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Changes to New Jersey LLC Law: What You Should Do Now

Legal Alert

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The New Jersey Revised Uniform Limited Liability Company Act recently became effective and may have a substantial impact on all New Jersey limited liability companies (LLCs). The Act applies to any New Jersey LLC formed on or after March 18, 2013 and will apply to **all** New Jersey LLCs, even those existing prior to March 18, 2013, beginning on March 1, 2014.

For New Jersey LLCs that have no Operating Agreement in place, the Act drastically changes the relationships among the members and between the members and the managers. Even for LLCs that do have an Operating Agreement, the Act will significantly change these relationships in several notable respects. Hence, every existing Operating Agreement should be reviewed and many should be amended to address the changes in the law.

The following are a few of the new provisions:

1. **Management.** Absent a provision in the Operating Agreement to the contrary, all actions outside the ordinary course of business (e.g., a sale of the business or the admission of a new member) will require the unanimous consent of the members, even in a manager-managed LLC.
2. **Fiduciary Obligations.** For the first time, the Act explicitly imposes a number of fiduciary obligations on members and managers. Some though not all of these obligations may be altered or waived, but only by provisions in the Operating Agreement. A member or manager who fails to comply with his or her fiduciary obligations may be sued by the members.
3. **Business Transactions Between Members and the LLC.** Among the new fiduciary obligations, the Act generally prohibits members from dealing with the LLC as a third party, (e.g., lending money, leasing property, providing services), unless specifically permitted by the Operating Agreement.
4. **Minority Member Protections.** For the first time, the Act creates statutory remedies for members who claim that they are oppressed by managers or controlling members, including the right to cause a dissolution of the company.
5. **Waiver of Liability.** A member or manager who seeks to limit his or her personal liability for wrongful actions must include specific provisions in the Operating Agreement, and these provisions may be different than those that would have been adequate under prior law.
6. **Charging Orders.** The Act now permits a creditor of a member of an LLC to foreclose on the members LLC interest. Thus, using a New Jersey LLC for asset protection planning is not as effective as it used to be. This may warrant some New Jersey LLCs considering converting to a Delaware LLC.

If you are the owner of a New Jersey limited liability company, with or without an Operating Agreement, we ***strongly*** recommend that you have your situation reviewed by an attorney from our Business and Corporate Department. The chances are high that without an appropriate change to your Operating Agreement, the new law will give you a different result than the result you intended.

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