Chapter 33: Limited Partnerships and Limited Liability Companies

LIMITED PARTNERSHIP

Definition of a Limited Partnership a partnership formed by two or more persons under the laws of a state and having one or more general partners and one or more limited partners

Formation a limited partnership can be formed only by substantial compliance with a state limited partnership statute

- Filing of Certificate two or more persons must file a signed certificate of limited partnership
- Name inclusion of a limited partner’s surname in the partnership name in most instances will result in the loss of the limited partner’s limited liability
- Contributions may be cash; property; services; or a promise to contribute cash, property, or services
- Defective Formation if no certificate is filed or if the one filed does not substantially meet the statutory requirements, the formation is defective and the limited liability of the limited partners is jeopardized
- Foreign Limited Partnerships a limited partnership is considered “foreign” in any state other than that in which it was formed

Rights a general partner in a limited partnership has all the rights and powers of a partner in a general partnership

- Control the general partners have almost exclusive control and management of the limited partnership; a limited partner who participates in the control of the limited partnership may lose limited liability
- Choice of Associates no person may be added as a general partner or a limited partner without the consent of all partners
- Withdrawal a general partner may withdraw from a limited partnership at any time by giving written notice to the other partners; a limited partner may withdraw as provided in the limited partnership certificate
- Assignment of Partnership Interest unless otherwise provided in the partnership agreement, a partner may assign his partnership interest; an assignee may become a limited partner if all other partners consent
- Profit and Loss Sharing profits and losses are allocated among the partners as provided in the partnership agreement; if the partnership agreement has no such provision, then profits and losses are allocated on the basis of the contributions each partner actually made
- Distributions the partners share distributions of cash or other assets of a limited partnership as provided in the partnership agreement
- Loans both general and limited partners may be secured or unsecured creditors of the partnership
- Information each partner has the right to inspect and copy the partnership records
- Derivative Actions a limited partner may sue on behalf of a limited partnership if the general partners refuse to bring the action

Duties and Liabilities

- Duties general partners owe a duty of care and loyalty (fiduciary duty) to the general partners, the limited partners, and the limited partnership; limited partners do not
- Liabilities the general partners have unlimited liability; the limited partners have limited liability (liability for partnership obligations only to the extent of the capital that the limited partner contributed or agreed to contribute)

Dissolution

- Causes the limited partners have neither the right nor the power to dissolve the partnership, except by decree of the court; the following events trigger a dissolution: (1) the expiration of the time period; (2) the withdrawal of a general partner, unless all partners agree to continue the business; or (3) a decree of judicial dissolution
- Winding Up unless otherwise provided in the partnership agreement, the general partners who have not wrongfully dissolved the partnership may wind up its affairs
- Distribution of Assets the priorities for distribution are as follows: (1) creditors, including partners who are creditors; (2) partners and expartners in satisfaction of liabilities for unpaid distributions; (3) partners for the return of contributions, except as otherwise agreed; and (4) partners for their partnership interests in the proportions in which they share in distributions, except as otherwise agreed
LIMITED LIABILITY COMPANY

Definition. A limited liability company is a noncorporate business organization that provides limited liability to all of its owners (members) and permits all of its members to participate in management of the business.

Formation. The formation of a limited liability company requires substantial compliance with a state’s limited liability company statute.

- Filing. The LLC statutes generally require the central filing of articles of organization in a designated state office.
- Name. LLC statutes generally require the name of the LLC to include the words “limited liability company” or the abbreviation “LLC.”
- Contribution. The contribution of a member to a limited liability company may be cash, property, services rendered, a promissory note, or other obligation to contribute cash or property, or to perform services.
- Operating Agreement. It is the basic contract governing the affairs of a limited liability company and stating the various rights and duties of the members.
- Foreign Limited Liability Companies. A limited liability company is considered “foreign” in any state other than that in which it was formed.

Rights of Members. A member’s interest in the LLC includes the financial interest (the right to distributions) and the management interest (which consists of all other rights granted to a member by the LLC operating agreement and the LLC statute).

- Profit and Loss Sharing. The LLC’s operating agreement determines how the partners allocate the profits and losses; if the LLC’s operating agreement makes no such provision, the profits and losses are typically allocated on the basis of the value of the members’ contributions.
- Distributions. The members share distributions of cash or other assets of a limited liability company as provided in the operating agreement; if the LLC’s operating agreement does not allocate distributions, they are typically made on the basis of the contributions each member made.
- Withdrawal. A member may withdraw and demand payment of her interest upon giving the notice specified in the statute or the LLC’s operating agreement.
- Management. In the absence of a contrary agreement, each member has equal rights in the management of the LLC; but LLCs may be managed by one or more managers who may be members.
- Voting. LLC statutes usually specify the voting rights of members, subject to a contrary provision in an LLC’s operating agreement.
- Information. LLCs must keep basic organizational and financial records; each member has the right to inspect the LLC records.
- Derivative Actions. A member has the right to bring an action on behalf of a limited liability company to recover a judgment in its favor if the managers or members with authority to bring the action have refused to do so.
- Assignment of LLC Interest. Unless otherwise provided in the LLC’s operating agreement, a member may assign his financial interest in the LLC; an assignee of a financial interest in an LLC may acquire the other rights by being admitted as a member of the company if all the remaining members consent or the operating agreement so provides.

Duties

- Manager-Managed LLCs. The managers of manager-managed LLCs have a duty of care and loyalty; usually, members of a manager-managed LLC have no duties to the LLC or its members by reason of being a member.
- Member-Managed LLCs. Members of member-managed LLCs have the same duties of care and loyalty that managers have in manager-managed LLCs.

Liabilities. No member or manager of a limited liability company is obligated personally for any debt, obligation, or liability of the limited liability company solely by reason of being a member or acting as a manager of the limited liability company.

Dissolution. An LLC will automatically dissolve upon (1) some states the dissociation of a member, (2) the expiration of the LLC’s agreed duration or the happening of any of the events specified in the articles, (3) the written consent of all the members, or (4) a decree of judicial dissolution.

- Dissociation. Means that a member has ceased to be associated with the company and includes voluntary withdrawal, death, incompetence, expulsion, or bankruptcy.
• **Winding Up** completing unfinished business, collecting debts, and distributing assets to creditors and members; also called liquidation

• **Authority** the actual authority of a member or manager to act for the LLC terminates, except so far as may be appropriate to wind up LLC affairs; apparent authority continues unless notice of the dissolution is given to a third party

• **Distribution of Assets** the default rules for distributing the assets of a limited liability company are (1) to creditors, including members and managers who are creditors, except with respect to liabilities for distributions; (2) to members and former members in satisfaction of liabilities for unpaid distributions, except as otherwise agreed; (3) to members for the return of their contributions, except as otherwise agreed; and (4) to members for their limited liability company interests in the proportions in which members share in distributions, except as otherwise agreed

**Mergers**

• **Definition** the combination of the assets of two or more business entities into one of the entities

• **Effect** the surviving entity receives title to all of the assets of the merged entities and assumes all of their liabilities; the merged entities cease to exist

**OTHER UNINCORPORATED BUSINESS ASSOCIATIONS**

**Limited Liability Partnership** is a general partnership that, by making the statutorily required filing, limits the liability of its partners for some or all of the partnership’s obligations

• **Formalities** most statutes require only a majority of the partners to authorize registration as an LLP; others require unanimous approval

• **Designation** the name of the LLP must include the words “limited liability partnership” or “registered limited liability partnership,” or the abbreviation “LLP”

• **Liability Limitation** some statutes limit liability only for negligent acts; others limit liability to any partnership tort or contract obligation that arose from negligence, malpractice, wrongful acts, or misconduct committed by any partner, employee, or agent of the partnership; most provide limited liability for all debts and obligations of the partnership

**Limited Liability Limited Partnership** is a limited partnership in which the liability of the general partners has been limited to the same extent as in an LLP