

NJ-RULLCA Provisions Requiring Unanimous Consent of Members

by Gianfranco A. Pietrafesa

There are numerous provisions in the New Jersey Revised Uniform Limited Liability Company Act (NJ-RULLCA)¹ requiring the consent of all members of a limited liability company (LLC) regarding certain actions. Fortunately, NJ-RULLCA implicitly authorizes the members of an LLC to agree in the company's operating agreement to require something less than unanimous consent of the members. N.J.S.A. 42:2C-11(c) expressly identifies the provisions an operating agreement may not alter or eliminate (unless done in accordance with NJ-RULLCA). By implication, any other statutory provisions may be altered or even eliminated in the operating agreement. In further support of this principle is the statutory language included in NJ-RULLCA about the freedom of contract and the enforceability of operating agreements.²

The following list identifies the actions requiring the unanimous consent or vote of the members under NJ-RULLCA. As noted, an operating agreement may change the required vote from unanimous to something less than unanimous, such as a simple majority or super-majority vote.

1. After the formation of an LLC, a person may become a member only with the consent of all existing members.³
2. Any action, matter or decision outside the ordinary course of business, regardless of whether the LLC is member-managed or manager-managed⁴ (This includes decisions to (a) sell, lease, exchange or otherwise dispose of all or substantially all of the LLC's property outside the ordinary course of business, (b) mergers, (c) conversions and (d) domestications.)⁵
3. Amending the operating agreement, regardless of whether the LLC is member-managed or manager-managed⁶
4. Authorizing or ratifying an act or transaction that violates the fiduciary duty of loyalty⁷
5. Expelling a member from the LLC pursuant to the provisions of NJ-RULLCA. However, the vote of the

- member being expelled is not required (obviously)⁸
6. Dissolving the LLC⁹
7. As noted, merging the LLC with or into another entity, converting the LLC into another type of business entity, and domesticating the New Jersey LLC into another state so that it becomes an LLC of the other state¹⁰
8. With regard to any merger, conversion or domestication, if a member will be subject to personal liability as a result of the merger, conversion or domestication, that member must approve the merger, conversion or domestication. Since almost all members will be similarly situated, any merger, conversion or domestication that will result in personal liability to the members will require the approval of all members.¹¹ ■

Gianfranco A. Pietrafesa is a partner of Archer & Greiner, P.C. in its Hackensack office, where he is a member of its business counseling group. He is a director and past chair of the Business Law Section and served on the select committee that drafted NJ-RULLCA.

Endnotes

1. N.J.S.A. 42:2C-1 *et seq.*
2. N.J.S.A. 42:2C-11(i).
3. N.J.S.A. 42:2C-31(c)(3).
4. N.J.S.A. 42:2C-37(b)(4) & -37(c)(4)(c).
5. See N.J.S.A. 42:2C-37(c)(4), -75(a), -79(a) & -83(a). (Note that NJ-RULLCA uses the term "activities" instead of "business" because an LLC may be used for nonprofit purposes. See N.J.S.A. 42:2C-4(b); Uniform Law Commission Comment to RULLCA Section 108(b)).
6. N.J.S.A. 42:2C-37(b)(5) & (c)(4)(d).
7. N.J.S.A. 42:2C-39(f).
8. N.J.S.A. 42:2C-46(d).
9. N.J.S.A. 42:2C-39(a)(2).
10. N.J.S.A. 42:2C-75(a); 42:2C-79(a); 42:2C-83(a).
11. N.J.S.A. 42:2C-86.