September 28, 2012

New Jersey Adopts a New Limited Liability Company Act

New Jersey Governor Christie signed into law a Revised Uniform Limited Liability Company Act on September 21. The new act takes effect on March 20, 2013, for limited liability companies formed after that date and on April 1, 2014, for LLCs already in existence. The new act repeals and replaces the existing New Jersey Limited Liability Company Act originally enacted in 1993. The new act includes provisions based on the Revised Uniform Limited Liability Company Act adopted by the National Conference of Commissioners on Uniform State Laws and is intended to update and modernize the laws governing LLCs in New Jersey, by providing more flexibility to LLCs organized or operating in New Jersey.

Several notable provisions in the new act differ from the current act:

- **Formation Changes**

The current act states that an LLC may carry on any lawful business, purpose or activity. The new act has clarified and expanded the purpose of an LLC, stating that an LLC "may have any lawful purpose, regardless of whether for profit." Although not explicitly stated, the clear implication is that LLCs may carry on nonprofit-type activities.

The current act provides that unless an LLC's certificate of formation specifies the LLC is to have a perpetual duration, the duration of such LLC is either the period specified in the LLC's operating agreement or, if no such period is specified, 30 years from the date of formation of such LLC. The new act, however, makes the default duration of an LLC perpetual, unless otherwise limited by the LLC's operating agreement. This change corresponds to the default perpetual duration for New Jersey corporations.

- **Increased Flexibility in Operating Agreements**

The current act defines "operating agreement" as "a written agreement among the members...as to the affairs of a limited liability company and the conduct of its business." The new act instead allows an operating agreement to be oral, written or implied based on the way an LLC has operated, which is consistent with the vast majority of other states' LLC statutes. This benefits smaller New Jersey LLCs that may not have written operating agreements but instead use oral or implied agreements between members to guide how they do business.

In addition, and different from the current act, the new act provides that an operating agreement may specify that an amendment to such operating agreement may require the approval of a person who is not a party to the operating agreement or the satisfaction of a condition in order to be effective.

- **Statement of Authority**

The current act states that each member in a member-managed LLC, unless otherwise provided in the operating agreement, has the authority to bind the LLC. That provision does not appear in the new act.

The new act incorporates the concept, not provided in the current act, of filing a Statement of Authority, allowing a specific person to act on behalf of the LLC. This provision clarifies that a member is not an agent of an LLC solely by reason of membership and recognizes the use of a publicly filed document to provide third parties with reliable documentation of the authority of a specific person to enter into transactions on behalf of an LLC (e.g., executing an instrument to transfer real property or otherwise entering into transactions that bind the LLC).

- **Resignation Rights**

The current act entitles resigning members to receive the fair value of their LLC interest upon resignation from the LLC.

Under the new act, however, a resigning member is no longer entitled to receive the fair value of such member's LLC interest as of the date of resignation. Instead, upon resignation, a resigning member is dissociated as a member and retains only the rights of an economic interest holder.

- **Domestication of Non-New Jersey LLCs and Conversion of Non-LLC Entities**

Unlike the current act, the new act provides procedures for the domestication of an LLC formed under the laws of another state to become a New Jersey LLC, as well as procedures for the conversion of a different corporate entity (e.g., a corporation) to become a New Jersey LLC. This change is in line with other business-friendly states' statutes, like those of Delaware and Nevada.

The Day Pitney attorneys in our Parsippany office would be pleased to discuss the new act and to answer any questions about its application to current New Jersey limited liability companies.