

California Defines LLCs Subject To New Law To Include Foreign LLCs: How Confused Is This?

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The **California Revised Uniform Limited Liability Company Act**, which took effect on January 1 of this year, provides the statutory framework for the formation and operation of limited liability companies. The law appears to distinguish between a “limited liability company” and a “foreign limited liability company”. As might be expected, a “limited liability company” is defined (except in the phrase “foreign limited liability company”) as an entity formed under the law. **Cal. Corp. Code § 17701.02(k)**. Thus, much of the law relates to how a limited liability company is formed, the relations of members and managers, and other matters pertaining to the entity’s birth, life and death. Article 8 of the law deals with foreign limited liability companies, which are defined as unincorporated entities formed under the laws of a jurisdiction other than California and denominated as limited liability companies. Cal. Corp. Code § 17701.02(j).

The law also defines a limited liability company to include an entity that becomes subject to the law pursuant to Article 13 (commencing with Corporations Code Section 17713.01). As I’ve discussed in several prior posts, Section 17713.04 purports to apply the new LLC act to all domestic LLCs existing on or after January 1st of this year. Therefore, LLCs formed under the now-repealed Beverly-Killea Act are also limited liability companies under the new law.

Now, here’s the fly in the ointment (See *Ecclesiastes* 10:1). Section 17713.04 states that the new law also applies “to all foreign limited liability companies registered with the Secretary of State prior to January 1, 2014, whose registrations have not been canceled as of January 1, 2014, to all foreign limited liability companies registered with the Secretary of State on or after January 1, 2014 . . .”. Thus, a “limited liability company” can include a “foreign limited liability company” that is registered with the Secretary of State because it is an entity subject to the new law pursuant to Article 13. Common sense dictates that the legislature did not intend this, but *scripsit quod scripsit* and the courts and lawyers are left to deal with the mess.

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