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CORPORATE-TAX NEWSLETTER

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PUERTO RICO APPROVES NEW LLC STATUTE

On September 23, 2004, the Governor of Puerto Rico signed into law an amendment to Puerto Rico's General Law of Corporations of 1995, establishing a legal framework for organizing Limited Liability Companies ("LLC") in Puerto Rico. Such amendment, enacted as Act No. 487, also provides for the registration of U.S. and foreign LLCs in Puerto Rico, which imparts some much needed legal guidance with respect to the status of U.S. and foreign LLCs doing business in Puerto Rico.

LLCs have gained popularity in the United States and other countries over the past several years, because they generally combine some of the most attractive features of partnerships and corporations; namely, limited liability for all its members and pass-through taxation.

> ***"LLCs generally combine some of the most attractive features of partnerships and corporations such as limited liability for all its members and pass-through taxation."***

The LLC law provides that the liability of LLC members for the LLC's obligations shall be limited to the value of their equity interests in the LLC. However, unlike the tax treatment afforded to LLCs for federal tax purposes, the Puerto Rico Internal Revenue Code of 1994, as amended, treats LLCs as corporations. As such, pass-through Puerto Rico income tax treatment will only be available to LLCs to the extent they qualify for Special Partnership or Subchapter N elections under the Puerto Rico Internal Revenue Code.

Puerto Rico's LLC law will be effective 90 days after its approval (on or about December 22, 2004). New LLCs may be organized by filing a certificate of organization with the Puerto Rico Department of State. U.S. and foreign LLCs currently doing business in Puerto Rico can register with the Department of State by filing a certificate of authorization to do business in Puerto Rico or a certificate of domestication, as applicable. The fee for each such filing is $50.00. U.S. and foreign LLCs doing business in Puerto Rico have a grace period of 90 days from the effective date of the LLC law to register with the Puerto Rico Department of State. Thereafter, all U.S. and foreign LLCs that do not register with the Department of State will be subject to a penalty of $200.00 for each year or part of a year that they fail to so register. Such LLCs will be prohibited from suing other parties in Puerto Rico courts and may be subject to injunctions prohibiting them from doing business in Puerto Rico until they register with the Department of State.

> ***"Foreign LLCs doing business in Puerto Rico have a grace period of 90 days from the effective date of the LLC law to register in Puerto Rico."***

The LLC law requires LLCs to pay annual duties to the Department of State in the amount of $100.00. Additionally, since the LLC law treats LLCs as corporations for purposes of the General Law of Corporations of 1995, LLCs may be required to file annual reports with the Department of State, though no such filing is expressly required by the LLC law. Given the differences in organizational structure between LLCs and corporations, however, it is unclear whether any such LLC annual reports would be filed in the current form used for corporations, or whether the Department of State will establish a new annual report form for LLCs.

Because of the general nature of this newsletter, nothing herein should be considered as legal advice or a legal opinion. For further information about the contents of this newsletter, or should you need further assistance in connection with these matters, please contact the firm's Corporate – Tax Department.

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