

## NEWS ALERT

### BUSINESS GROUP



## The Connecticut Uniform Limited Liability Company Act

By Marcel J. Bernier | March 20, 2017

*The Connecticut Uniform Limited Liability Company Act, Public Act 16-97 (the "New Act") will become effective for all existing and new Connecticut LLCs on July 1, 2017. The New Act is more comprehensive, modern and well written than the current Connecticut LLC Act (the "Current Act"). The New Act is patterned after the most recent version of the Uniform LLC Act adopted by the Uniform Law Commission. Connecticut is the 17th state to enact a version of the Uniform LLC Act.*

The New Act can best be described as a set of "default rules", i.e., rules to apply when there is no operating agreement provision to govern a particular issue. An operating agreement may contain any provision which is approved by the members of the LLC, whether or not the provision varies from the default rules of the New Act, except for 14 specifically enumerated items listed in Section 5(c) of the New Act which cannot be varied by the operating agreement. The New Act still affords tremendous deference to the terms of the operating agreement and explicitly embraces principles of freedom of contract.

The document required to be filed with the Office of the Secretary of the State of Connecticut to form an LLC under the New Act is the certificate of organization. Although the certificate of organization is similar to the articles of organization under the Current Act, there are two significant differences. First, the LLC will not be required to state if it is manager-managed in the certificate of organization. If the LLC is manager-managed, it must be stated in the operating agreement. For LLCs formed before July 1, 2017, it is sufficient that the articles of organization state that the LLC is manager-managed. Second, the LLC will no longer be required to state its purpose in the certificate of organization.

Although most of the default voting provisions under the New Act are the same as most of the default voting provisions under the Current Act, there are two important differences. First, the vote to admit a new member to the LLC will change from a majority in interest of the members under the Current Act to all of the members under the New Act. Second, the vote to amend the operating agreement will change from two thirds in interest of the members under the Current Act to all of the members under the New Act. If an existing or a new

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operating agreement of an LLC permits a new member to be admitted or the operating agreement to be amended by less than a unanimous vote of the members, the provisions of the operating agreement will control over the provisions of the New Act.

If your LLC has more than one member and does not currently have a written operating agreement, please contact your Murtha Cullina business attorney to discuss whether a written operating agreement would be advisable.

The New Act prohibits distributions if and to the extent the LLC is insolvent. A creditor may make a claim against a member receiving a distribution when the LLC is insolvent for two years after the date of the distribution.

The New Act describes the duty of loyalty and the standard of care in more detail than the Current Act. The New Act states that the operating agreement may specify the method by which an act or transaction that would otherwise violate the duty of loyalty may be authorized or ratified by one or more disinterested persons after full disclosure of the material facts. In addition, the New Act states that the duty of loyalty may be altered or eliminated in an operating agreement if it is not manifestly unreasonable to do so. A court determines as a matter of law whether such a term contained in an operating agreement is manifestly unreasonable and must determine manifest unreasonableness measured as of the time the challenged term became part of the operating agreement.

The New Act defines a “transferable interest” as the right to receive LLC distributions, and makes very clear that transfers of transferable interests do not necessarily vest a transferee with anything other than the economic right to receive LLC distributions and the right to limited LLC information following dissolution. A transferee succeeds to no voting rights without the required vote of the remaining members.

With respect to a member of an LLC who is a judgment debtor, the New Act states that a charging order against that member’s distributions is the judgment creditor’s exclusive remedy against the judgment debtor-member’s LLC interest. Since foreclosure of the judgment debtor’s transferable interest is not an available remedy under the New Act, a member’s creditor cannot step into the shoes of a member and vote the member’s interest. However, unlike the Current Act, the New Act gives the LLC and the other members of the LLC the option to pay the judgment creditor and succeed to the rights of the judgment creditor in the charging order.

The Current Act and the New Act both state that a majority in interest of the members may dissolve an LLC. If the operating agreement of an LLC contains a different voting requirement to approve the dissolution of the LLC, the provisions of the operating agreement will control over the provisions of the Current Act or the New Act.

The New Act permits judicial dissolution if the court determines that:

- (a) the conduct of all or substantially all of the LLC’s activities are unlawful;
- (b) it is not reasonably practical to carry on the LLC’s activities; or
- (c) the managers or members in control of the LLC have acted, are acting or will act in a manner that is fraudulent or illegal or is oppressive and harmful to the applicant.

The New Act states that a member who desires to maintain a direct legal action against another member, a manager or an LLC must plead an actual injury or a threatened injury that is not solely the result of an injury suffered or threatened to be suffered by the LLC. If the action does not meet the requirements for a direct action, the legal action must be filed as a derivative action of the LLC and must comply with the provisions of the New Act regarding a derivative action.

The New Act permits LLCs to merge and engage in interest exchanges.

A significant benefit of enacting the New Act is being able to use the Uniform Law Commission Commentary to the Uniform LLC Act and the decisions of other jurisdictions which have adopted the Uniform LLC Act as authority with respect to disputes involving Connecticut LLCs.

As stated in the New Act, neither the New Act nor any amendment to the New Act shall be construed to impair the obligations of any contract existing on, or affect any actions or proceedings begun or right accrued before July 1, 2017 or the effective date of such amendment. Connecticut LLCs should have confidence that agreements they draft will be enforced, except to the extent they contain a provision which is prohibited under Section 5(c) of the New Act.

An important objective of the Business Law Section when working on the New Act was to have a new limited liability company act which makes Connecticut more business friendly and makes it more likely that new LLCs will be formed in Connecticut. We believe the New Act will achieve these objectives.

Please contact your Murtha Cullina business attorney if you have any questions about the New Act or would like us to review the provisions of the operating agreement of your LLC to determine if the operating agreement should be amended or restated because of the New Act or because of changed circumstances.

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