

Connecticut Uniform Limited Liability Company Act

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Michael A. Rueda

PARTNER | HEAD OF US SPORTS AND ENTERTAINMENT | US

CATEGORY:

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PUBLIC COMPANIES

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Effective July 1, 2017, the Connecticut Uniform Limited Liability Company Act (the "New Act") will replace the current Connecticut Limited Liability Company Act (the "Existing Act"). The New Act sets forth default rules that apply when an LLC's operating agreement does not contain a provision to govern a specific issue. Except in certain instances described in the New Act, an LLC's operating agreement may deviate from the default rules that would otherwise apply.

The New Act modifies the document that is filed with the Secretary of State to form a Connecticut LLC in several ways. First, the New Act changes the name of this document from "articles of organization" to "certificate of organization." Second, the New Act does not require an LLC's certificate of organization to indicate whether or not the LLC is manager-managed. Third, under the New Act, an LLC's certificate of organization need not state the LLC's purpose.

The Existing Act provides that an LLC's operating agreement may be written or oral. The New Act expressly allows an operating agreement to be written, oral, implied, or any combination of the foregoing. Except in fourteen specifically enumerated cases, the New Act permits an operating agreement to contain any provision agreed to by an LLC's members, even if a provision differs from the default rules of the New Act. Notably, operating agreements may, if not manifestly unreasonable, eliminate the duty of loyalty otherwise imposed on managers and members, alter the duty of care, and remove any other fiduciary duty. The New Act prohibits an operating agreement from applying another state's law to govern a domestic LLC (i.e., a Connecticut LLC), changing an LLC's capacity to sue and be sued in its own name, eliminating the implied contractual obligations of good faith and fair dealing, or exonerating a person from liability for conduct involving bad faith.

The New Act changes default voting provisions governing the number of votes required for the LLC to take certain actions. For example, under the Existing Act, a majority of the outstanding LLC membership interests must approve amendments to an LLC's articles of organization, and amendments to an LLC's operating agreement require the approval of two-thirds of the outstanding LLC membership interests. The New Act requires unanimous consent of the outstanding LLC membership interests to amend an LLC's certificate of organization and to modify an LLC's operating agreement.

Under the Existing Act, every member of an LLC is deemed an agent of a member-managed LLC. The New Act eliminates the statutory apparent authority of a member, providing that a member is not an agent of an LLC solely by virtue of being a member of such LLC. Much like the Existing Act, the New Act does not treat members of a manager-managed LLC as agents of such LLC solely because of such status as a member.

The New Act prohibits an LLC from making distributions to its members if after the distributions, (a) the LLC would not be able to pay its debts as they become due or (b) the LLC's total assets would be less than the sum of liabilities, plus the amount necessary to satisfy members with preferential rights. The New Act also imposes personal liability on members of member-managed LLCs and managers of manager-managed LLCs for improper distributions. Under the New Act, such members or managers, as applicable, are personally liable for the amount by which the improper distribution exceeds the sum that the LLC could distribute without violating the New Act. The New Act also imposes liability on a member who receives an improper distribution to the extent that such member knows the distribution violates the New Act. The provisions prohibiting an improper distribution by an LLC are similar to analogous provisions already applicable to corporations under the Connecticut Business Corporation Act.

The New Act does not impair existing contracts, or impact previously commenced proceedings or accrued rights. With respect to an LLC formed before the New Act takes effect, such LLC's articles of organization are deemed certificate of organization and determinations about such LLC's management structure are deemed to be in the operating agreement per the New Act's requirements.

The above discussion only provides a summary of the more significant changes under the New Act. Individuals should consult with a Withers Bergman LLP attorney for detailed advice regarding the New Act.

Authors

Michael A. Rueda

PARTNER | HEAD OF US SPORTS AND ENTERTAINMENT | NEW YORK

Corporate

 +1 203 302 4087

 michael.rueda@withersworldwide.com