

MICHIGAN LIMITED LIABILITY COMPANY ACT (EXCERPT)

Act 23 of 1993

ARTICLE 3

450.4301 Members; contribution.

Sec. 301. (1) A contribution of a member to a limited liability company may consist of any tangible or intangible property or benefit to the company, including cash, property, services performed, promissory notes, contracts for services to be performed, or other binding obligation to contribute cash or property or to perform services.

(2) A contribution of an obligation to contribute cash or property or to perform services may be in exchange for a present membership interest or for a future membership interest, including a future profits interest, as provided in an operating agreement.

History: 1993, Act 23, Eff. June 1, 1993;—Am. 1997, Act 52, Imd. Eff. July 1, 1997;—Am. 2002, Act 686, Imd. Eff. Dec. 30, 2002.

450.4302 Promise by member to contribute; enforcement; obligation to perform; rights of company; compromising obligation; enforcement by creditor of original member's obligation.

Sec. 302. (1) A promise by a member to contribute to the limited liability company is not enforceable unless the promise is in writing and signed by the member.

(2) Unless otherwise provided in an operating agreement, a member is obligated to the limited liability company to perform any enforceable promise to contribute cash or property or to perform services, even if the member is unable to perform because of death, disability, or other reason. If a member does not make the required contribution of property or services, the member is obligated, at the option of the limited liability company, to contribute cash equal to that portion of value of the stated contribution that is not made.

(3) The rights of the limited liability company under subsection (2) are in addition to any other rights that the limited liability company may have under an operating agreement or applicable law.

(4) Unless otherwise provided in an operating agreement, a member's obligation to make a contribution or to return money or other property paid or distributed in violation of this act may be compromised only upon the unanimous vote of the members of the limited liability company entitled to vote. Notwithstanding a compromise of a member's obligation, a creditor of a limited liability company who extends credit or otherwise acts in reliance on the member's obligation after the member signs a writing that reflects the obligation and before the amendment of the writing to reflect the compromise may enforce the member's original obligation.

History: 1993, Act 23, Eff. June 1, 1993;—Am. 1997, Act 52, Imd. Eff. July 1, 1997;—Am. 2010, Act 290, Imd. Eff. Dec. 16, 2010.

450.4303 Distribution of assets; allocation; manner; basis.

Sec. 303. (1) Distributions of cash or other assets of a limited liability company shall be allocated among the members and among classes of members in the manner provided in an operating agreement. If an operating agreement does not provide for an allocation, distributions shall be allocated as follows:

(a) Prior to July 1, 1997, on the basis of the value, as stated in the records the limited liability company is required to keep under section 213 or as determined by any other reasonable method, of the contributions made by each member to the extent that the contributions have been received by the limited liability company and have not been returned.

(b) On and after July 1, 1997, except as otherwise provided in subsection (2), in equal shares to all members. A membership interest held by 2 or more persons, whether as fiduciaries, members of a partnership, tenants in common, joint tenants, tenants by the entirety, or otherwise, is considered as held by 1 member for an allocation under this subdivision.

(2) If a limited liability company in existence before July 1, 1997 allocated distributions on the basis of subsection (1)(a), the limited liability company shall continue to allocate distributions pursuant to subsection (1)(a) until the allocation is changed by an operating agreement.

History: 1993, Act 23, Eff. June 1, 1993;—Am. 1997, Act 52, Imd. Eff. July 1, 1997;—Am. 2002, Act 686, Imd. Eff. Dec. 30, 2002.

450.4304 Distribution; conditions for receiving.

Sec. 304. (1) Except as otherwise provided in this act and subject to subsection (2), a member is entitled to receive a distribution from a limited liability company before the withdrawal of the member from the limited liability company or before the dissolution and winding up of the limited liability company to the extent and at the times or upon the happening of the events specified in an operating agreement.

(2) If an operating agreement does not address a member's right to receive a distribution before the withdrawal of the member from the limited liability company or before the dissolution and winding up of the limited liability company, the unanimous approval of the members is required for any distribution to that member.

History: 1993, Act 23, Eff. June 1, 1993;—Am. 1997, Act 52, Imd. Eff. July 1, 1997;—Am. 2002, Act 686, Imd. Eff. Dec. 30, 2002;—Am. 2010, Act 290, Imd. Eff. Dec. 16, 2010.

450.4305 Distributions to withdrawing member.

Sec. 305. Until the effective date of withdrawal, a withdrawing member shall share in any distribution made in accordance with section 304. An operating agreement may provide for an additional distribution to a withdrawing member. If a provision in an operating agreement permits withdrawal but is silent on an additional withdrawal distribution, a member withdrawing in accordance with the operating agreement is entitled to receive as a distribution, within a reasonable time after withdrawal, the fair value of the member's interest in the limited liability company as of the date of withdrawal based upon the member's share of distributions as determined under section 303.

History: 1993, Act 23, Eff. June 1, 1993;—Am. 1997, Act 52, Imd. Eff. July 1, 1997.

450.4306 Distributions; demand, acceptance, and receipt of distribution; form.

Sec. 306. Except as provided in an operating agreement, a member, regardless of the nature of the member's contribution, has no right to demand and receive a distribution from a limited liability company in any form other than cash, and a member may not be compelled to accept from a limited liability company a distribution of an asset in kind to the extent that the percentage of the asset distributed to the member exceeds a percentage of that asset that is equal to the percentage in which the member shares in distributions from the limited liability company.

History: 1993, Act 23, Eff. June 1, 1993.

450.4307 Distributions prohibited under certain situations; exceptions; effect of distribution under subsection (1); remedies available; future payments to withdrawing members; effect of subsection (1) on third party; asserting legal or equitable rights.

Sec. 307. (1) Except as otherwise provided in subsection (5), a distribution shall not be made if, after giving the distribution effect, 1 or more of the following situations would occur:

(a) The limited liability company would not be able to pay its debts as they become due in the usual course of business.

(b) The limited liability company's total assets would be less than the sum of its total liabilities plus, unless an operating agreement provides otherwise, the amount that would be needed, if the limited liability company were to be dissolved at the time of the distribution, to satisfy the preferential rights of other members upon dissolution that are superior to the rights of the member or members receiving the distribution.

(2) The limited liability company may base a determination that a distribution is not prohibited under subsection (1) on financial statements prepared on the basis of accounting practices and principles that are reasonable under the circumstances, on a fair valuation, or on another method that is reasonable under the circumstances.

(3) The effect of a distribution under subsection (1) is measured at the following times:

(a) Except as provided in subsection (5), in the case of a distribution to a withdrawing member, as of the earlier of the date money or other property is transferred or debt incurred by the limited liability company, or the date the member ceases to be a member.

(b) In the case of any other distribution of indebtedness, as of the date the indebtedness is authorized if distribution occurs within 120 days after the date of authorization, or the date the indebtedness is distributed if it occurs more than 120 days after the date of authorization.

(c) In all other cases, as of the date the distribution is authorized if the payment occurs within 120 days after the date of authorization, or the date the payment is made if it occurs more than 120 days after the date of authorization.

(4) At the time a member becomes entitled to receive a distribution, the member has the status of, and is entitled to all remedies available to, a creditor of the limited liability company with respect to the distribution. A company's indebtedness to a member incurred by reason of a distribution made in accordance with this section is at parity with the company's indebtedness to its general, unsecured creditors except as otherwise agreed.

(5) If the limited liability company distributes an obligation to make future payments to a withdrawing member, and distribution of the obligation would otherwise be prohibited under subsection (1) at the time it is

made, the company may issue the obligation and the following apply:

(a) The portion of the obligation that could have been distributed without violating subsection (1) is indebtedness to the withdrawing member under subsection (4).

(b) All of the following apply to the portion of the obligation that exceeds the amount of the obligation that is indebtedness to the withdrawing member under subdivision (a):

(i) At any time prior to the due date of the obligation, payments of principal and interest may be made as a distribution to the extent that a distribution may then be made under this section.

(ii) At any time on or after the due date, the obligation to pay principal and interest is considered distributed and treated as indebtedness described in subsection (4) to the extent that a distribution may then be made under this section.

(c) Unless otherwise provided in an agreement with the withdrawing member, the obligation is considered a liability or debt for purposes of determining whether distributions other than payments on the obligation may be made under this section, except for purposes of determining whether distributions may be made to members having preferential rights superior to the rights of the withdrawing member.

(6) The enforceability of a guaranty or other undertaking by a third party relating to a distribution is not affected by the prohibition of the distribution under subsection (1).

(7) If a claim is made to recover a distribution made contrary to subsection (1) or if a violation of subsection (1) is raised as a defense to a claim based upon a distribution, this section does not prevent the person receiving the distribution from asserting a right of rescission or other legal or equitable rights.

History: 1993, Act 23, Eff. June 1, 1993;—Am. 1997, Act 52, Imd. Eff. July 1, 1997;—Am. 2002, Act 686, Imd. Eff. Dec. 30, 2002.

450.4308 Distribution; violating operating agreement or MCL 450.4307; liability of members or managers; presumption of assent; knowledge of violation; contribution; commencement of proceeding.

Sec. 308. (1) A member or manager that votes for or assents to a distribution in violation of an operating agreement or section 307 is personally liable, jointly and severally, to the limited liability company for the amount of the distribution that exceeds what could have been distributed without violating the operating agreement or section 307 if it is established that the member or manager did not comply with section 404.

(2) For purposes of liability under subsection (1), a member or manager entitled to participate in a decision to make a distribution is presumed to have assented to a distribution unless the member or manager does 1 of the following:

(a) Votes against the distribution.

(b) Files a written dissent with the limited liability company within a reasonable time after the member or manager has knowledge of the decision.

(3) A member that accepts or receives a distribution with knowledge of facts indicating it is in violation of an operating agreement or section 307 is liable to the limited liability company for the amount the member accepts or receives that exceeds the member's share of the amount that could have been distributed without violating section 307 or the operating agreement.

(4) Each member or manager held liable under subsection (1) for an unlawful distribution is entitled to contribution from each other member or manager who could be held liable under subsection (1) or (3). The contribution of a person held liable under both subsections (1) and (3) shall not exceed the person's liability under either subsection (1) or (3), whichever is greater.

(5) A proceeding under this section is barred unless it is commenced within 2 years after the date on which the effect of the distribution is measured under section 307.

History: 1993, Act 23, Eff. June 1, 1993;—Am. 1997, Act 52, Imd. Eff. July 1, 1997;—Am. 2010, Act 290, Imd. Eff. Dec. 16, 2010.