

2018 — year of the Limited Liability Company

Everyone knows that 2018 is the Year of the Dog; savvy business owners should know 2018 is also the Year of the Limited Liability Company.

Limited liability companies (LLCs) are business entities that combine the pass-through taxation of a partnership with the limited liability protection of a corporation for its owners. They also do not require the formalities of a corporation (e.g. annual meetings, maintaining the minutes from such meetings, etc.) to maintain such protection. They are truly the best of both worlds.

It's no wonder LLCs have become the "go to" entity for many businesses. And, thanks to several significant changes in the laws, 2018 will see even more businesses go this route.

Historically, one of the only major drawbacks of an LLC had been the expense of forming and maintaining it with the Illinois Secretary of State. On December 20, 2017, that all changed when Governor Rauner signed Senate Bill 867 into law (805 ILCS 180/50-10). The law lowered the fees associated with LLCs and made the cost of having such a business more affordable. The law lowers several fees, dropping the LLC filing fee from \$500 to \$150, the Annual Report filing fee from \$250 to \$75, and the Amendments to



CARRIE M. BUDDINGH

the Articles of Organization filing fee from \$150 to \$50. The newly reduced fees are now aligned with those associated with corporations, making an LLC an even more attractive option.

Illinois also recently completed a major overhaul of its Limited Liability Act (805 ILCS 180/) effective July 1, 2017. As a result, both new and old LLCs should revisit how they are doing business. For example, this new law establishes a distinction between a full member of an LLC and his or her rights as such versus a distributional interest (entitlement to distributions from the LLC only). The new law also limits a judgment creditor's ability to only assert, via a charging order, a lien against a debtor's distributional interest from an LLC for an unsatisfied judgment. The creditor will have no other rights.

In addition, simply being a member (AKA an owner) of an LLC no longer automatically makes you an agent of the LLC for purposes of the company's business. Rather, the company can now specifically grant a member the authority to act and terminate that member's authority when it so desires. This does not affect the member's ownership interest or his or her right to distributions from the company; it merely limits his or her authority to act on behalf of

the company and bind it.

This is a particularly important aspect of the new law for member-managed LLCs. Prior to the new law, a member-managed LLC would vest each member with the authority to act on behalf of the company (e.g. enter into a contract), which could create all types of problems and issues with an absentee business owner. This new provision eliminates such concern as a specific grant of authority can be made (or not made) when needed.

It is important to note that LLCs will be deemed member-managed LLCs by default under the law. So, if a company wishes to grant or limit a member's authority, it will need to file a Statement of Authority Amendment or Cancellation and/or vest the authority in one or more managers. An LLC can still be classified as manager-managed LLC; however, such declaration needs to be made in the LLC's operating agreement.

These are just a few of the recently enacted changes to the laws governing LLCs. For additional information regarding the recent changes and their potential effect on your business, please contact your legal counsel.

• *Carrie M. Buddingh is a partner with Oak Brook based Bellock & Coogan Ltd. She may be reached at cbuddingh@bellockcoogan.com or bellockcoogan.com.*

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