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Business Law Alert: New Law for LLCs

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Effective January 1, 2014, California has enacted the Revised Uniform Limited Liability Company Act ("RULLCA", or the "New Act," commencing at Corporations Code Section 17701.01), which will replace the original Beverly-Killea Act adopted in 1994.

Reviewing Your LLC Documents

Typically, new laws have transitional provisions, but the New Act applies to all pre-existing LLCs as well as newly formed entities from January 1, 2014 on. While many aspects of the law stay the same (for example, formation, Secretary of State forms, taxation, and dissolution), enough changes have been made to make it prudent to review your existing LLC documents.

The new Act, among other changes, provides:

- an emphasis on written contract, stating California policy is "... to give maximum effect to the principles of freedom of contract", which recognizes the importance of the LLC Operating Agreement;
- rules regarding withdrawal or other "disassociation", including penalties for wrongful disassociation;
- that a member of an LLC will be subject to the same common law factors regarding "piercing the corporate veil" for individual liability, except as to the failure to hold meetings or observe formalities surrounding the calling or conducting of meetings;
- for numerous "default rules", meaning the new Act statutes control if not otherwise provided in the Articles of Organization or Operating Agreement. For example, certain matters will require unanimous member approval in a manager-managed LLC unless otherwise stated in the governing documents;

- changes as to fiduciary duties, including limitations on reducing or modifying the duties of care and loyalty; and
- that certain matters cannot be overridden by either the Articles or the Operating Agreement, including the right to receive and inspect specified information, and so-called "dissenters' rights triggered by certain reorganizations of an LLC.

We recommend that clients have all California LLC operating agreements reviewed to assess any impacts of the New Act.



***Jeffrey Curcio** is a partner with the Corporate and Securities Team and Chair of the Tax Law Team. Jeff represents clients before the Examination, Appeals and Collection Divisions of the IRS. His primary emphasis is on income tax matters for all types of taxpayers, but he also is involved with planning and controversies concerning other federal and state tax matters.*

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