A Business Review of the Delaware Series:  
Good Business for the Informed

By

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“Co-operation, not competition, will prove most rational in the months to come...”  Anonymous, 2006

THESIS

Delaware has long attempted to provide business structures that reflect the demands of the business community in an efficient and productive manner. One prime example of this demand/response is the “series” interest available in Delaware limited partnerships, LLCs, and statutory trusts. The series structure combines the flexibility that different types of businesses desire along with the statutory and contractual support that Delaware provides to all of its unincorporated business organizations. Other states have now emulated the Delaware series concept, although there is still considerable confusion as to how a series works. This piece provides an overview of some of the more significant provisions of the Delaware series law. The author concludes that the Delaware series provides a beneficial, efficient use of a combined contractual Delaware entity form with sensible, informed planning.

ABSTRACT - OPENING CONSIDERATION

The concept of the Delaware “series” first arose in the context of the

1 This article focuses solely upon the Delaware series due to its originality and national popularity. Six other jurisdictions have followed Delaware and adopted “series” legislation: (1) Iowa, Iowa Code § 490A. 305 (adopted 1997); compare 6 Del.C. § 18-215 (basically follows Delaware series except that termination requires consent of all members rather than 2/3 percentage in interest); (2) Illinois, 805 ILCS § 190/37-40(b)(Effective 8/6/2005); (similar to Delaware series under the 2007 amendments except series itself files to create separate existence and is deemed a separate “entity; Illinois series addresses tax status by providing that an LLC and any series may elect to consolidate their business as a single taxpayer “to the extent permitted under applicable law.”); (3) Nevada, Nev. Rev. Stat., § 86.011 et seq. (adopted 2005)(similar to Delaware series except that series provisions found throughout statute instead of in one central location - making it more difficult for practitioner use; Nevada imposes an initial filing fee of
Delaware Business\textsuperscript{2}, now Statutory, Trust Act (DSTA).\textsuperscript{3} The purpose of the series was to allow persons managing, controlling or operating certain business activities in a manner known at the common law as a “business trust” or “Massachusetts trust” to segregate similar assets. In the mutual fund context, one trust could be created and a distinct series of the trust could be formed for each asset class within

\textsuperscript{2} The original Delaware Business Trust Act was adopted in 1988.

\textsuperscript{3} 12 Del.C. §§ 3801 et seq.

For an offshore series LLC, the Republic of the Marshall Island permits the creation of series LLCs. RMI, PL 2000-14, § 79. The RMI series is modeled after Delaware.
the trust. The reason for the series mutual fund was that a single legal entity could be formed - typically a corporation for liability purposes - and that entity could achieve centralized management (a board of directors) and could operate under a single registration under the Investment Company Act of 1940. The original investment purpose of the series was expanded in the DSTA to include any business purpose. The series was thereafter adopted in Delaware’s LLC Act. The series concept that has now taken a center stage is found in Delaware’s immensely popular Limited Liability Company Act (“DLLCA”).

I. INTRODUCTION

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4 In National Securities Series-Industrial Stock Series, 13 TC 884, Dec. 17, 299 (1949), the Tax Court decided that several series within a single investment trust could be treated as separate taxable entities.

5 In 2006, 96,831 new LLCs formed in Delaware. Corporations gained 34, 733 new entities. Limited partnerships came in third place with 9,948 new formations and statutory trusts followed with 3,868 new entities. Http://www.corp.delaware.gov.2006%20Annual%06