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The Connecticut Uniform Limited Liability Company Act

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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 Laws Commission (“ULC”) on July 12, 2013. 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.

An LLC formed on or after July 1, 2017 to render professional services will be required to use PLLC or P.L.L.C. in its name. Professional services LLCs formed before July 1, 2017 will not be required to change their names.

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. Manager-management must now 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.

The New Act provides that in the event of an inconsistency between the certificate of organization and the operating agreement, the terms of the operating agreement will control as between or among the managers and members of the LLC, while the terms of the certificate of organization will control as to third parties to the extent third parties reasonably rely on the certificate of organization.

The New Act eliminates the statutory apparent authority of a member contained in the Current Act. A member is not an agent of the LLC merely by reason of being a member. A member’s authority to act for and bind the LLC derives solely from the operating agreement or from common law principles of apparent authority.

Although most of the default voting pro-



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visions 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. Both of these changes were required by the ULC as a condition to the New Act being designated a Uniform LLC Act. As with all provisions of the New Act other than the 14 items listed in Section 5(c) of the New Act, the unanimity provisions for admitting new members and amending the operating agreement may be varied by the operating agreement of the members. Another default rule in the New Act provides that a person that becomes a member of a limited liability company is deemed automatically to assent to the operating agreement, regardless of whether the new member signs the operating agreement.

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 provisions prohibiting a distribution by an insolvent LLC are similar to the provisions of the Connecticut Business Corporation Act (“CBCA”) prohibiting a distribution from an insolvent corporation.

The New Act describes the duty of loyalty and the standard of care in more detail than the Current Act. As default rules, those duties mirror the CBCA. However, 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 con-

tained 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 also codifies that members and managers must discharge their duties and obligations under the New Act or the operating agreement consistently with the implied contractual obligation of good faith and fair dealing.

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 requisite vote of the remaining members. These provisions carry forward the “pick your partner” principles of traditional partnership law.

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.

The New Act permits judicial dissolution if the court determines that: the conduct of all or substantially all of the LLC’s activities are unlawful; if it is not reasonably practical to carry on the LLC’s activities; or if 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 maintaining a direct action against another member, a manager, or an LLC must plead or prove an actual or 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 action must be filed as a derivative action. The derivative action provisions of the New Act are similar to the derivative action provisions of the CBCA.

The New Act permits LLCs to merge and engage in interest exchanges. As is the case currently, if the merger or interest exchange involves different kinds of legal entities, then the merger or interest exchange is governed by the provisions of the Connecticut Entity Transactions Act rather than the New Act.

The New Act states that in construing this Uniform LLC Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact this Uniform LLC Act. A significant benefit of enacting the New Act is being able to use the ULC Commentary to the Uniform LLC Act and the decisions of other jurisdictions which have adopted the Uniform LLC Act, as authority with respect to litigation 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 attorneys and 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. **CL**