Department of Legislative Services
Maryland General Assembly
2004 Session

FISCAL AND POLICY NOTE

House Bill 1512 (Delegate Doory)
Economic Matters

Corporations and Associations - Venture Limited Liability Companies

This bill authorizes the formation of a venture limited liability company (LLC).

The bill takes effect July 1, 2004 and provides for its interpretation in relation to other provisions governing corporations, real estate investment trusts, and LLCs.

Fiscal Summary

State Effect: General fund revenues would increase to the extent current LLCs recorded amendments to their articles of organization under the bill. Special fund revenues would increase to the extent filers of these documents requested expedited processing. Expenditures would not be affected.

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Bill Summary: An LLC may elect to be a venture LLC by: (1) including in its articles of organization a statement that it elects to be one; or (2) amending its articles of organization to include a statement that the LLC elects to become a venture LLC and specified information.

A venture LLC is not governed by most provisions governing an LLC's relations between members, LLC finances, and derivative actions. It is also not subject to provisions governing distributions. A venture LLC may issue shares of stock and is governed by certain provisions that govern issuing stock by a corporation and corporate dissolution. References and requirements relating to stock's par value do not apply to a venture LLC.

A venture LLC has a board of directors and is governed by most provisions governing a corporation's board of directors. Directors have a fiduciary duty to the venture LLC and generally have the same immunity from liability as a corporation's directors. Generally, the corporate opportunity doctrine applies to a venture LLC to the same extent as it would to a Maryland corporation. However, a venture LLC's articles of organization or bylaws may include a provision that limits or eliminates the liability of directors or officers to the venture LLC or its members for usurping a corporate opportunity.

Unless a venture LLC elects to be treated as a corporation for federal and State income tax purposes, a venture LLC must keep its books in a manner that shows: (1) the capital account of each member were accounted for as a partnership for federal income tax purposes; and (2) the number of units of each class of stock issued to each member. A venture LLC must deliver to its members a completed federal income tax form used by pass-through entities within 75 days after the last day of its tax year, and the bill establishes procedures for failure to deliver the form as required.

Generally, an action required to be taken at an annual or special meeting of a venture LLC's member or any action that may be taken at a meeting may be taken without a meeting, without prior notice, and without a vote if written consent is given. The bill specifies the methods for inspection of a venture LLC's books by its members.

Current Law: Generally, a domestic LLC may be organized and conduct business in any state for any lawful purpose, except the business of insurance. An LLC has a separate existence and offers its members the protection from liability similar to a corporation while providing the pass-through taxation of a partnership. Unlike a corporation, an LLC does not issue stock shares. Instead, members make capital contributions and receive a share of distributions and profits. Unless otherwise provided in the operating agreement, its profits and losses are allocated among its members in proportion to their respective capital interests, and distributions are made in proportion to the share of profits. Capital contributions may be in cash, property, services rendered, or a promissory note or other binding obligation to contribute cash or property or perform services.

Under the common law corporate opportunity doctrine, a corporate fiduciary (usually an officer or director) may not divert to himself or herself a business opportunity in which the corporation has an expectancy, property interest or right, or that in fairness should otherwise belong to the corporation.

State Revenues: The recording fee applicable to an amendment of articles of organization is $100. The fee for expedited processing is $50 and is deposited in the special fund that helps pay the costs of the charter division of the State Department of Assessments and Taxation. The number of amendments to articles of organization cannot be accurately estimated but is assumed to be minimal.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): State Department of Assessments and Taxation, Comptroller's Office, Judiciary (Administrative Office of the Courts), Department of Legislative Services

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