

LLC FORMATION CONSIDERATIONS

MEMBERS

- Who are the Members?
- Classes of Members?
- Terms for admission of new Members
- Any Trusts?

CONTRIBUTIONS

- Initial Capital Contributions:
 - > Contribution of Money or Property
 - > Contribution of Services
- Required Capital Calls:
 - > What are the consequences if a Member fails to timely contribute additional amounts?
 - > Guaranties and Indemnification Obligations?

MANAGEMENT

- Member or Manager managed?
- Managers
 - > Number of managers
 - > Allocation of responsibilities
 - > Successor managers (how appointed?)
- How Are Decisions Made?
 - > What happens in the event of deadlock?
 - > Any major decisions requiring unanimous consent?
 - * incurrence of debt
 - * purchase or sale of property
 - * establishment of reserves
 - * fees paid to Members or affiliates
 - * additional capital contributions
 - * admission of new Members
 - * change of business
- Manager compensation

DISTRIBUTIONS/ALLOCATIONS

- Pro-Rata Distributions
- Priority Distributions/Guarantied Returns
- Preferred Returns
- Creating reserves
- Minimum distributions for paying taxes

TAX CONSIDERATIONS

- Pro-rata Allocations
- Special Allocations

TRANSFERABILITY OF INTERESTS

- How restrictive are transfers?
 - > Absolute prohibition of transfers.
 - > Transfers to “permitted transferees”
 - * Existing Members
 - * Family of Existing Members
 - * Trust FBO Members’ families
 - * Affiliated and successor entities
 - > Rights of Members
 - * Consent Thresholds
 - * Right Of First Refusal
 - * Put/Call Rights
 - > No limitations whatsoever.
- Death or disability on Members
 - > Buy-Sell provisions
 - > Key Man insurance.