with Section 17713.01).

Rationale for Change: This subdivision contains the definition of “limited liability company.” As reflected in the existing text of this subdivision, RULLCA makes a distinction throughout between “limited liability companies” and “foreign limited liability companies.” Under RULLCA, the term “limited liability company” without the word “foreign” preceding it means a domestic LLC. The change is intended to confirm this meaning and eliminate any potential ambiguity in the definition.

3. Cal. Corp. Code § 17701.02(v). “Person” means an individual, partnership, limited partnership, trust, a trustee of a trust (including a trust under Probate Code Section 15000 et seq.), estate, association, corporation, professional corporation, professional association, non-profit corporation, business trust or statutory business trust.

Rationale for Change: To make clear that a trust can be a member of an LLC. The trust and not the trustee is the member.

4. Cal. Corp. Code § 17701.10(c). In addition to the matters specified in subdivisions (d)(1) through (d)(4), ~~An~~ an operating agreement shall not do any of the following:

\* \* \* \*

- (4) Subject to subdivisions (c)(14), (c)(15), and (d) to (g), inclusive, eliminate the duty of loyalty, the duty of care, or any other fiduciary duty.

Rationale for Change: Section 17701.10 is perhaps the most important section of RULLCA because it describes to what extent an LLC operating agreement can override or nullify specific provisions of RULLCA. In its current form, § 17701.10 incorporates both (i) provisions from the NCCUSL version of RULLCA, and (ii) some carried-over provisions from Beverly Killea. Because of this hybrid nature, there are some inconsistencies that need to be corrected in order to avoid confusion on the part of the California attorneys and judges who must work with this statute in the future. The corrections to § 17701.10 that are needed are described in this Paragraph 4 and in Paragraphs 5 through 13 below. The addition to the beginning of subdivision (c) above is made to clarify that the restrictions detailed in subdivision (c) do not constitute an exclusive list. Subdivisions (d)(1) through (d)(4) (see Paragraph 12 below, which adds (d)(2) and (d)(4)) also include restrictions on what an operating agreement may do, and subdivision (d) already includes a cross-reference back to subdivision (c). The addition is intended to be helpful to attorneys called on to draft operating agreements under RULLCA. The change in subdivision (c)(4) set forth above is intended to make subdivision (c)(4) consistent with existing subdivision (c)(14) and (c)(15), namely, to clarify that, concerning the duties of loyalty and care, the operating agreement can do what is expressly now allowed in subdivisions (c)(14) and (c)(15). Subdivision (c)(14) now provides that an operating agreement cannot eliminate the duty of loyalty but allows an operating agreement to identify categories of activities that do not violate the duty of loyalty and to specify the

number of members who may authorize, after full disclosure, a transaction that would otherwise violate the duty of loyalty. Subdivision (c)(15) now provides that an operating agreement cannot unreasonably reduce the duty of care.

5. Cal. Corp. Code § 17701.10(c). In addition to the matters specified in subdivisions (d)(1) through (d)(4), An an operating agreement shall not do any of the following:

\* \* \* \*

(5) Subject to subdivisions (d) to (g), inclusive, eliminate the contractual obligation of good faith and fair dealing under subdivision (d) of Section 17704.09, but the operating agreement may prescribe the standards by which the performance of the obligation is to be measured, if the standards are not manifestly unreasonable as determined at the time the standards are prescribed.

Rationale for Change: Subdivision (c)(16) currently provides that the operating agreement cannot eliminate the obligation of good faith and fair dealing, but may prescribe the standards by which performance of the obligation is to be measured if the standards are not manifestly unreasonable. Subdivisions (c)(5) and (c)(16) therefore each now address the obligation of good faith and fair dealing, although subdivision (c)(5) does not now include the underlined “but” clause above. This change is intended to combine the substance of subdivisions (c)(5) and (c)(16) in one place, and thereby eliminate the conflict and potential confusion resulting from having two different provisions that address what the operating agreement can do with respect to the obligation of good faith and fair dealing. Subdivision (c)(16) is accordingly deleted (see Paragraph 11 below).

6. Cal. Corp. Code § 17701.10(c). In addition to the matters specified in subdivisions (d)(1) through (d)(4), An an operating agreement shall not do any of the following:

\* \* \* \*

(6) ~~Unreasonably restrict the duties and rights stated in Section 17704.10~~ Vary the requirements of Section 17701.13 through 17701.16, inclusive, or any provision under Article 8 (commencing with Section 17708.01).

Rationale for Changes: The deleted phrase conflicts with existing Cal. Corp. Code § 17701.10(d)(2), which provides, without any qualification, that an operating agreement shall not vary a member’s information rights under § 17704.10 (see Paragraph 12 below). The deleted phrase also conflicts with § 17704.10(h), which provides that any waiver of the information rights in § 17704.10 is unenforceable. The deletion will eliminate these conflicts and protect the information rights of non-managing LLC members. The addition is made in order to conform with Beverly Killea (Cal. Corp. Code § 17005(c)), because, in the Committee’s view, an operating agreement should or should not be permitted to override RULLCA provisions to the same extent as operating agreements were or were not permitted to do so under Beverly Killea. Further, the addition is intended to clarify that the requirements of the California Secretary

of State cannot be changed by the operating agreement. Cal. Corp. Code §§ 17701.13 through 17701.16 contain the Secretary of State-related provisions for LLCs to maintain an office, agent for service of process, and specified records in California, as well as service of process procedures; Article 8 contains the foreign LLC registration requirements.

7. Cal. Corp. Code § 17701.10(c). In addition to the matters specified in subdivisions (d)(1) through (d)(4), An-an operating agreement shall not do any of the following:

\* \* \* \*

(8) Except as provided stated therein~~herein~~, vary the requirements of Article 2 (commencing with Section 17702.01) or Article 7 (commencing with Section 17707.01) Sections 17707.04 to 17707.08 inclusive.

Rationale for Change: Article 2 contains the California Secretary of State requirements concerning formation of limited liability companies; Article 7 contains the provisions for LLC dissolutions. The reference to “herein” instead of “therein” in existing subdivision (c)(8) was a typographical error, as was the reference to Section 17707.04 instead of Section 17707.01. The errors created the potential for confusion regarding what provisions in Article 7 could be altered by the operating agreement. The change above is made in order to correct these typographical errors, to eliminate any potential confusion, and to conform with Beverly Killea (Cal. Corp. Code § 17005(c)) (see Paragraph 6 above) and the requirements of the California Secretary of State.

8. Cal. Corp. Code § 17701.10(c). In addition to the matters specified in subdivisions (d)(1) through (d)(4), An-an operating agreement shall not do any of the following:

\* \* \* \*

(10) Restrict the right of a member that will have personal liability with respect to a surviving or converted organization to approve a merger or conversion under Article 10~~approve a merger, conversion, or domestication under Section 17710.14 to a member that will have personal liability with respect to a surviving, converted, or domesticated organization.~~

Rationale for Change: In its present form, subdivision (c)(10) is not clear. The change above is designed to make it clear that any members who will have personal liability as a result of a merger or conversion must have the right to vote on the transaction. In addition, because RULLCA has no provisions for “domestication” of an organization, the reference to domestication has been deleted to avoid potential confusion.

9. Cal. Corp. Code § 17701.10(c). In addition to the matters specified in subdivisions (d)(1) through (d)(4), An-an operating agreement shall not do any of the following:

\* \* \* \*

(12) Except as provided therein, Vary any provision under Article 10 (commencing with Section 17710.01).

Rationale for Change: Article 10, concerning mergers and conversions, now allows the operating agreement to make certain changes. For example, Cal. Corp. Code § 17710.03(b)(1) allows the operating agreement to change the number of managers and members required to approve a plan of conversion. Subdivision (c)(12) in its present form therefore conflicts with Article 10. The change above is intended to conform with Article 10 and the provisions of Beverly Killea (see Cal. Corp. Code § 17005(c) and Paragraph 6 above), thereby eliminating the conflict.

10. Cal. Corp. Code § 17701.10(c). In addition to the matters specified in subdivisions (d)(1) through (d)(4), An operating agreement shall not do any of the following:

\* \* \* \*

(13) Vary any provision under Article 11 (commencing with Section 17711.01), Article 12 (commencing with Section 17712.01) or Article 13 (commencing with Section 17713.01).

Rationale for Change: Article 11 contains the provisions for dissenters' rights in the event of a merger, conversion, sale of substantially all of the assets of an LLC, or other reorganization transaction; Article 13 contains certain California Secretary of State requirements and penalties for non-compliance, as well as the Beverly Killea–RULLCA transition rules. The additions above are consistent with Beverly Killea and are intended to make clear that an operating agreement cannot override or change the provisions for dissenters' rights, the Secretary of State provisions, or the transition rules.

11. Cal. Corp. Code § 17701.10(c). In addition to the matters specified in subdivisions (d)(1) through (d)(4), An operating agreement shall not do any of the following:

\* \* \* \*

~~(16). Eliminate the obligation of good faith and fair dealing under subdivision (d) of Section 17704.09, but the operating agreement may prescribe the standards by which the performance of the obligation is to be measured, if the standards are not manifestly unreasonable.~~

Rationale for Change: Subdivisions (c)(5) and (c)(16) each address the extent to which an operating agreement can modify the contractual obligation of good faith and fair dealing, but are currently inconsistent with one another. The “but” clause from subdivision (c)(16) has been added to the text of subdivision (c)(5). See Paragraph 5 above. Assuming the change to subdivision (c)(5) is made, subdivision (c)(16) becomes duplicative and superfluous and should be deleted. This change will eliminate the duplication (and attendant potential confusion) with subdivision (c)(5).

12. Cal. Corp. Code § 17701.10(d). Except as provided in subdivision (c) and subdivisions (e) to (g), inclusive, the effects of the provisions of this title may be varied as among the members or as between the members and the limited liability company by the operating agreement; provided, however, that the provisions of Sections 17701.13, 17703.01, 17704.07(f) through (r), inclusive; 17704.07(u) through (w), inclusive; and 17704.08 shall only be varied by a written operating agreement. Notwithstanding the first sentence of this subdivision and in addition to the matters specified in subdivision (c), the operating agreement shall not do ~~either~~ any of the following:

(1) Vary the definitions of Section 17701.02, except as specifically provided therein.

(2) Vary any of the provisions of this Section 17701.10 or Section 17701.12, except as provided therein.

~~(3)(2)~~ Vary a member's rights under Sections ~~17703.01~~ and 17704.10.

(4) Vary any of the provisions of Sections 17704.07(s) and 17704.07(t).

Rationale for Changes:

First paragraph of Cal. Corp. Code § 17701.10(d): Cal. Corp. Code § 17704.07 is a lengthy section of RULLCA that includes provisions concerning management, meetings, voting procedures and voting rights, officers, and execution of LLC documents. The current reference to § 17704.07 in the first paragraph of § 17701.10(d) is overbroad and inconsistent with Beverly Killea (see Paragraph 4 above); further, it conflicts with § 17704.07(a), which concerns when an LLC is deemed member-managed or manager-managed and requires that an LLC will be member-managed unless the articles of organization or operating agreement provide that an LLC will be manager-managed. The addition in the first paragraph of § 17701.10(d) is intended to conform with Beverly Killea (Cal. Corp. Code § 17005), to correct the overbroad and undifferentiated reference to § 17704.07, and to clarify that (as under Beverly Killea) meeting procedures and provisions for officers in § 17704.07 can be varied by a written operating agreement.

Cal. Corp. Code § 17701.10(d)(2): This addition is intended to remove any implication that the operating agreement can change this § 17701.10 or § 17701.12, which also contains provisions concerning operating agreements as well as provisions concerning the legal effect of documents filed with the Secretary of State.

Cal. Corp. Code § 17701.10(d)(3): Cal. Corp. Code § 17703.01 generally concerns the agency authority of LLC members and managers. The first paragraph of § 17701.10(d) (consistent with Beverly Killea) allows this section to be changed by a written operating agreement. The deletion in subdivision (d)(3) removes the conflict between subdivision (d)(3) and the first paragraph of § 17701.10(d).

Cal. Corp. Code § 17701.10(d)(4): The addition of the reference to § 17704.07(s) and (t) is designed to protect members' voting rights and conforms with Beverly Killea. Beverly Killea prohibits an operating agreement from eliminating or changing the voting rights of members set forth in Cal. Corp. Code §17103(b) and (c). See Cal Corp. Code § 17005(b)(3). Sections 17704.07(s) and (t) of RULLCA are identical to § 17103(b) and (c) of Beverly Killea. The addition of the reference to § 17704.07(s) and (t) is therefore directly parallel to what was provided for in Beverly Killea.

13. Cal. Corp. Code § 17701.10(e). The fiduciary duties of a manager to ~~the a~~ manager-managed limited liability company and to the members of such limited liability company and of a member to a member-managed limited liability company and to the members of such limited liability company shall only be modified in a written operating agreement with the informed consent of the members. Assenting to the operating agreement pursuant to subdivision (b) of Section 17701.11 shall not constitute informed consent.

Rationale for Change. Cal. Corp. Code § 17701.10(e) is a carry-over from Beverly Killea. The additional language is designed to ensure that § 17701.10(e) is consistent with Cal. Corp. Code § 17704.09, which describes the scope of the fiduciary duties of managers and members in manager-managed and member-managed LLCs.

14. Cal. Corp. Code § 17701.12(c). If a record that has been delivered by a limited liability company to the Secretary of State for filing and has become effective under this title contains a provision that would be ineffective under ~~subdivision (e) of~~ Section 17701.10 if contained in the operating agreement, the provision is likewise ineffective in the record.

Rationale for Change. In addition to subdivision (c), subdivisions (d) through (g) of § 17701.10 also regulate the contents of operating agreements. The deletion above clarifies that any restrictions in § 17701.10 also apply to records under § 17701.12.

15. Cal. Corp. Code § 17701.13(d)(1). A current list of the full name and last known business or residence address of each member and of each transferee ~~holder of a transferable~~ set forth in alphabetical order, together with the contribution and the share in profits and losses of each member and transferee ~~holder of a transferable interest~~.

Rationale for Change. The term “transferee” is a defined term in RULLCA. See Cal. Corp. Code § 17701.02(ab), while the phrase “holder of a transferable interest” is not defined. The change above is made to conform this provision (which was carried over from Beverly Killea) with the RULLCA terminology.

16. Cal. Corp. Code § 17704.01(e). Sections 406 and 407 of the Labor Code shall not apply to membership interests issued by any limited liability company or foreign limited liability company to the following persons:

(1) Any employee of the limited liability company or foreign limited liability company or of any parent or subsidiary of either, pursuant to a membership interest purchase plan or agreement or membership interest option plan or agreement.

(2) In any transaction in connection with securing employment, a person who is or is about to become an officer or a manager (as appointed or elected by the members) of the limited liability company or the foreign limited liability company or of any parent or subsidiary of either.

Rationale for Change. New subdivision § 17704.01(e) is identical to the corresponding provision in Beverly Killea, Cal. Corp. Code § 17100(d). (Labor Code § 406 deals with property pledged by an employee in connection with an employment offer; Labor Code § 407 prohibits conditioning an employment offer on an investment in the business by the prospective employee.) The change carries over the Beverly Killea provision that Labor Code §§ 406 and 407 do not apply to certain described LLC membership interests.

17. Cal. Corp. Code § 17704.04(e). The profits and losses of a limited liability company shall be allocated among the members, and among classes of members, in the manner provided in the operating agreement. If the operating agreement does not otherwise provide, profits and losses shall be allocated in proportion to the value, as stated in the required records, of the contributions the limited liability company has received from each member.

Rationale for Change. New subdivision § 17704.04(e) is substantially similar to the corresponding provision in Beverly Killea, Cal. Corp. Code § 17202, and to the corresponding provision of the California Revised Uniform Limited Partnership Act of 2008, Cal. Corp. Code § 15905.035. The addition of this subdivision creates a needed default rule for the allocation of profits and losses among the LLC members.

18. Cal. Corp. Code § 17704.07(a). A limited liability company is a member-managed limited liability company unless the articles of organization contain the statement required by Section 17702.01(b)(5) and ~~the operating agreement does any of the following:~~

~~(1) Expressly provide that:~~

~~(A) The limited liability company is or will be “manager managed.”~~

~~(B) The limited liability company is or will be “managed by managers.”~~

~~(C) Management of the limited liability company is or will be “vested in managers.”~~

~~(2) Include words of similar import.~~

Rationale for Change. Cal. Corp. Code § 17702.01(b)(5) contains the requirement of the California Secretary of State that, if an LLC is to be manager-managed, the articles of organization must contain a statement to that effect. This change eliminates the conflict between § 17702.01(b)(5) and this § 17704.07(a), and removes the potential for confusion concerning how an LLC is deemed to be manager-managed.

19. Cal. Corp. Code § 17704.07(b). In a member-managed limited liability company, the following rules apply:

\* \* \* \*

(3) A difference arising among members as to a matter in the ordinary course of the activities of the limited liability company shall be decided by a majority of the members ~~of the limited liability company which the difference among the member has arisen.~~

Rationale for Change. In its present form, § 17704.07(b)(3) is unclear. The deletion above clarifies this subdivision.

20. Cal. Corp. Code § 17704.07(b). In a member-managed limited liability company, the following rules apply:

(4) Except as otherwise provided in Article 10, An act outside the ordinary course of the activities of the limited liability company may be undertaken only with the consent of all members.

Rationale for Change. Article 10 (mergers and conversions) permits transactions outside the ordinary course of the LLC’s business with majority consent of the members. This revision conforms § 17704.07(b)(4) to Article 10.

21. Cal. Corp. Code § 17704.07(c). In a manager-managed limited liability company, the following rules apply:

\* \* \* \*

(4) The consent of all members of the limited liability company is required to do any of the following:

\* \* \* \*

~~(B) Approve a merger or conversion under Article 10 (commencing with Section 17710.01).~~

~~(C)~~(B) Except as otherwise provided in Article 10, An act outside the ordinary course of the activities of the limited liability company may be undertaken only with the consent of all members.

~~(D)~~—Amend the operating agreement.

Rationale for Change. See Paragraph 9 above. Article 10, concerning mergers and conversions, now allows the operating agreement to make certain changes. For example, Cal. Corp. Code § 17710.03(b)(1) allows the operating agreement to change the number of managers and members required to approve a plan of conversion. Subdivision 17704.07(c)(4)(b) in its present form therefore conflicts with Cal. Corp. Code § 17701.10(c)(12) (see Paragraph 9 above) and with Article 10. The change above is intended to conform with § 17701.10(c)(12) (as proposed to be amended) and with Article 10, as well as with the provisions of Beverly Killea (see Cal. Corp. Code § 17005(c)), thereby eliminating the conflict.

22. Cal. Corp. Code § 17704.07(c). In a manager-managed limited liability company, the following rules apply:

\* \* \* \*

(5) \* \* \* \* A manager may be removed at any time by the consent of a majority of the members without ~~notice or cause~~, subject to the rights, if any, of the manager under any service contract with the limited liability company.

Rationale for Change. The changes above are intended to reduce the potential for litigation between a removed manager and the LLC. The “subject to” clause preserves the manager’s contract rights in the event that the manager has a service contract with the LLC. It is consistent with Cal. Corp. Code §§ 312(b) and 17704.07(v), each of which similarly preserves the contract rights of removed corporate and LLC officers. The deletion of the reference to notice is intended to eliminate any implication that a manager could be removed without being informed of the removal.

23. Cal. Corp. Code § 17704.07(t) Notwithstanding any provision to the contrary in the articles of organization or operating agreement, members shall have the right to vote on a dissolution of the limited liability company as provided in subdivision (b) of Section 17707.01, on a conversion to another business entity as provided in subdivision (b) of Section 17710.03, and on a merger of the limited liability company as provided in Section 17710.12.

Rationale for Change. The addition above will confirm that members have the right to vote on any conversion of the LLC to another business entity. Note that this technical correction should have been made to Beverly Killea when the conversion provisions (Cal. Corp. Code §§ 17540.1 *et seq.*) were added to Beverly Killea in 1999, but was not made at the time.

24. Cal. Corp. Code § 17704.08. (a) A limited liability company shall reimburse for any payment made and indemnify for any debt, obligation, or other liability incurred by a member of a member-managed limited liability company or the manager of a manager-managed limited liability company in the course of the member's or manager's activities on behalf of the limited liability company, if, in making the payment or incurring the debt, obligation, or other liability, the member or manager complied with the duties stated in Section 17704.09.

(b) Except as provided in subdivision (g) of Section 17701.10, A limited liability company may reimburse for any payment made and may indemnify for any debt, obligation, or other liability incurred by a person not identified in subsection (a), above, including without limitation, any officer, employee, or agent of the limited liability company, in the course of that person's activities on behalf of the limited liability company.

~~(b)~~(c) A limited liability company may purchase and maintain insurance on behalf of any person member or manager of the limited liability company against liability asserted against or incurred by the member or manager in that capacity or arising from that status that person even if, under subdivision (g) of Section 17701.10, the operating agreement could not eliminate or limit the person's liability to the limited liability company for the conduct giving rise to the liability.

(d)(1) Without limiting subdivision (a) of this Section, To the extent that an agent of a limited liability company has been successful on the merits in defense or settlement of any claim, issue, or matter in any proceeding in which the agent was or is a party or is threatened to be made a party by reason of the fact that the person is or was an agent of the limited liability company, if the agent acted in good faith and in a manner the agent reasonably believed to be in the best interests of the limited liability company and its members, the agent shall be indemnified against expenses actually and reasonably incurred by the agent in connection therewith.

(2) For purposes of this subdivision, the following terms have the following meanings:

(A) "Agent" means any person who is or was a member of a member-managed limited liability company, manager of a manager-managed limited liability company, employee, or other agent of the limited liability company, or is or was serving at the request of the limited liability company as a manager, director, officer, employee or agent of another foreign or domestic corporation, limited liability company or foreign limited liability company, partnership, joint venture, trust or other enterprise, or was a manager, director, officer, employee or agent of a foreign or domestic limited liability company, partnership, joint venture, trust, or other enterprise that was a predecessor of the limited liability company or of another enterprises at the request of the predecessor entity or other enterprise.

(B) “Expenses” includes without limitation the attorney’s fees and any expenses of establishing a right to indemnification under this subdivision.

(C) “Proceeding” means any threatened, pending, or completed action or proceeding, whether civil, criminal, administrative, or investigative.

Rationale for Changes: The underlined text above provides for indemnification of agents similar Cal. Corp. Code §317 for corporate agents.

Cal. Corp. Code § 17704.08(b): New Cal. Corp. Code § 17704.08(b) clarifies that an LLC may provide indemnification to additional persons beyond the mandatory indemnification of subdivision 17704.08(a). Any change to the indemnification must be reflected in a written operating agreement, as provided by Cal. Corp. Code § 17701.10(d). (See Paragraph 12 above.)

Cal. Corp. Code § 17704.08(c): The changes to subdivision 17704.08(c) clarify that the limited liability company may purchase and maintain insurance for any person for whom it has an obligation to indemnify, whether by this statute or by agreement. This aligns more closely with Beverly-Killea, Cal. Corp. Code § 17155(b).

Cal. Corp. Code § 17704.08(d)(1): Subdivision 17704.08(d)(1) clarifies the standard of conduct that an agent must adhere to in order to be entitled to indemnification under this provision, but does not limit the limited liability company’s broader indemnification obligation in subdivision (a).

Cal. Corp. Code § 17704.08(d)(2): This section includes helpful definitions, conforming with other parts of RULLCA.

25. Cal. Corp. Code § 17704.09(b). A member’s duty of loyalty to athe limited liability company and the other members is limited to the following:

(1) To account to athe limited liability company and hold as trustee for it any property, profit, or benefit derived by the member in the conduct and winding up of the activities of athe limited liability company or derived from a use by the member of a limited liability company property, including the appropriation of a limited liability company opportunity.

(2) To refrain from dealing with athe limited liability company in the conduct or winding up of the activities of athe limited liability company as or on behalf of a ~~party~~person having an interest adverse to athe limited liability company.

(3) To refrain from competing with athe limited liability company in the conduct or winding up of the activities of the limited liability company.

(4) Except as otherwise provided in Article 10, Aan act outside the ordinary course of the activities of the limited liability company may be undertaken only with the consent of all members.

Rationale for Changes: To correct incorrect usage of the article “a” in place of “the” when referring to the limited liability company of which the member is a member, and to correct incorrect usage of word “party” instead of the defined term “person.”

26. Cal. Corp. Code §17704.10. (a) Upon the request of a member or ~~transferee holder of a transferable interest~~, for purposes reasonably related to the interest of that person as a member or a holder of a transferable interest, a manager or, if the limited liability company is member-managed, a member in possession of the requested information, shall promptly deliver, in writing, to the member or ~~transferee holder of a transferable interest~~, at the expense of the limited liability company, a copy of the information required to be maintained by paragraphs (1), (2) and (4) of subdivision (d) of Section 17701.13 and any written operating agreement of the limited liability company.

(b) Each member, manager, and ~~transferee holder of a transferable interest~~ has the right, upon reasonable request, for purposes reasonably related to the interest of that person as a member, manager, or ~~transferee holder of a transferable interest~~, to each of the following:

Rationale for Change. The term “transferee” is a defined term in RULLCA. See Cal. Corp. Code § 17701.02(ab), while the phrase “holder of a transferable interest” is not defined. The change above is made to conform this provision (which was carried over from Beverly Killea) with the RULLCA terminology.

27. Cal. Corp. Code § 17705.02(a). With respect to a transfer, in whole or in part, of a transferable interest, all of the following apply:

\* \* \* \*

(3) Subject to Section 17705.04, a transfer does not entitle the transferee to do any of the following:

(A) Vote or otherwise Participate~~participate~~ in the management or conduct of the activities of a limited liability company.

(B) Except as otherwise provided in subdivision (c) and Section 17704.10, have access to records or other information concerning the activities of a limited liability company.

Rationale for Change. The change in subdivision 17705.02(a)(3)(A) above is intended to clarify that the phrase “participate in the management or conduct of the activities” of the LLC includes the right to vote. Under RULLCA, a transfer, without more, does not carry voting rights with it; the transferee is not entitled to vote until the transferee becomes a member of the LLC. The addition of the reference in subdivision 17705.02(a)(3)(B) above to § 17704.10 is intended to confirm the information rights of a transferee under § 17704.10, which is a carry-over provision from Beverly Killea.

28. Cal. Corp. Code § 17706.03(a). When a person is dissociated as a member of a limited liability company all of the following apply:

(1) The person’s right to vote or participate as a member in the management and conduct of the limited liability company’s activities terminates.

Rationale for Change: The change in subdivision 17706.03(a)(1) above is intended to clarify that the phrase “participate as a member in the management or conduct” of the LLC’s activities includes the right to vote.

29. Cal. Corp. Code § 17706.03(c). If a member dies or a guardian or general conservator is appointed for the member, the member’s executor, administrator, guardian, conservator or other legal representative may exercise all of the member’s rights for the purpose of settling the member’s estate or administering the member’s property, including any power the member had under the articles of organization or an operating agreement to give a transferee the right to become a member.

Rationale for Change: The change in subdivision § 17706.03(c) is to carry over the provisions of § 17304(a) under prior law.

30. Cal. Corp. Code § 17707.01. A limited liability company is dissolved, and its activities shall be wound up, upon the first to occur of the following:

\* \* \* \*

(c) The passage of 90 consecutive days during which the limited liability company has no members, except that, on the death of a natural person who is the sole member of a limited liability company, the status of the member, including a membership interest, may pass to ~~the one or more~~ heirs, successors and assigns of the member by will or applicable law. ~~The~~An heir, successor, or assign of the member’s interest upon death becomes a substituted member pursuant to subdivision (c)(4) of Section 17704.01, subject to administration as provided by applicable law, without the permission or consent of the other heirs, successors, or assigns, or those administering the estate of the deceased member.

Rationale for Change. The changes in subdivision § 17707.01(c) are intended to correct grammar and clarify the meaning of this subdivision and its operation in practice.

31. Cal. Corp. Code § 17707.03(c). In any suit for judicial dissolution, the other members may avoid the dissolution of the limited liability company by purchasing for cash the membership interests owned by the members so initiating the proceeding the “moving parties” at their fair market value. In fixing the value, the amount of any damages resulting if the initiation of the dissolution is a breach by any moving party or parties of an agreement with the purchasing party or parties, including, without limitation, the operating agreement, may be deducted from the amount payable to the moving party or parties; provided, that no member who sues for dissolution on the

grounds set forth in paragraph (3), (4), or (5) of subdivision ~~(a)~~(b) shall be liable for damages for breach of contract in bringing that action.

Rationale for Change. This change corrects an erroneous cross-reference in subdivision § 17707.03(c).

32. Cal. Corp. Code § 17707.09. (a) Notwithstanding the filing of a certificate of dissolution, a majority ~~in interest~~ of the members may cause to be filed, in the office of, and on a form prescribed by, the Secretary of State, a certificate of continuation, in any of the following circumstances:

Rationale for Change: The term “majority in interest” is not defined or intended to be used in RULLCA. RULLCA defines and uses the phrase “majority of the members” instead. See Cal. Corp. Code § 17701.02(m). Cal. Corp. Code § 17707.09 is one of the carry-over sections from Beverly Killea, which did use the term “majority in interest.” The change above is intended to correct the RULLCA terminology and thereby remove any possible ambiguity.

33. Cal. Corp. Code § 17708.07. (b) The failure of a foreign limited liability company to have a certificate of registration to transact intrastate business in this state does not ~~impair the validity of a contract or act of the foreign limited liability company or~~ prevent the foreign limited liability company from defending an action or proceeding in this state.

Rationale for Change. Cal. Corp. Code § 17708.07(b) derives from the NCCUSL version of RULLCA. The current provision concerning impairment of contracts conflicts with the California Revenue & Tax Code § 23304.01(b). See also Cal. Rev. & Tax Code § 23305.5. The change above will eliminate this conflict.

34. Cal. Corp. Code § 17710.03(b)(1). The plan of conversion shall be approved by all managers and a majority ~~in interest~~ of the members of each class of membership interest or if there are no managers, a majority ~~in interest~~ of the members of each class of membership of the converting limited liability company, unless a greater ~~or lesser~~ approval is required by the operating agreement of the converting limited liability company.

(2) However, if the members of the limited liability company would become personally liable for any obligations of the converted entity as a result of the conversion, the plan of conversion shall be approved by all of the ~~limited~~ members of the converting limited liability company, unless the plan of conversion provides that all members will have dissenters’ right as provided in Article 11 (commencing with Section 17711.01).

Rationale for Change: The term “majority in interest” is not defined or intended to be used in RULLCA. RULLCA defines and uses the phrase “majority of the members” instead. See Cal. Corp. Code § 17701.02(m). Cal. Corp. Code § 17710.03 is one of the carry-over sections from Beverly Killea, which did use

the term “majority in interest.” The deletion of “in interest” and addition of the phrase “the members of” in subdivision 17710.03(b)(1) above is intended to correct the RULLCA terminology and thereby remove any possible ambiguity. The deletion of “or lesser” in subdivision 17710.03(b)(1) is made for consistency with Beverly Killea (former Cal. Corp. Code § 17540.3(b)) and for consistency with the requirements for approval of mergers under RULLCA (see Cal. Corp. Code § 17710.12(a)). The change in subdivision 17710.03(b)(2) removes the word “limited,” which was included inadvertently.

35. Cal. Corp. Code § 17710.06. (b) Any certificate or statement of conversion shall be executed and acknowledged by all members of a member-managed limited liability company or all managers of a manager-managed limited liability company, unless a lesser number is provided in the articles of organization or operating agreement, and shall set forth all of the following:

(1) The name and the Secretary of State’s file number of the converting limited liability company.

(2) A statement that the principal terms of the plan of conversion were approved by a vote of the members, that equaled or exceeded the vote required under Section 17710.03, specifying each class entitled to vote and the percentage vote required of each class.

(3) The name, form and jurisdiction of organization and Secretary of State’s file number, if any, of the converted entity.

(4) The mailing address of the converted entity’s agent for service of process and the chief executive office of the converted entity.

Rationale for Change: Cal. Corp. Code § 17710.06 is one of the carry-over sections from Beverly Killea, which did require the certificate of conversion to be signed by all of the managers of a limited liability company. RULLCA changed this to require the signatures of all members. However, the appropriate rule would require the signatures of all of the managers of a manager-managed LLC and all of the members of a member-managed LLC.

36. Cal. Corp. Code §17710.12. (a) Each limited liability company and other business entity that desires to merge shall approve an agreement of merger. The agreement of merger shall be approved by all managers and a majority ~~in interest~~ of the members of each class of membership interests of each constituent limited liability company, unless a greater approval is required by the operating agreement of the constituent limited liability company.

Rationale for Change: The term “majority in interest” is not defined or intended to be used in RULLCA. RULLCA defines and uses the phrase “majority of the members” instead. See Cal. Corp. Code § 17701.02(m). Cal. Corp. Code

§ 17710.12 is one of the carry-over sections from Beverly Killea, which did use the term “majority in interest.” The change in subdivision 17710.12(a) above is intended to correct the RULLCA terminology and thereby remove any possible ambiguity.

37. Cal. Corp. Code § 17710.12. (b)(2) Unless otherwise provided in a written operating agreement, Notwithstanding notwithstanding paragraph (1), except in a merger of a limited liability company with a limited liability company that controls at least 90 percent of the membership interests entitled to vote with respect to the merger, the unredeemable membership interests of a constituent limited liability company may be converted only into unredeemable interests or securities of the surviving limited liability company or other business entity, or a parent if a constituent limited liability company or a constituent other business entity or its parent owns, directly or indirectly, prior to the merger, membership interests of another constituent limited liability company or interests or securities of a constituent other business entity representing more than 50 percent of the interests or securities entitled to vote with respect to the merger of the other constituent limited liability company or constituent other business entity or more than 50 percent of the voting power, as defined in Section 194.5, of a constituent other business entity that is a domestic corporation, unless all of the members of the class consent.

Rationale for Change: Cal. Corp. Code § 17710.12(b)(2) contains the so-called “50-90” rule concerning the approvals required for certain merger transactions. The addition above will allow limited liability company operating agreements to opt in or out of these approval requirements, just as Beverly Killea so allowed. See former Cal. Corp. Code § 17005(b). The change is therefore consistent with prior law.

38. Cal. Corp. Code § 17713.04. (a) Except as otherwise specified in this title provided in subdivision (b) and (c), this title shall apply to all domestic limited liability companies formed or existing on or after January 1, 2014, to all foreign limited liability companies registered with the Secretary of State prior to January 1, 2014, whose registrations have not been canceled as of January 1, 2014, to all foreign limited liability companies registered with the Secretary of State on or after January 1, 2014, and to all actions taken by the managers or members of a limited liability company on or after that date.

(b) This title applies only to the acts or transactions by a limited liability company existing on or before January 1, 2014 or by the members or managers of the limited liability company existing on or before January 1, 2014 occurring, or an operating agreement or other contract entered into by the limited liability company or by the members or managers of the limited liability company, on or after January 1, 2014. An amendment, including the acts necessary to and in respect to the negotiation, adoption, ratification or approval, to an operating agreement or other contract entered into by a limited liability company existing on or before January 1, 2014 or by the members or managers of a limited liability company existing on or before January 1, 2014 shall be governed by prior law unless expressly provided in such amendment or other contract.

The prior law governs all acts or transactions by a limited liability company existing on or before January 1, 2014 or by the members or managers of the limited liability company occurring, and any operating agreement or other contract entered into by the limited liability company or by the members or managers of the limited liability company, prior to ~~that date~~ January 1, 2014.

(c) ~~Except as otherwise specified in this title, Except as otherwise specified in this title, Any~~ Any vote or consent by the managers or members of a limited liability company prior to January 1, 2014 shall be governed by prior law. If a certificate or document is required to be filed in any public office of this state relating to a vote or consent by the managers or members of the limited liability company prior to January 1, 2014, it may be filed after that date pursuant to the filing requirements of this title, even though the vote or consent is governed by prior law.

(d) This title does not cancel or otherwise affect the status of, or create a new filing requirement with the Secretary of State or any other agency, board, commission, or department for, any domestic limited liability company in existence on December 31, 2013, or any foreign limited liability company registered to transact intrastate business in this state prior to January 1, 2014.

(e) For the purposes of this section, “prior law” means Title 2.5 (commencing with Section 17000) as it read on December 31, 2013.

Rationale for Changes: The Committee has received many comments and questions regarding the effect of RULLCA on the operating agreements of LLCs formed prior to January 1, 2014. In response, the Committee proposes the above changes in Cal. Corp. Code § 17713.04 in order to clarify that the term “contracts” in § 17713.04(b) includes LLC operating agreements. Thus, the operating agreements of LLCs existing prior to January 1, 2014 are governed by Beverly Killea and should not necessarily need to be amended after that date. RULLCA only applies to operating agreements, contracts, member relations, acts, and transactions occurring or entered into on or after January 1, 2014. The new second sentence in § 17713.04(b) is intended to clarify that operating agreements (and other contracts) of LLCs existing prior to January 1, 2014 remain governed by Beverly Killea even if they are amended on or after January 1, 2014—unless the agreement or contract provides otherwise. Whether the operating agreement of an existing LLC should be amended after January 1, 2014 to take advantage of RULLCA provisions is an issue for practitioners to decide in consultation with their clients on a case-by-case basis.

39. Cal. Corp. Code § 17713.12(a). A limited liability company is liable for a civil penalty in an amount not exceeding one million dollars (\$1,000,000) if the limited liability company does both of the following:

(1) Has actual knowledge that a member, officer, manager, or agent of the limited liability company does any of the following:

(A) Makes, publishes, or posts, or has made, published, or posted, either generally or privately to the members ~~shareholders~~ or other persons, either of the following:

Rationale for Change. The change above corrects an erroneous reference to “shareholders” instead of “members.”

40. Cal. Corp. Code § 17657(b). Except as provided in Section 17713.04, This ~~this~~ title shall remain in effect only until January 1, 2014, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2014, deletes or extends that date.

Rationale for Change. Cal. Corp. Code § 17657(b) is the transition rule that was added to Beverly Killea by SB 323. The additional language above is intended to conform the Beverly Killea transition rule to the RULLCA transition rule in Cal. Corp. Code § 17713.04. See Paragraph 38 above.

41. Cal. Corp. Code § 15902.01(c). Subject to subdivision (c) of Section 15902.06, a limited partnership is formed when the Secretary of State files the certificate of limited partnership and, before or after the filing of a certificate of limited partnership, the partners enter into a partnership agreement.

Rationale for Change. Subdivisions (a) and (c) of the Section 15902.01 are inconsistent. Subdivision (a) requires a filed certificate of limited partnership and a limited partnership agreement whereas subdivision (c) only requires a filed certificate. The Committee believes that a partnership requires some agreement between the partners.

## **II. Application**

If enacted in 2015, the proposed amendments to RULLCA and RULPA would become effective as of January 1, 2016.

## **III. Pending Litigation**

None to the knowledge of the Committee.

## **IV. Likely Support and Opposition**

The Committee anticipates that the proposed revisions would receive the strong support of California limited liability companies, venture capital investors, family owned businesses, and LLC law practitioners. The Committee’s amendments continue RULLCA’s existing investor protections and indeed enhance those protections by eliminating conflicts in the statute that could potentially detract from those protections. The Committee is not currently aware of any opposition to the proposed amendments.

## V. Fiscal Impact

No negative fiscal impact is expected. There may be a positive fiscal impact if more limited liability companies organize in California or remain organized in California as a result of the proposed amendments.

## VI. Germaneness

The subject matter of the proposed revisions to RULLCA is one in which the members of the Business Law Section (and, in particular, the members of the PLLC Committee) have special expertise, because they routinely form limited liability companies and prepare and negotiate the terms of LLC articles of organization and operating agreements. The subject matter requires the special knowledge, training, experience, and technical expertise of the Committee. The Committee believes that these proposed amendments are in the best interests of California business enterprises that wish to do business in the LLC form, their investors, and the California attorneys and judges who are charged with interpreting and administering RULLCA. The proposed amendments are designed to promote clarity and consistency in the law.

## VII. Disclaimer

This position is only that of the Partnerships and Limited Liability Companies Committee of the Business Law Section of the State Bar of California. This position has not been adopted by the State Bar's Board of Trustees or overall membership, and is not to be construed as representing the position of the State Bar of California.

Membership in the Partnerships and Limited Liability Companies Committee and in the Business Law Section is voluntary and funding for their activities, including all legislative activities, is obtained entirely from voluntary sources.

### Text of Proposal

The text of RULLCA would be revised as set forth below (added text is indicated in underscore and deleted text is indicated by ~~strikethrough~~).

1. Cal. Corp. Code § 17701.02(i)(1)(C). Other means of electronic communication to which both of the following apply:

(i) The communication is delivered to a recipient who has provided an unrevoked consent to the use of those means of transmission.

(ii) The communication creates a record that is capable of retention, retrieval and review; and that may thereafter be rendered in a clearly legible tangible form. ~~However, an electronic transmission by a limited liability company to an individual member is not authorize unless, in addition to satisfying the requirements of this section, the transmission satisfies requirements applicable to consumer consent to electronic~~

~~records set forth the federal electronic signature in Global and National Government Act (15 U.S.C. Sec. 7001(e)(i)).~~

2. Cal. Corp. Code § 17701.02(k). “Limited liability company,” except in the phrase “foreign limited liability company,” means an entity formed under this title or ~~an~~ a domestic entity that becomes subject to this title pursuant to Article 13 (commencing with Section 17713.01).

3. Cal. Corp. Code § 17701.02(v). “Person,” means an individual, partnership, limited partnership, trust, a trustee of a trust (including a trust under Probate Code Section 15000 et seq.), estate, association, corporation, professional corporation, professional association, non-profit corporation, business trust or statutory business trust.

4. Cal. Corp. Code § 17701.10(c). In addition to the matters specified in subdivisions (d)(1) through (d)(4), ~~An~~ an operating agreement shall not do any of the following:

\* \* \* \*

(4) Subject to subdivisions (c)(14), (c)(15), and (d) to (g), inclusive, eliminate the duty of loyalty, the duty of care, or any other fiduciary duty.

5. Cal. Corp. Code § 17701.10(c). In addition to the matters specified in subdivisions (d)(1) through (d)(4), ~~An~~ an operating agreement shall not do any of the following:

\* \* \* \*

(5) Subject to subdivisions (d) to (g), inclusive, eliminate the contractual obligation of good faith and fair dealing under subdivision (d) of Section 17704.09, but the operating agreement may prescribe the standards by which the performance of the obligation is to be measured, if the standards are not manifestly unreasonable as determined at the time the standards are prescribed.

6. Cal. Corp. Code § 17701.10(c). In addition to the matters specified in subdivisions (d)(1) through (d)(4), ~~An~~ an operating agreement shall not do any of the following:

\* \* \* \*

(6) ~~Unreasonably restrict the duties and rights stated in Section 17704.10~~ Vary the requirements of Section 17701.13 through 17701.16, inclusive, or any provision under Article 8 (commencing with Section 17708.01).

7. Cal. Corp. Code § 17701.10(c). In addition to the matters specified in subdivisions (d)(1) through (d)(4), ~~An~~ an operating agreement shall not do any of the following:

\* \* \* \*

(8) Except as provided stated therein~~herein~~, vary the requirements of Article 2 (commencing with Section 17702.01) or Article 7 (commencing with Section 17707.01) Sections 17707.04 to 17707.08 inclusive.

8. Cal. Corp. Code § 17701.10(c). In addition to the matters specified in subdivisions (d)(1) through (d)(4), Anan operating agreement shall not do any of the following:

\* \* \* \*

(10) Restrict the right of a member that will have personal liability with respect to a surviving or converted organization to approve a merger or conversion under Article 10 approve a merger, conversion, or domestication under Section 17710.14 to a member that will have personal liability with respect to a surviving, converted, or domesticated organization.

9. Cal. Corp. Code § 17701.10(c). In addition to the matters specified in subdivisions (d)(1) through (d)(4), Anan operating agreement shall not do any of the following:

\* \* \* \*

(12) Except as provided therein, Varyvary any provision under Article 10 (commencing with Section 17710.01).

10. Cal. Corp. Code § 17701.10(c). In addition to the matters specified in subdivisions (d)(1) through (d)(4), Anan operating agreement shall not do any of the following:

\* \* \* \*

(13) Vary any provision under Article 11 (commencing with Section 17711.01), Article 12 (commencing with Section 17712.01) or Article 13 (commencing with Section 17713.01).

11. Cal. Corp. Code § 17701.10(c). In addition to the matters specified in subdivisions (d)(1) through (d)(4), Anan operating agreement shall not do any of the following:

\* \* \* \*

~~(16). Eliminate the obligation of good faith and fair dealing under subdivision (d) of Section 17704.09, but the operating agreement may prescribe the standards by which the performance of the obligation is to be measured, if the standards are not manifestly unreasonable.~~

12. Cal. Corp. Code § 17701.10(d). Except as provided in subdivision (c) and subdivisions (e) to (g), inclusive, the effects of the provisions of this title may be varied as among the members or as between the members and the limited liability company by the operating agreement; provided, however, that the provisions of Sections 17701.13, 17703.01, 17704.07(f) through (r), inclusive; 17704.07(u) through (w), inclusive; and 17704.08 shall only be varied by a written operating agreement. Notwithstanding the first sentence of this subdivision and in addition to the matters specified in subdivision (c), the operating agreement shall not do ~~either~~any of the following:

(1) Vary the definitions of Section 17701.02, except as specifically provided therein.

(2) Vary any of the provisions of this Section 17701.10 or Section 17701.12 except as provided therein.

~~(3)(2)~~ Vary a member's rights under Sections 17703.01 and 17704.10.

(4) Vary any of the provisions of Sections 17704.07(s) and 17704.07(t).

13. Cal. Corp. Code § 17701.10(e). The fiduciary duties of a manager to ~~the a~~ manager-managed limited liability company and to the members of ~~the~~ such limited liability company and of a member to a member-managed limited liability company and to the members of such limited liability company shall only be modified in a written operating agreement with the informed consent of the members. Assenting to the operating agreement pursuant to subdivision (b) of Section 17701.11 shall not constitute informed consent.

14. Cal. Corp. Code § 17701.12(c). If a record that has been delivered by a limited liability company to the Secretary of State for filing and has become effective under this title contains a provision that would be ineffective under ~~subdivision (e) of~~ Section 17701.10 if contained in the operating agreement, the provision is likewise ineffective in the record.

15. Cal. Corp. Code § 17701.13(d)(1). A current list of the full name and last known business or residence address of each member and of each transferee ~~holder of a transferable interest of the limited liability company~~ set forth in alphabetical order, together with the contribution and the share in profits and losses of each member and transferee. ~~holder of a transferable interest.~~

16. Cal. Corp. Code § 17704.01(e). Sections 406 and 407 of the Labor Code shall not apply to membership interests issued by any limited liability company or foreign limited liability company to the following persons:

(1) Any employee of the limited liability company or foreign limited liability company or of any parent or subsidiary thereof, pursuant to a membership interest purchase plan or agreement or membership interest option plan or agreement.

(2) In any transaction in connection with securing employment, a person, who is or is about to become an officer or a manager (as appointed or elected by the members) of the limited liability company or the foreign limited liability company or of any parent or subsidiary of either.

17. Cal. Corp. Code § 17704.04(e). The profits and losses of a limited liability company shall be allocated among the members, and among classes of members, in the manner provided in the operating agreement. If the operating agreement does not otherwise provide, profits and losses shall be allocated in proportion to the value, as

stated in the required records, of the contributions the limited liability company has received from each member.

18. Cal. Corp. Code § 17704.07(a). A limited liability company is a member-managed limited liability company unless the articles of organization contain the statement required by Section 17702.01(b)(5) ~~and the operating agreement does either any of the following:~~

~~(1) Expressly provide that:~~

~~(A) The limited liability company is or will be “manager-managed.”~~

~~(B) The limited liability company is or will be “managed by managers.”~~

~~(C) Management of the limited liability company is or will be “vested in managers.”~~

~~(2) Include words of similar import.~~

19. Cal. Corp. Code § 17704.07(b). In a member-managed limited liability company, the following rules apply:

\* \* \* \*

(3) A difference arising among members as to a matter in the ordinary course of the activities of the limited liability company shall be decided by a majority of the members ~~of the limited liability company which the difference among the member has arisen.~~

20. Cal. Corp. Code § 17704.07(b). In a member-managed limited liability company, the following rules apply:

(4) Except as otherwise provided in Article 10, An act outside the ordinary course of the activities of the limited liability company may be undertaken only with the consent of all members.

21. Cal. Corp. Code § 17704.07(c). In a manager-managed limited liability company, the following rules apply:

\* \* \* \*

(4) The consent of all members of the limited liability company is required to do any of the following:

\* \* \* \*

~~(B) Approve a merger or conversion under Article 10 (commencing with Section 17710.01).~~

~~(C)~~(B) Except as otherwise provided in Article 10, An act outside the ordinary course of the activities of the limited liability company may be undertaken only with the consent of all members.

~~(D)~~ Amend the operating agreement.

22. Cal. Corp. Code § 17704.07(c). In a manager-managed limited liability company, the following rules apply:

\* \* \* \*

(5) \* \* \* \* A manager may be removed at any time by the consent of a majority of the members without ~~notice or cause~~, subject to the rights, if any, of the manager under any service contract with the limited liability company.

23. Cal. Corp. Code § 17704.07(t) Notwithstanding any provision to the contrary in the articles of organization or operating agreement, members shall have the right to vote on a dissolution of the limited liability company as provided in subdivision (b) of Section 17707.01, on a conversion to another business entity as provided in subdivision (b) of Section 17710.03, and on a merger of the limited liability company as provided in Section 17710.12.

24. Cal. Corp. Code § 17704.08. (a) A limited liability company shall reimburse for any payment made and indemnify for any debt, obligation, or other liability incurred by a member of a member-managed limited liability company or the manager of a manager-managed limited liability company in the course of the member's or manager's activities on behalf of the limited liability company, if, in making the payment or incurring the debt, obligation, or other liability, the member or manager complied with the duties stated in Section 17704.09.

(b) Except as provided in subdivision (g) of Section 17701.10, A limited liability company may reimburse for any payment made and may indemnify for any debt, obligation, or other liability incurred by a person not identified in subsection (a), above, including without limitation, any officer, employee, or agent of the limited liability company, in the course of that person's activities on behalf of the limited liability company.

~~(b)~~(c) A limited liability company may purchase and maintain insurance on behalf of any person member or manager of the limited liability company against liability asserted against or incurred by ~~the member or manager in that capacity or arising from that status~~ that person even if, under subdivision (g) of Section 17701.10, the operating agreement could not eliminate or limit the person's liability to the limited liability company for the conduct giving rise to the liability.

(d)(1) Without limiting subdivision (a) of this Section, To the extent that an agent of a limited liability company has been successful on the merits in defense or settlement of any claim, issue, or matter in any proceeding in which the agent was or is a party or is threatened to be made a party by reason of the fact that the person is or was an

agent of the limited liability company, if the agent acted in good faith and in a manner the agent reasonably believed to be in the best interests of the limited liability company and its members, the agent shall be indemnified against expenses actually and reasonably incurred by the agent in connection therewith.

(2) For purposes of this subdivision, the following terms have the following meanings:

(A) “Agent” means any person who is or was a member of a member-managed limited liability company, manager of a manager-managed limited liability company, employee, or other agent of the limited liability company, or is or was serving at the request of the limited liability company as a manager, director, officer, employee or agent of another foreign or domestic corporation, limited liability company or foreign limited liability company, partnership, joint venture, trust or other enterprise, or was a manager, director, officer, employee or agent of a foreign or domestic limited liability company, partnership, joint venture, trust, or other enterprise that was a predecessor of the limited liability company or of another enterprises at the request of the predecessor entity or other enterprise.

(B) “Expenses” includes without limitation the attorney’s fees and any expenses of establishing a right to indemnification under this subdivision.

(C) “Proceeding” means any threatened, pending, or completed action or proceeding, whether civil, criminal, administrative, or investigative.

25. Cal. Corp. Code § 17704.09(b). A member’s duty of loyalty to ~~at~~the limited liability company and the other members is limited to the following:

(1) To account to ~~at~~the limited liability company and hold as trustee for it any property, profit, or benefit derived by the member in the conduct and winding up of the activities of ~~at~~the limited liability company or derived from a use by the member of a limited liability company property, including the appropriation of a limited liability company opportunity.

(2) To refrain from dealing with ~~at~~the limited liability company in the conduct or winding up of the activities of ~~at~~the limited liability company as or on behalf of a ~~party~~person having an interest adverse to ~~at~~the limited liability company.

(3) To refrain from competing with ~~at~~the limited liability company in the conduct or winding up of the activities of the limited liability company.

26. Cal. Corp. Code §17704.10. (a) Upon the request of a member or ~~transferee~~holder of a transferable interest, for purposes reasonably related to the interest of that person as a member or a holder of a transferable interest, a manager or, if the limited liability company is member-managed, a member in possession of the requested information, shall promptly deliver, in writing, to the member or ~~transferee~~holder of a

~~transferable interest~~, at the expense of the limited liability company, a copy of the information required to be maintained by paragraphs (1), (2) and (4) of subdivision (d) of Section 17701.13 and any written operating agreement of the limited liability company.

(b) Each member, manager, and ~~transferee holder of a transferable interest~~ has the right, upon reasonable request, for purposes reasonably related to the interest of that person as a member, manager, or ~~transferee holder of a transferable interest~~, to each of the following:

27. Cal. Corp. Code § 17705.02(a). With respect to a transfer, in whole or in part, of a transferable interest, all of the following apply:

\* \* \* \*

(3) Subject to Section 17705.04, a transfer does not entitle the transferee to do any of the following:

(A) Vote or otherwise Participate~~participate~~ in the management or conduct of the activities of a limited liability company.

(B) Except as otherwise provided in subdivision (c) and Section 17704.10, have access to records or other information concerning the activities of a limited liability company.

28. Cal. Corp. Code § 17706.03(a). When a person is dissociated as a member of a limited liability company all of the following apply:

(1) The person's right to vote or participate as a member in the management and conduct of the limited liability company's activities terminates.

29. Cal. Corp. Code § 17706.03(c). If a member dies or a guardian or general conservator is appointed for the member, the member's executor, administrator, guardian, conservator or other legal representative may exercise all of the member's rights to the purpose of settling the member's estate or administering the member's property, including any power the member had under the articles of organization or an operating agreement to give a transferee the right to become a member.

30. Cal. Corp. Code § 17707.01. A limited liability company is dissolved, and its activities shall be wound up, upon the ~~happening of the~~ first to occur of the following:

\* \* \* \*

(c) The passage of 90 consecutive days during which the limited liability company, has no members except that, on the death of a natural person who is the sole member of a limited liability company, the status of the member, including a membership interest, may pass to ~~the one or more~~ heirs, successors and assigns of the member by will or applicable law. ~~The~~An heir, successor, or assign of the member's interest upon death becomes a substituted member pursuant to subdivision (c)(4) of Section 17704.01, subject to administration as provided by applicable law, without the permission or

consent of the other heirs, successors, or assigns, or those administering the estate of the deceased member.

31. Cal. Corp. Code § 17707.03(c). In any suit for judicial dissolution, the other members may avoid the dissolution of the limited liability company by purchasing for cash the membership interests owned by the members so initiating the proceeding the “moving parties” at their fair market value. In fixing the value, the amount of any damages resulting if the initiation of the dissolution is a breach by any moving party or parties of an agreement with the purchasing party or parties, including, without limitation, the operating agreement, may be deducted from the amount payable to the moving party or parties; provided, that no member who sues for dissolution on the grounds set forth in paragraph (3), (4), or (5) of subdivision ~~(a)~~(b) shall be liable for damages for breach of contract in bringing that action.

32. Cal. Corp. Code § 17707.09. (a) Notwithstanding the filing of a certificate of dissolution, a majority ~~in interest~~ of the members may cause to be filed, in the office of, and on a form prescribed by, the Secretary of State, a certificate of continuation, in any of the following circumstances:

33. Cal. Corp. Code § 17708.07. (b) The failure of a foreign limited liability company to have a certificate of registration to transact intrastate business in this state does not ~~impair the validity of a contract or act of the foreign limited liability company or~~ prevent the foreign limited liability company from defending an action or proceeding in this state.

34. Cal. Corp. Code § 17710.03(b)(1). The plan of conversion shall be approved by all managers and a majority ~~in interest~~ of the members of each class of membership interest or if there are no managers, a majority ~~in interest~~ of the members of each class of membership of the converting limited liability company, unless a greater ~~or lesser~~ approval is required by the operating agreement of the converting limited liability company.

(2) However, if the members of the limited liability company would become personally liable for any obligations of the converted entity as a result of the conversion, the plan of conversion shall be approved by all of the ~~limited~~ members of the converting limited liability company, unless the plan of conversion provides that all members will have dissenters’ right as provided in Article 11 (commencing with Section 17711.01)

35. Cal. Corp. Code § 17710.06. (b) Any certificate or statement of conversion shall be executed and acknowledged by all members of a member-managed limited liability company or all managers of a manager-managed limited liability company, unless a lesser number is provided in the articles of organization or operating agreement, and shall set forth all of the following:

(1) The name ~~of the converting limited liability company~~ and the Secretary of State’s file number of the converting limited liability company.

(2) A statement that the principal terms of the plan of conversion were approved by a vote of the members, that equaled or exceeded the vote required under Section 17710.03, specifying each class entitled to vote and the percentage vote required of each class.

(3) The name, form and jurisdiction of organization and Secretary of State's file number, if any, of the converted entity.

(4) The mailing address of the converted entity's agent for service of process and the chief executive office of the converted entity.

36. Cal. Corp. Code §17710.12. (a) Each limited liability company and other business entity that desires to merge shall approve an agreement of merger. The agreement of merger shall be approved by all managers and a majority ~~in interest~~ of the members of each class of membership interests of each constituent limited liability company, unless a greater approval is required by the operating agreement of the constituent limited liability company.

37. Cal. Corp. Code § 17710.12. (b)(2) Unless otherwise provided in a written operating agreement, Notwithstanding notwithstanding paragraph (1), except in a merger of a limited liability company with a limited liability company that controls at least 90 percent of the membership interests entitled to vote with respect to the merger, the unredeemable membership interests of a constituent limited liability company may be converted only into unredeemable interests or securities of the surviving limited liability company or other business entity, or a parent if a constituent limited liability company or a constituent other business entity or its parent owns, directly or indirectly, prior to the merger, membership interests of another constituent limited liability company or interests or securities of a constituent other business entity representing more than 50 percent of the interests or securities entitled to vote with respect to the merger of the other constituent limited liability company or constituent other business entity or more than 50 percent of the voting power, as defined in Section 194.5, of a constituent other business entity that is a domestic corporation, unless all of the members of the class consent.

38. Cal. Corp. Code § 17713.04. (a) Except as otherwise ~~specified in this title provided in subdivision (b) and (c)~~, this title shall apply to all domestic limited liability companies formed or existing on or after January 1, 2014, to all foreign limited liability companies registered with the Secretary of State prior to January 1, 2014, whose registrations have not been canceled as of January 1, 2014, to all foreign limited liability companies registered with the Secretary of State on or after January 1, 2014, and to all actions taken by the managers or members of a limited liability company on or after that date.

(b) This title applies only to the acts or transactions by a limited liability company existing on or before January 1, 2014 or by the members or managers of the limited liability company existing on or before January 1, 2014 occurring, or an operating

agreement or other contract entered into by the limited liability company or by the members or managers of the limited liability company, on or after January 1, 2014. An amendment, including the acts necessary to and in respect to the negotiation, adoption, ratification or approval, to an operating agreement or other contract entered into by a limited liability company existing on or before January 1, 2014 or by the members or managers of a limited liability company existing on or before January 1, 2014 shall be governed by prior law unless expressly provided in such amendment or other contract. The prior law governs all acts or transactions by a limited liability company existing on or before January 1, 2014 or by the members or managers of the limited liability company occurring, and any operating agreement or other contract entered into by the limited liability company or by the members or managers of the limited liability company, prior to that date January 1, 2014.

(c) ~~Except as otherwise specified in this title, Except as otherwise specified in this title, A~~Any vote or consent by the managers or members of a limited liability company prior to January 1, 2014, shall be governed by prior law. If a certificate or document is required to be filed in any public office of this state relating to a vote or consent by the managers or members of the limited liability company prior to January 1, 2014, it may be filed after that date pursuant to the filing requirements of this title, even though the vote or consent is governed by prior law.

(d) This title does not cancel or otherwise affect the status of, or create a new filing requirement with the Secretary of State or any other agency, board, commission, or department for, any domestic limited liability company in existence on December 31, 2013, or any foreign limited liability company registered to transact intrastate business in this state prior to January 1, 2014.

(e) For the purposes of this section, “prior law” means Title 2.5 (commencing with Section 17000) as it read on December 31, 2013.

39. Cal. Corp. Code § 17713.12(a). A limited liability company is liable for a civil penalty in an amount not exceeding one million dollars (\$1,000,000) if the limited liability company does both of the following:

(1) Has actual knowledge that a member, officer, manager, or agent of the limited liability company does any of the following:

(A) Makes, publishes, or posts, or has made, published, or posted, either generally or privately to the members ~~shareholders~~ or other persons, either of the following:

40. Cal. Corp. Code § 17657(b). Except as provided in Section 17713.04, Thisthis title shall remain in effect only until January 1, 2014, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2014, deletes or extends that date.

41. Cal. Corp. Code § 15902.01(c). Subject to subdivision (c) of Section 15902.06, a limited partnership is formed when the Secretary of State filed the certificate of limited partnership and, either before or after the filing of a certificate of limited partnership, the partners enter into a partnership agreement.