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CORPORATIONS, PARTNERSHIPS, AND ASSOCIATIONS

Partnerships: Designate Qualification Requirements, Laws Governing, and Regulation Concerns for Foreign Limited Liability Partnerships

CODE SECTIONS: O.C.G.A. §§ 14-8-2 (amended), -44 to -61 (new)
BILL NUMBER: HB 1813
ACT NUMBER: 1221
SUMMARY: The Act provides guidelines for foreign limited liability partnerships transacting business in Georgia. The Act mandates certification with the Secretary of State as a means for providing service of process on foreign limited liability partnerships. Once a certificate is issued, a foreign limited liability partnership is authorized to transact business in Georgia. In addition, the Act requires appointment of a registered agent who may accept service of process on behalf of the foreign limited liability partnership. The Act also provides a list of activities which do not constitute transacting business in Georgia; however, the list is not intended to be exhaustive. Any foreign limited liability partnership that is not authorized to transact business in Georgia is also prohibited from maintaining any action, suit, or proceeding in a Georgia court.

EFFECTIVE DATE: July 1, 1994

History

Many states have recently begun to recognize limited liability companies (LLC) as a form of business entity.¹ In 1993, the Georgia General Assembly passed the Limited Liability Company Act to provide for the formation of LLCs in Georgia.² The appeal of such organizations is that they combine the attributes of partnership tax treatment with corporate liability protection.³ The General Assembly first regulated

1. See Robert P. Bryant, *Georgia's New Limited Liability Company Act*, GA. ST. B.J., Winter 1993, at 62.

2. 1993 Ga. Laws 123 (codified at O.C.G.A. §§ 14-11-100 to -1109 (Supp. 1993); see *Legislative Review*, 10 GA. ST. U. L. REV. 79 (1993).

3. Bryant, *supra* note 1, at 62. For a discussion on the tax implications of LLCs

LLCs in 1992 with the passage of the Foreign Limited Liability Company Act⁴ which states that the "laws of the jurisdiction under which a foreign limited liability company is organized govern its organization and internal affairs and the liability of its managers, members, and other owners, regardless of whether the foreign limited liability company procured or should have procured a certificate of authority under this chapter."⁵

HB 1813

The 1994 Act provides a means for obtaining service of process on foreign limited liability partnerships (LLP) transacting business in Georgia.⁶ The Act amends the Uniform Partnership Act (UPA)⁷ by requiring qualification of a foreign LLP which transacts business in Georgia.⁸ The Act defines a foreign LLP as "a limited liability partnership formed under the laws of a jurisdiction other than [Georgia]."⁹ The Act updates the UPA by defining an LLP as a "person" within the meaning of the UPA.¹⁰

The Act further amends the UPA by adding Code sections 14-8-44 to -61, requiring foreign LLCs to qualify to transact business in Georgia.¹¹ However, Code section 14-8-44(a) recognizes that a foreign LLP's organizational and internal affairs are governed by the laws of the jurisdiction under which it was organized.¹² Further, a difference between the laws of the jurisdiction of organization and the laws of Georgia cannot form the basis for denial of a certificate of authorization.¹³

The Act requires a foreign LLP which transacts business in Georgia to obtain a certificate of authority from the Secretary of State.¹⁴ A

see Patrick G. Jones, *Tax Aspects of Limited Liability Companies*, GA. ST. B.J., Winter 1993, at 66.

4. 1992 Ga. Laws 1865. Although the 1992 Act was not officially entitled the Foreign Limited Liability Company Act, the title was coined by commentators on the Act. Bryant, *supra* note 1, at 62.

5. 1992 Ga. Laws 1865 (formerly found at O.C.G.A. § 14-11-2(a) (Supp. 1993)), repealed by 1993 Ga. Laws 123. The current version of this provision is codified at O.C.G.A. § 14-11-701(a) (1994).

6. Telephone Interview with Rep. Roy Barnes, House District No. 33 (Apr. 4, 1994) [hereinafter Barnes Interview]. The Act was drafted and sponsored by Rep. Barnes. *Id.*; see O.C.G.A. § 14-8-46 (1994).

7. O.C.G.A. §§ 14-8-1 to -61 (1994).

8. *Id.* § 14-8-45 (1994).

9. *Id.* § 14-8-2(5) (1994).

10. *Id.* § 14-8-2(7) (1994).

11. *Id.* §§ 14-8-44 to -61 (1994).

12. *Id.* § 14-8-44(a) (1994).

13. *Id.* § 14-8-44(b) (1994).

14. *Id.* § 14-8-45(a) (1994).

signed application which includes the name of the LLP,¹⁵ jurisdiction of organization,¹⁶ date of organization,¹⁷ and pertinent addresses¹⁸ must be submitted to the Secretary of State.¹⁹ More importantly, the signed application must include a statement that the Secretary of State is appointed the agent for service of process unless an agent is appointed under subsection (a) of Code section 14-8-46.²⁰ The application further requires a statement that the foreign LLP maintains either capital accounts or liability insurance of at least one million dollars.²¹

This Act includes an illustrative list of activities which do not constitute transacting business in Georgia.²² Foreign LLPs may perform the following activities: 1) maintain or defend any judicial or quasi-judicial actions; 2) hold meetings; 3) maintain financial accounts; 4) maintain offices for the transfers of partnership interests; 5) use independent contractors for sales; 6) solicit orders when the acceptance is required outside of the state and these contracts do not involve local performance other than delivery and installation; 7) make loans; 8) collect or secure debts or enforce rights in property; 9) effect interstate transactions; 10) own or control another entity organized or transacting business in Georgia; 11) conduct an isolated transaction; and 12) serve as a trustee, executor, administrator, guardian, or in a fiduciary capacity.²³

The Act requires appointment of a registered agent who can accept service of process on behalf of the foreign LLP.²⁴ The Act provides for the regulation of these agents and establishes provisions for resignation, change of address, and the appointment of a successor.²⁵ Code section 14-8-46 further mandates that if a foreign LLP fails to provide a registered agent, service of process may be made directly upon the Secretary of State.²⁶ However, the Act also provides that Code section 14-8-46 does not set forth the only means of serving process, notice, or demand.²⁷ For the purposes of determining venue, the residence of each foreign LLP is determined in accordance with Code section 14-2-510 as though the foreign LLP is a foreign corporation.²⁸

15. *Id.* § 14-8-45(a)(1) (1994).

16. *Id.* § 14-8-45(a)(2) (1994).

17. *Id.* § 14-8-45(a)(3) (1994).

18. *Id.* § 14-8-45(a)(4), (6)-(8) (1994).

19. *Id.* § 14-8-45(a) (1994).

20. *Id.* § 14-8-45(a)(5) (1994); *see infra* text accompanying notes 24-28.

21. O.C.G.A. § 14-8-45(a)(9) (1994).

22. *Id.* § 14-8-45(c) (1994).

23. *Id.* § 14-8-45(b)(1)-(12) (1994).

24. *Id.* § 14-8-46(a) (1994).

25. *Id.* § 14-8-46(c)-(g) (1994).

26. *Id.* § 14-8-46(i) (1994).

27. *Id.* § 14-8-46(k) (1994).

28. *Id.* § 14-8-46(l) (1994); *see id.* § 14-2-510 (1994) (relating to residence for foreign

The Act provides that if a certificate is issued, "a foreign [LLP] shall be deemed authorized to transact business in [Georgia] from the time of filing its application for the certificate of authority."²⁹ The Act precludes a foreign LLP authorized to transact business in Georgia from withdrawing from the state until a certificate of withdrawal is obtained from the Secretary of State.³⁰ Further, even after withdrawal is effective, service of process on the Secretary of State still constitutes valid service upon the foreign LLP.³¹ The Act includes provisions for revocation of a certificate of authority under certain conditions.³²

Code section 14-8-54 prohibits a foreign LLP that is not authorized to transact business in Georgia from maintaining any action, suit, or proceeding in a Georgia court.³³ The Act recognizes that this does not prevent a foreign LLP from defending an action.³⁴ Further, the Attorney General is authorized to maintain an action against the foreign LLP to restrain the LLP from transacting business in violation of the Act.³⁵ The aforementioned provisions are especially important to protect Georgia citizens by providing a means for service of process on the increasingly popular foreign LLPs.³⁶

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corporations for venue purposes).

29. *Id.* § 14-8-47(c) (1994).

30. *Id.* § 14-8-50(a) (1994).

31. *Id.* § 14-8-50(c) (1994).

32. *Id.* § 14-8-51(1)-(6) (1994).

33. *Id.* § 14-8-54(a) (1994).

34. *Id.* § 14-8-54(b) (1994).

35. *Id.* § 14-8-55 (1994).

36. Barnes Interview, *supra* note 6.