

001760724

HOUSE BILL NO. 902

Offered January 24, 2000

A BILL to amend and reenact §§ 13.1-1010.3, 13.1-1038.1 and 13.1-1046 of the Code of Virginia, and to amend the Code of Virginia by adding sections numbered 13.1-1040.2 and 50-73.39:1, relating to limited liability companies.

Patron—Diamonstein

Referred to Committee on Corporations, Insurance and Banking

Be it enacted by the General Assembly of Virginia:

1. That §§ 13.1-1010.3, 13.1-1038.1 and 13.1-1046 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding sections numbered 13.1-1040.2 and 50-73.39:1 as follows:

§ 13.1-1010.3. Domestication of non-United States entities.

A. Any non-United States entity may become domesticated as a limited liability company by complying with subsection E of this section and filing articles of organization that meet the requirements of §§ 13.1-1003 and 13.1-1011 and include the following:

1. The name of the non-United States entity immediately prior to the filing of the articles of organization;

2. The date on which and the jurisdiction in which the non-United States entity was first formed, incorporated, organized, created or otherwise came into being;

3. The jurisdiction that constituted the seat, siege social, or principal place of business or central administration of the non-United States entity, or any equivalent thereto under applicable law, immediately prior to the filing of the articles of organization.

B. A non-United States entity that has been domesticated pursuant to this section shall be deemed for all purposes the same entity that existed before the domestication.

C. Upon the effective date and time of the certificate or organization:

1. The non-United States entity shall be domesticated as a limited liability company, and the limited liability company shall thereafter be subject to all of the provisions of this chapter, except that notwithstanding subsection B of § 13.1-1004, the existence of the limited liability company shall be deemed to have commenced on the date the non-United States entity commenced its existence in the jurisdiction in which the non-United States entity was first formed, incorporated, organized, created or otherwise came into being;

2. All property owned by the non-United States entity remains vested in the domesticated entity;

3. All obligations of the non-United States entity continue as obligations of the domesticated entity; and

4. An action or proceeding pending against the non-United States entity may be continued as if the conversion had not occurred.

D. The filing of articles of organization shall not affect the choice of law applicable to the non-United States entity, except that from the effective date of the time of the domestication, the law of the Commonwealth of Virginia, including the provisions of this chapter, shall apply to the non-United States entity to the same extent as if the non-United States entity had been organized as a limited liability company on the effective date of the certificate of organization.

E. The terms and conditions of a domestication of a non-United States entity as a limited liability company shall be approved in the manner provided for by the document, instrument, agreement or other writing, as the case may be, governing the internal affairs of the non-United States entity in the conduct of its business or by applicable law other than the law of this Commonwealth, as appropriate.

F. Unless otherwise agreed, or as required under applicable non-Virginia law, the domesticating non-United States entity shall not be required to wind up its affairs or pay its liabilities and distribute its assets. The domestication shall not be deemed to constitute a dissolution of the non-United States entity and shall constitute a continuation of the existence of the domesticating non-United States entity in the form of a domestic limited liability company. If, following domestication, a non-United States entity that has become domesticated as a limited liability company continues its existence in the foreign country or other foreign jurisdiction in which it was existing immediately prior to domestication, the limited liability company and the non-United States entity shall, for all purposes of the laws of the Commonwealth of Virginia, constitute a single entity formed, organized, incorporated, created or otherwise having come into being, as applicable, and exist under the laws of the Commonwealth of Virginia and the laws of such foreign country or other foreign jurisdiction.

INTRODUCED

HB902

§ 13.1-1038.1. Admission of members.

A. Subject to subsection B, a person may become a member in a limited liability company:

1. In the case of a person acquiring a membership interest directly from the limited liability company, upon compliance with an operating agreement or, if the operating agreement does not so provide, upon the consent of a majority of the managers of a manager-managed limited liability company or a majority vote of the members of a member-managed limited liability company; and

2. In the case of an assignee of a membership interest, as provided in subsection A of § 13.1-1040.

B. The effective time of admission of a member to a limited liability company shall be the later of:

1. The date the limited liability company is formed; or

2. The time provided in an operating agreement or, if no such time is provided therein, then when the person's admission is reflected in the records of the limited liability company.

C. *A person may be admitted to a limited liability company as a member of the limited liability company and may receive a membership interest in the limited liability company without making a contribution or being obligated to make a contribution to the limited liability company. Unless otherwise provided in the articles of organization or an operating agreement:*

1. *A person may be admitted to a limited liability company as a member of the limited liability company without acquiring a membership interest in the limited liability company; and*

2. *A person may be admitted as the sole member of a limited liability company without making a contribution or being obligated to make a contribution to the limited liability company or without acquiring a membership interest in the limited liability company.*

§ 13.1-1040.2. Effect of a member's dissociation.

A. *Except as provided in the articles of organization or an operating agreement, the dissociation of a member shall not affect the membership interest held by the dissociated member or the former member's successor in interest. The former member or successor in interest shall continue to hold a membership interest and shall have the same rights that an assignee of the membership interest would have under § 13.1-1039.*

B. *Except as provided in the articles of organization or an operating agreement, the dissociation of a member shall not cause the limited liability company to be dissolved or its affairs to be wound up, and, upon the occurrence of any such event, the limited liability company shall be continued without dissolution.*

§ 13.1-1046. Dissolution; generally.

A limited liability company organized under this chapter is dissolved and its affairs shall be wound up upon the happening of the first to occur of the following events:

1. At the time or on the happening of any events specified in writing in the articles of organization or an operating agreement;

2. Upon the unanimous written consent of the members;

3. At any time there are no members; ~~however,~~ *However*, unless otherwise provided in the articles of organization or an operating agreement, the limited liability company is not dissolved and is not required to be wound up if, (i) within six months or such period as is provided for in the articles of organization or an operating agreement after the occurrence of the event that caused the dissociation of the last remaining member, the personal representative of the last remaining member agrees in writing to continue the limited liability company until the admission of the personal representative of ~~such~~ *that* member or its nominee or designee to the limited liability company as a member, effective as of the occurrence of the event that caused the dissociation of the last remaining member; *provided that the articles of organization or an operating agreement may provide that the personal representative of the last remaining member shall be obligated to agree in writing to continue the limited liability company and to the admission of the personal representative of that member or its nominee or designee to the limited liability company as a member, effective as of the occurrence of the event that caused the dissociation of the last remaining member; or* (ii) a member is admitted to the limited liability company in the manner provided for in the articles of organization or an operating agreement, effective as of the occurrence of the event that caused the dissociation of the last remaining member, within six months or such other period as is provided for in the operating agreement after the occurrence of the event that caused the dissociation of the last remaining member, pursuant to a provision of the articles of incorporation or an operating agreement that specifically provides for the admission of a member to the limited liability company after there is no longer a remaining member of the limited liability company;

4. The entry of a decree of judicial dissolution under § 13.1-1047; or

5. Automatic cancellation of its certificate pursuant to § 13.1-1064.

§ 50-73.39:1. No right to distribution upon withdrawal.

Except as otherwise provided in writing in the partnership agreement, neither a general partner nor a limited partner has any right to receive any distribution on account of (i) the partner's withdrawal, or (ii) other event of dissolution or ceasing, for any other reason, to be partner.