

OVERVIEW OF LLC TYPES

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I. THE 16 MAIN TYPES OF LLCs—OVERVIEW

A. THE THREE MAIN FACTORS USEFUL IN CLASSIFYING LLCs

The most practical way to classify LLCs for purposes of determining what model operating agreements lawyers should have in order to be equipped to form all of the main types of LLCs that clients are likely to need and to convert non-LLC entities to LLCs is on the basis of the following three factors:

- 1) Number of members. The first factor is the number of members that each relevant LLC type will have. LLCs can have:
 - a) Only one member, who is an individual;
 - b) Only one member, which is an entity;
 - c) Two members who are equal in voting power and profit-sharing;
 - d) Two members who are unequal in voting power or profit-sharing; or
 - e) Three or more members.
- 2) Type of federal income tax regimen. The second factor is the federal income tax regimen that will govern the relevant LLC types. The main relevant federal income tax regimens are:
 - a) Disregarded entity;
 - b) LLC taxable under Subchapter K without special tailoring to take advantage of the Self-Employment Tax avoidance provisions of an Internal Revenue Service proposed regulation known as Prop. Reg. § 1.1402(a)-2 (the “Prop. Reg.”);
 - c) LLC taxable under Subchapter K with the above Prop. Reg. tailoring; and
 - d) LLC taxable under Subchapter S.
- 3) Type of management structure. The third factor is the management structure of each LLC type. The main relevant management structures are:
 - a) For single-member LLCs owned by one individual:
 - i) Management by the member only;
 - ii) Management by the member and an assistant manager who is not a member;
 - iii) Management by a manager who is not a member;

- b) For single-member LLCs owned by entities:
 - i) Management by one or more officers;
 - ii) Management by an internal board.
- c) For multi-member LLCs (whether owned by individuals, entities or a combination of individuals and entities):
 - i) A general partnership management structure, under which each member can sign contracts for the LLC and has a vote on all LLC matters;
 - ii) A limited partnership management structure, under which the day-to-day business of the LLC is managed exclusively by a manager and the members as such are passive as to the LLC's day-to-day management;
 - iii) A corporate management structure, under which:
 - (1) The members as such are essentially passive except as to a few major LLC matters (but which does not provide for member meetings, minutes or other relatively complex management procedures);
 - (2) The day-to-day business of the LLC is managed by officers; and
 - (3) The members appoint directors to monitor the activities of the officers.

The application of the above three factors results in the identification of 16 main types of LLCs, as identified in the table set forth in the attached Exhibit A. As also shown in the table, while the number of model operating agreements required for two of these types (namely, Types 14 and 16) is one, some types require as many as six. The types of model operating agreements required for the 16 types of LLCs identified in Table A are identified and briefly described in Tables B-1 through B-16.

The total number of model operating agreements that lawyers should have in order to be fully equipped for LLC formation is 41. As shown in the attached tables, 20 of these 41 model operating agreements are likely to be useful on a frequent basis and 11 are used with only moderate frequency. The rest are used infrequently.

B. SERIES LLCs

Five states—namely, Delaware, Illinois, Iowa, Oklahoma and Tennessee—have LLC acts that provide for “series” LLCs. In their most common form, series LLCs are single- or multi-member LLCs that divide their various lines of business into series. Under the relevant LLC acts, the assets in each of these series are protected from claims against all of the other series by an internal liability shield.

Series LLCs can have any of the number of members, the management structures and the tax structures noted above, and in certain situations, they can, at least theoretically, have tax structures that are highly tailored and complex. However, a type of LLC that is reasonably likely to be tailored as a series LLC is an LLC that has three or more equal members, that has a simple general partnership management, and that is taxable under Subchapter K (without special tailoring under the Prop. Reg.); and in the case of this type of series LLC, both of the members are likely to be members of each series.

Thus, the table of model operating agreements in Exhibit A lists only a single type of series LLC—namely, Type 16; and the model operating agreement for that type of LLC—namely, Form 16.1—is closely modeled on LLC Form 3.3 (model operating agreement for LLC that has three or more equal members and that is taxable under Subchapter K). However, the series-specific terms in Form 16.1 can be used to transform into model operating agreements for series LLCs not only Form 3.3 but also most or all of the other forms for LLC Types 1 through 15.

EXHIBIT A

THE 16 MAIN TYPES OF LLCs AND THE MODEL OPERATING AGREEMENTS REQUIRED FOR EACH

TYPE NUMBER	DESCRIPTION	NUMBER OF MODEL OPERATING AGREEMENTS REQUIRED FOR EACH TYPE
TYPE 1.	Single-member LLC—owned by individual	6
TYPE 2.	Single-member LLC—owned by entity	3
TYPE 3.	Multi-member LLC—simple general partnership management structure—taxable under Subchapter K	3
TYPE 4.	Multi-member LLC—simple general partnership management structure—taxable under Subchapter S	3
TYPE 5.	Multi-member LLC—complex general partnership management structure—taxable under Subchapter K	1
TYPE 6.	Multi-member LLC—complex general partnership management structure—taxable under Subchapter S	1
TYPE 7.	Multi-member LLC—simple limited partnership management—manager-controlled—taxable under Subchapter K	4
TYPE 8.	Multi-member LLC—simple limited partnership management—manager-controlled—taxable under Subchapter S	3
TYPE 9.	Multi-member LLC—simple limited partnership management—member-controlled—taxable under Subchapter K	6
TYPE 10.	Multi-member LLC—simple limited partnership management—member-controlled—taxable under Subchapter S	3
TYPE 11.	Multi-member LLC—complex limited partnership management structure—member-controlled—taxable under Subchapter K	2
TYPE 12.	Multi-member LLC—complex limited partnership management structure—member-controlled—taxable under Subchapter S	1
TYPE 13.	Multi-member LLC—corporate management structure—taxable under Subchapter K	2
TYPE 14.	Multi-member LLC—corporate management structure—taxable under Subchapter S	1
TYPE 15.	Multi-member LLC—corporate management structure—taxable under Subchapter C	1
TYPE 16	Series LLC (based on Form 3.1)	1
Total number of model operating agreements		41

EXHIBIT B

**MODEL OPERATING AGREEMENTS REQUIRED FOR EACH OF THE 16
MAIN TYPES OF LLCs**

**Table B-1: TABLE OF MODEL OPERATING AGREEMENTS FOR
TYPE 1 LLCs (SINGLE-MEMBER LLCs OWNED BY ONE INDIVIDUAL)**

LLC MODEL OPERATING AGREEMENT NUMBER	MANAGEMENT STRUCTURE	FEDERAL INCOME TAX REGIMEN	FREQUENCY OF USE
Type 1.1	<u>Member-managed.</u> The LLC's member is also its manager and there is no assistant manager	Disregarded entity	Somewhat frequent
Type 1.2	<u>Manager-managed.</u> The LLC's member is its manager, but the LLC also has one or more assistant managers	Disregarded entity	Frequent
Type 1.3	<u>Manager-managed.</u> The LLC's member is a non-manager, and it is managed by a non-member manager	Disregarded entity	Somewhat frequent
Type 1.4	<u>Member-managed.</u> The LLC's member is also its manager and there is no assistant manager	Subchapter S	Somewhat frequent
Type 1.5	<u>Manager-managed.</u> The LLC's member is its manager, but the LLC also has one or more assistant managers	Subchapter S	Frequent
Type 1.6	<u>Manager-managed.</u> The LLC's member is a non-manager, and it is managed by a non-member manager	Subchapter S	Somewhat frequent
Total number of Type 1 model operating agreements			6

**Table B-2: TABLE OF MODEL OPERATING AGREEMENTS FOR
TYPE 2 LLCs (SINGLE-MEMBER LLCs OWNED BY ONE ENTITY)**

LLC MODEL OPERATING AGREEMENT NUMBER	MANAGEMENT STRUCTURE	FREQUENCY OF USE
Type 2.1	Managed by a single officer	Frequent
Type 2.2	Managed by two or more officers	Somewhat frequent
Type 2.3	Managed by an internal board	Infrequent
Total number of model operating agreements		3

**Table B-3: TABLE OF MODEL OPERATING AGREEMENTS FOR
TYPE 3 LLCs (MULTI-MEMBER LLCs—SIMPLE GENERAL PARTNERSHIP
MANAGEMENT STRUCTURE—TAXABLE UNDER SUBCHAPTER K)**

LLC MODEL OPERATING AGREEMENT NUMBER	NUMBER AND RELATIONSHIP OF MEMBERS	FREQUENCY OF USE
Type 3.1	Two members with equal rights	Frequent
Type 3.2	Two members of whom one is dominant	Somewhat frequent
Type 3.3	Three or more members	Frequent
Total number of model operating agreements		3

**Table B-4: TABLE OF MODEL OPERATING AGREEMENTS FOR
TYPE 4 LLCs (MULTI-MEMBER LLCs—SIMPLE GENERAL PARTNERSHIP
MANAGEMENT STRUCTURE—TAXABLE UNDER SUBCHAPTER S)**

LLC MODEL OPERATING AGREEMENT NUMBER	NUMBER AND RELATIONSHIP OF MEMBERS	FREQUENCY OF USE
Type 4.1	Two members with equal rights	Frequent
Type 4.2	Two members of whom one is dominant	Somewhat frequent
Type 4.3	Three or more members	Frequent
Total number of model operating agreements		3

**Table B-5: TABLE OF MODEL OPERATING AGREEMENTS FOR
TYPE 5 LLCs (MULTI-MEMBER LLCs—COMPLEX GENERAL
PARTNERSHIP MANAGEMENT STRUCTURE—TAXABLE UNDER
SUBCHAPTER K)**

LLC MODEL OPERATING AGREEMENT NUMBER	NUMBER AND RELATIONSHIP OF MEMBERS	FREQUENCY OF USE
Type 5.1	Three or more members	Frequent
Total number of model operating agreements		1

**Table B-6: TABLE OF MODEL OPERATING AGREEMENTS FOR
TYPE 6 LLCs (MULTI-MEMBER LLCs—COMPLEX GENERAL
PARTNERSHIP MANAGEMENT STRUCTURE—TAXABLE UNDER
SUBCHAPTER S)**

LLC MODEL OPERATING AGREEMENT NUMBER	NUMBER AND RELATIONSHIP OF MEMBERS	FREQUENCY OF USE
Type 6.1	Three or more members	Frequent
Total number of model operating agreements		1

**Table B-7: TABLE OF MODEL OPERATING AGREEMENTS FOR
TYPE 7 LLCs (MULTI-MEMBER LLCs—SIMPLE LIMITED PARTNERSHIP
MANAGEMENT STRUCTURE—MANAGER-CONTROLLED--TAXABLE
UNDER SUBCHAPTER K)**

LLC MODEL OPERATING AGREEMENT NUMBER	NUMBER AND RELATIONSHIP OF MEMBERS	TAILORED UNDER PROP. REG. § 1.1402(a)-2 (YES/NO)	FREQUENCY OF USE
Type 7.1	Two members of whom one is dominant	No	Frequent
Type 7.2	Three or more members	No	Frequent
Type 7.3	Two members of whom one is dominant	Yes	Frequent
Type 7.4	Three or more members	Yes	Frequent
Total number of model operating agreements			4

**Table B-8: TABLE OF MODEL OPERATING AGREEMENTS FOR
TYPE 8 LLCs (MULTI-MEMBER LLCs—SIMPLE LIMITED PARTNERSHIP
MANAGEMENT STRUCTURE—MANAGER-CONTROLLED--TAXABLE
UNDER SUBCHAPTER S)**

LLC MODEL OPERATING AGREEMENT NUMBER	NUMBER AND RELATIONSHIP OF MEMBERS	FREQUENCY OF USE
Type 8.1	Two members of whom one is dominant	Somewhat frequent
Type 8.2	Three or more members	Frequent
Total number of model operating agreements		2

**Table B-9: TABLE OF MODEL OPERATING AGREEMENTS FOR
TYPE 9 LLCs (MULTI-MEMBER LLCs--SIMPLE LIMITED PARTNERSHIP
MANAGEMENT STRUCTURE—MEMBER-CONTROLLED—TAXABLE
UNDER SUBCHAPTER K)**

LLC MODEL OPERATING AGREEMENT NUMBER	NUMBER AND RELATIONSHIP OF MEMBERS	TAILORED UNDER PROP. REG. § 1.1402(a)-2 (YES/NO)	FREQUENCY OF USE
Type 9.1	Two members with equal rights	No	Frequent
Type 9.2	Two members of whom one is dominant	No	Somewhat frequent
Type 9.3	Three or more members	No	Frequent
Type 9.4	Two members with equal rights	Yes	Frequent
Type 9.5	Two members of whom one is dominant	Yes	Somewhat frequent
Type 9.6	Three or more members	Yes	Frequent
Total number of model operating agreements			6

**Table B-10: TABLE OF MODEL OPERATING AGREEMENTS FOR
TYPE 10 LLCs (MULTI-MEMBER LLCs--SIMPLE LIMITED PARTNERSHIP
MANAGEMENT STRUCTURE—MEMBER-CONTROLLED—TAXABLE
UNDER SUBCHAPTER S)**

LLC MODEL OPERATING AGREEMENT NUMBER	NUMBER AND RELATIONSHIP OF MEMBERS	FREQUENCY OF USE
Type 10.1	Two members with equal rights	Frequent
Type 10.2	Two members of whom one is dominant	Somewhat frequent
Type 10.3	Three or more members	Frequent
Total number of model operating agreements		3

**Table B-11: TABLE OF MODEL OPERATING AGREEMENTS FOR
TYPE 11 LLCs (MULTI-MEMBER LLCs—COMPLEX LIMITED
PARTNERSHIP MANAGEMENT STRUCTURE—MEMBER-CONTROLLED--
TAXABLE UNDER SUBCHAPTER K)**

LLC MODEL OPERATING AGREEMENT NUMBER	NUMBER AND RELATIONSHIP OF MEMBERS	TAILORED UNDER PROP. REG. § 1.1402(a)-2 (YES/NO)	FREQUENCY OF USE
Type 11.1	Three or more members	No	Infrequent
Type 11.2	Three or more members	Yes	Infrequent
Total number of model operating agreements			2

**Table B-12: TABLE OF MODEL OPERATING AGREEMENTS FOR
TYPE 12 LLCs (MULTI-MEMBER LLCs—COMPLEX LIMITED
PARTNERSHIP MANAGEMENT STRUCTURE—MEMBER-CONTROLLED--
TAXABLE UNDER SUBCHAPTER S)**

LLC MODEL OPERATING AGREEMENT NUMBER	NUMBER AND RELATIONSHIP OF MEMBERS	FREQUENCY OF USE
Type 12.1	Three or more members	Infrequent
Total number of model operating agreements		1

**TABLE B-13: TABLE OF MODEL OPERATING AGREEMENTS FOR
TYPE 13 LLCs (MULTI-MEMBER LLCs—CORPORATE MANAGEMENT
STRUCTURE--TAXABLE UNDER SUBCHAPTER K)**

LLC MODEL OPERATING AGREEMENT NUMBER	NUMBER AND RELATIONSHIP OF MEMBERS	TAILORED UNDER PROP. REG. § 1.1402(a)-2 (YES/NO)	FREQUENCY OF USE
Type 13.1	Three or more members	No	Infrequent
Type 13.2	Three or more members	Yes	Infrequent
Total number of model operating agreements			2

**Table B-14: TABLE OF MODEL OPERATING AGREEMENTS FOR
TYPE 14 LLCs (MULTI-MEMBER LLCs—CORPORATE MANAGEMENT
STRUCTURE--TAXABLE UNDER SUBCHAPTER S)**

LLC MODEL OPERATING AGREEMENT NUMBER	NUMBER AND RELATIONSHIP OF MEMBERS	FREQUENCY OF USE
Type 14.1	Three or more members	Infrequent
Total number of model operating agreements		1

**TABLE B-15: TABLE OF MODEL OPERATING AGREEMENTS FOR
TYPE 15 LLCs (MULTI-MEMBER LLCs—CORPORATE MANAGEMENT
STRUCTURE--TAXABLE UNDER SUBCHAPTER C)**

LLC MODEL OPERATING AGREEMENT NUMBER	NUMBER AND RELATIONSHIP OF MEMBERS	FREQUENCY OF USE
Type 15.1	Three or more members	Infrequent
Total number of model operating agreements		1

**Table B-16: TABLE OF MODEL OPERATING AGREEMENTS FOR
TYPE 16 LLCs (TYPE 3.3 LLCs – ADAPTED FOR USE UNDER THE SERIES
PROVISIONS OF THE DELAWARE LLC ACT)**

LLC MODEL OPERATING AGREEMENT NUMBER	NUMBER AND RELATIONSHIP OF MEMBERS	FREQUENCY OF USE
Type 16.1	Three or more members	Infrequent
Total number of model operating agreements		1