



Season's Greetings

Mesmer & Deleault, PLLC
41 Brook Street, Manchester, NH 03104
Seacoast Office: One New Hampshire Ave., Suite 125
Portsmouth, NH 03801



"Tip of the Month"

Adding a Nonvoting Investor to an LLC

Sometimes a limited liability company (LLC) wants to bring in additional capital, but the owners want to keep control of the company. In that case, the LLC might consider adding nonvoting investor who will participate in profits but have no say in the company's daily management.

To start, the company must be a manager-managed LLC. If the LLC is a member-managed company, you can amend your LLC Operating Agreement and include agreed terms with the investor.

The LLC Agreement must also allow for a nonvoting class of members, which might also call for an amendment. The current members must vote on agreements to the LLC Agreement, which can be done by signing unanimous Consent Resolutions.

Your updated LLC Agreement should list the members with management roles and the classes of members having and non-voting rights. The updated LLC Agreement should provide procedures for issuing nonvoting membership interests.

The investor may want very favorable profit allocations or other perks in exchange for limitations on the ability to influence management and operations. You should have a separate agreement formalizing your terms with the nonvoting investor, which also details limitations on the investor's ability to manage the company. Each member should sign this agreement, together with the investor.

Negotiated terms with the new investor should clearly define 1) the investor's role in the LLC's day-to-day affairs, 2) what share of profits the investor will receive, 3) what the LLC's profit and loss allocations will be, 4) buyout procedures in the event the investor wants to pull out, and 5) the powers and duties of the investor, who will likely want to have some say in the company's operations.

Be aware that bringing in a nonvoting investor to your LLC could trigger the application of securities laws, particularly if the investor has no participation in the decision-making functions of the business. Be sure to maintain compliance with securities and financial regulations.

If you need help with your company's business questions, please give us a call at (603) 668-1971 or contact us by email at mailbox@biz-patlaw.com.

Happy Holidays!

Frank B. Mesmer, Jr.
Robert R. Deleault



(603) 668-1971

Fax (603) 622-1445

E-mail: mailbox@biz-patlaw.com

Website: www.biz-patlaw.com