



is the west coast the best coast?

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practice areas

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We are often asked whether a new limited liability company ("LLC") that will be active in California should be organized in California or Delaware. In the next several posts we will explore different topics relating to this threshold question, since an LLC operating in California may have its internal affairs governed by Delaware law if it is organized and properly maintained under Delaware law. And while the answer depends on the facts of each case, there are important common factors that all parties involved in this decision making process must carefully consider.

One of the most important factors in picking between California and Delaware are the default voting rights given to members in California that cannot be waived or altered by agreement. These fundamental voting rights shift a certain amount of power and control away from the managers, who are often the founders or initial investors, and towards the other members.

The importance of this shift in power, mandated by California statute, depends in large part on the anticipated investor profile of the company, both upon formation and at different stages in the business lifecycle. If it is anticipated that the company will only be owned by a handful of individuals or family members, the voting rights may be of relative less importance because of the opportunity to seek consensus amongst the members. But if the company may eventually need outside investors or the ability to issue profits interests to key employees, the voting rights become far more important.

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