

CONNECTICUT ADOPTS A NEW UNIFORM STATUTE GOVERNING LLCs

On June 2, 2016, Governor Malloy signed into law the “Connecticut Uniform Limited Liability Company Act” (the “New Act”), which makes significant revisions to Connecticut’s laws governing limited liability companies (“LLCs”). The New Act, which takes effect on July 1, 2017, will apply to domestic LLCs and foreign LLCs registered to do business in Connecticut. With the adoption of the New Act, Connecticut is modernizing its laws concerning LLCs—now the most common form of business entity—in an effort to promote a business-friendly environment in the state. Since the New Act is based on the revised Uniform LLC Act (the “Uniform Act”), which is a model statute approved by the American Bar Association, it also makes Connecticut’s LLC laws more uniform with the laws of other states that have also adopted some form of the Uniform Act.

Similar to the existing law, the New Act is a “default” statute and generally applies when an LLC’s operating agreement is silent on a particular matter. The New Act, however, expands upon the items that cannot be modified by an LLC’s operating agreement. For example, the New Act specifically prohibits an operating agreement from restricting a member’s rights regarding access to LLC information or from applying another state’s law to govern a domestic LLC. While the New Act will supersede Connecticut’s existing LLC laws, it will not affect existing operating agreements entered into or rights that accrued prior to the effective date of the New Act.

The New Act makes many changes to existing law from mere changes in terminology (e.g., using the term “Certificate of Formation” instead of the “Articles of Organization” to refer to an LLC’s formational document) to significant substantive changes to the rights and obligations of LLC members. For example:

- The New Act changes the due date for the filing of the LLC’s Annual Report. An LLC is now required to file its Annual Report between January 1 and March 31 of the year following the LLC’s formation, rather than the anniversary date of the LLC’s formation.
- Under the New Act, unless the operating agreement states otherwise, amendments to the articles of organization and operating agreement will require unanimous member approval. Current law requires only a majority member approval for amendments to the articles of organization and a two-thirds member approval for amendments to the operating agreement.
- The New Act explicitly states that a charging order is the exclusive remedy to satisfy a judgment against a member of an LLC and that a creditor is unable to foreclose on a member’s LLC interests.
- Under existing LLC law, there is a presumption that any member of a member-managed LLC is an agent of the LLC with the authority to bind and sign contracts on behalf of the LLC solely by virtue of being a member of the LLC. The New Act has no such presumption. As a result, parties dealing with an LLC member should obtain satisfactory evidence to confirm that a member has the authority to sign documents on behalf of the LLC.

The information provided above is a brief overview of some of the important changes resulting from the New Act and is by no means an exhaustive list. It is important for clients with existing Connecticut LLCs and foreign LLCs doing business in the state to understand the implications of the New Act.

Furthermore, anyone who intends to form an LLC after the effective date of the New Act is encouraged to consult with a business attorney in order to draft the operating agreement carefully to ensure that it appropriately reflects the desired arrangement and avoids any undesirable default rules that would otherwise be applicable under the New Act. For more information, please contact Justin L. Galletti (jgalletti@brodywilk.com).