The Record SECTION B

Business

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ASK A LAWYER

LLC operating agreements can provide flexibility

Q. My limited liability company has filed a certificate of formation with the State of New Jersey. How would an operating agreement benefit my company?

An operating agreement is a contract among owners (called members) as to the affairs of a limited liability company.

Without an operating agreement, LLCs are governed by New Jersey statute. With an operating agreement, LLC members can vary certain rules that would otherwise apply to the company's operations and the relationship of the members.

Key components of an operating agreement include:

■ **Management.** Absent an operating agreement, management is vested in the members in proportion to their interest in LLC profits, with decisions by majority vote. Through an operating agreement, members may identify officers and/or managers and their respective rights. In an operating agreement, members also can select a "tax matters partner" from among members.

■ **Capital contributions.** An operating agreement should reflect the members' initial capital contribution and may specify consequences to a member's interest for failure to make a required contribution. Changes to capital accounts should be reflected annually in the books and records.

■ **Profits, losses and distributions.** If members wish to allocate profits, losses and distributions other than in proportion to the agreed value of contributions made by each member, they may do so in an operating agreement.

Because LLCs are generally taxed as partnerships, operating agreements often require the company to distribute to its members sufficient profits to cover each member's tax liability arising from its interests.

■ **Changes in membership.** An operating agreement may limit the admission of additional members and may restrict transferability of interests.

■ **Dissolution.** Members frequently choose to include a dissolution provision to provide members a clear path for winding down the company.

In conclusion, it is in your best interest to have an operating agreement because it can provide flexibility and protection to an LLC and its members.

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