

Client Advisory

June 6, 2006

Limited Liability Entities in New York Must Meet Amended Publication Requirements or Face Suspension of Authority to do Business in New York

This is a supplement to the Client Advisory issued on May 1, 2006, regarding the change in New York law concerning newspaper publication requirements applicable to non-corporate limited liability entities ("LLEs") organized in New York, or organized elsewhere and qualified to do business in New York, that were formed or qualified on or after January 1, 1999 and prior to the June 1, 2006 effective date of the new law. As before, we ask that if you are not the person in your company responsible for matters of this nature, please forward this Advisory to that person to make him or her aware of the upcoming change in New York law.

As originally enacted, the new law would have imposed a penalty of suspension of an LLE's authority to transact business in New York if it failed to comply with the publication requirement within 18 months after the new law's June 1 effective date. It also would have added a new requirement that the published notice identify the holders of the ten most valuable interests in an LLE that are active in its business. Finally, it would have reduced from 6 to 4 the number of required consecutive weekly newspaper publications.

When our earlier Advisory was issued, amendatory legislation was pending in New York that would have become effective at the same time as the original new law. This amendment would have drastically shortened the time for existing LLEs (those formed or qualified in New York prior to June 1, 2006) to comply with the new publication requirement, and would have increased the penalty for failure to comply from suspension to loss of limited liability protection.

We are pleased to advise that the amendatory legislation just described has been significantly revised. As enacted into law on May 31, 2006, with a June 1, 2006 effective date, it makes the following changes to the new law as enacted earlier this year, which also became effective June 1:

- Reduces the new law's time limit for existing LLEs to comply with publication requirements, but only from 18 months after the June 1, 2006 effective date of the new requirements to 12 months after that date, i.e., May 31, 2007.
- Increases the new law's number of required consecutive weekly newspaper publications from 4 back to 6 (restoring that number to its level under the old law.)
- Eliminates the new law's requirement to disclose the names of the holders of the ten most valuable interests in an LLE.

The revised bill leaves in place the new law's penalty for non-compliance with the publication requirements. The penalty remains the suspension of an LLE's authority to conduct business in New York, the suspension being annulled when and if the LLE later complies with those requirements. The proposed increase in the penalty (loss of partners'/members' limited liability protection) was dropped from the revised bill before its enactment.

We reiterate our strong recommendation that clients using an LLE organized or qualified in New York on or after January 1, 1999 consider taking action as soon as possible to comply with applicable publication requirements, if they have not already done so. Our paralegals can assist you in determining whether your LLE is on record with the New York Department of State as having met the publication requirements and, if not, in complying with them now in a timely manner.

¹ For example, limited liability companies (LLCs), limited partnerships (LPs), and limited liability partnerships (LLPs).

We Can Help

Information about the status of our clients' LLEs as regards compliance with New York publication requirements, and assistance in complying if required, can be obtained by our clients from:

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Information about the provisions and effect of the new law, as recently amended, can be obtained from:

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