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Series LLC: What is it?

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A series limited liability company, commonly known as a series LLC, is a special form of a limited liability company that provides liability protection across multiple "series" or "cells" each of which is protected from liabilities arising from the other series if certain requirements of state law are followed. In overall structure, the series LLC is comparable to a corporation with several subsidiaries. Although each cell of a series LLC can own distinct assets, incur separate liabilities, and have different managers and members, a series LLC usually pays one filing fee to be formed under state law, thereby decreasing costs.

Delaware was the first state to introduce the series LLC but a few other states have followed suit. Currently, Delaware, Iowa, Oklahoma, Nevada, Illinois, Tennessee, Utah, Wisconsin and Texas enacted some form of Series LLC legislation.

One of the primary benefits of a series LLC is that it permits the operation of multiple separate business activities within a single legal entity. A series LLC also permits the reduction of administrative burdens and costs compared to the alternative of forming multiple companies. In Delaware, for example, the fees required to form a series LLC and the annual tax payable by a series LLC are the same as those imposed on a non-series LLC.

Series LLCs do have some drawbacks. Since they are relatively "new", there is a lack of case law on interstate recognition. For example, how will a series LLC formed in Delaware will be treated in a non-series LLC state such as Pennsylvania. In addition, there is uncertainty in the tax treatment of a series LLC and utilizing a series LLC in a secured transaction. Due to each "series" having separate assets and liabilities, it may be unclear whether the debtor is the individual series or the series LLC.

Despite being relatively unproven, series LLCs have frequently been used by investment funds since, under applicable securities laws, a series LLC may be the sole registrant but may register interests in all the series of the series LLC. This can dramatically reduce the costs and burdens of filing multiple registration statements. In addition, series LLCs could be considered an ideal entity under any of the following scenarios:

• Holding multiple parcels of real property in liability-segregated cells.

• Facilitating an equity compensation program in a business with multiple divisions. With each division segregated into a separate series, the series LLC can give the key employees of each series some sort of equity interest tied to that series only rather than equity interests in the entity as a whole. Such structure rewards employees in productive divisions and protects them from the potential downside of other divisions.

• Facilitating a business combination. For example, rather than undertaking a traditional merger, two companies wishing to join forces might form a series LLC, with each company contributing its assets to a separate series, or with the owners of each company contributing their ownership interests to a separate series. Even though series LLC's are a "new" player to the entity selection game, they may be advantageous in certain circumstances. Accordingly, you should consult an experienced advisor before deciding to utilize a series LLC.

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