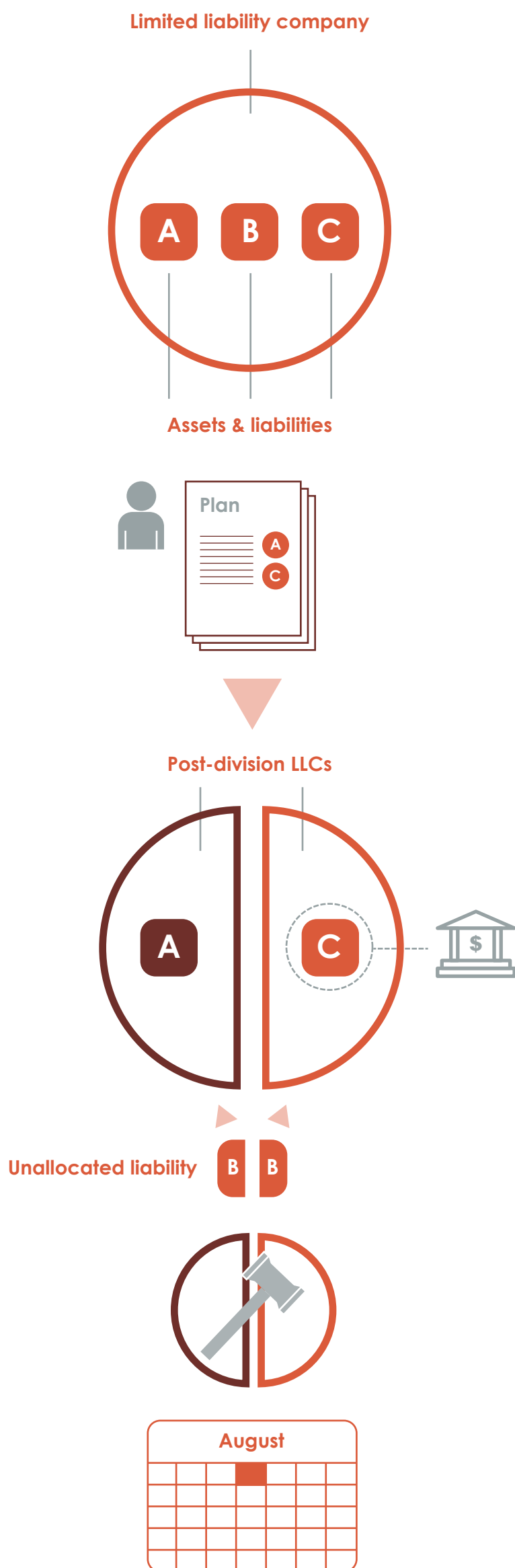


Divisive mergers and credit agreements

Delaware limited liability companies (LLCs) may now divide their assets, rights and obligations among two or more newly created LLCs, in what is known as a “divisive merger.” The new provisions could create new risks for creditors, because a divisive merger may reduce the pool of assets available for repayment. Here, we take a closer look at the structure of divisive mergers.



Division plan

Before proceeding with a divisive merger, an LLC must create a **plan of division**, which it is not required to file publicly. The plan must include:

- 1 The terms and conditions of the division, including the allocation of the dividing LLC’s assets and liabilities among the new companies;
- 2 The name of each resulting LLC, including the surviving one as applicable;
- 3 The name and address of a contact who has custody of the division plan; and
- 4 Any other matters the dividing LLC wishes to include.

Application of division plan

Some interests must be preserved: After the divisive merger takes place, **all liens on property** of the dividing company are unimpaired after they are allocated to a new LLC.

Other interests are shared: All division LLCs are **jointly and severally liable** for any liabilities not allocated in the plan.

There is an exception for fraud: If the division would constitute a **fraudulent transfer** under the applicable law, all division LLCs are jointly and severally responsible for those liabilities as well.

If these obligations were created before the amendments **took effect on Aug. 1, 2018** and if these contracts had restrictions on mergers, consolidations or transfer of assets, those will also apply to a division. If the contracts are entered into after Aug. 1, these protections are not available.