

MICHIGAN LIMITED LIABILITY COMPANY ACT (EXCERPT)
Act 23 of 1993

450.4705a Definitions; merger of domestic limited liability companies with business organizations.

Sec. 705a.

(1) As used in this section:

(a) "Business organization" means a domestic or foreign corporation, domestic or foreign nonprofit corporation, limited partnership, general partnership, telephone corporation formed under 1883 PA 129, MCL 484.1 to 484.10, or any other type of domestic or foreign business enterprise, incorporated or unincorporated, except a domestic limited liability company.

(b) "Entity" means a business organization or a domestic limited liability company.

(c) "Nonprofit corporation" means a corporation that, under the laws of the jurisdiction in which it was formed, is a nonprofit corporation, including, but not limited to, a corporation formed under or subject to, in whole or in part, the nonprofit corporation act, 1982 PA 162, MCL 450.2101 to 450.3192.

(d) "Obligated person" means a general partner of a limited partnership, a partner of a general partnership, or a participant in or an owner of an interest in any other type of business enterprise that, under applicable law, is generally liable for the obligations of the business enterprise.

(2) If all of the business organizations in a merger with 1 or more domestic limited liability companies are foreign limited liability companies, the merger must comply with section 705 and not this section.

(3) Except as otherwise provided in subsection (2), 1 or more domestic limited liability companies may merge with 1 or more business organizations if all of the following requirements are satisfied:

(a) The merger is permitted under the law of the jurisdiction in which each constituent business organization is organized and each constituent business organization complies with that law in effecting the merger.

(b) Each foreign constituent business organization transacting business in this state complies with the applicable laws of this state.

(c) Each domestic limited liability company complies with this section.

(4) If 1 or more domestic limited liability companies propose to merge with 1 or more business organizations, each domestic limited liability company shall prepare a plan of merger that contains all of the following:

(a) The name of each constituent entity, the name of the surviving entity, the street address of the surviving entity's principal place of business, and the type of organization of the surviving entity.

(b) The terms and conditions of the proposed merger, including the manner and basis of converting the shares, partnership interests, membership interests, or other ownership interests of each constituent entity into ownership interests or obligations of the surviving entity, or into cash or other consideration, which may include ownership interests or obligations of an entity not a party to the merger, or into a combination thereof.

(c) If the surviving entity is to be a domestic limited liability company, a statement of the amendments to the articles of organization of the surviving company if the articles are changed by the merger, a restatement of the articles of organization, or a statement that the articles of organization of the surviving domestic limited liability company are unchanged.

(d) Any other provision that the domestic limited liability company considers necessary or desirable.

(5) A constituent domestic limited liability company shall submit a plan of merger to the members for approval. A unanimous vote by the members entitled to vote in the constituent domestic limited liability company is required to approve a plan of merger unless an operating agreement of the constituent domestic limited liability company provides otherwise.

(6) If an operating agreement of a constituent domestic limited liability company provides for approval by less than unanimous vote of members entitled to vote and the merger is approved, a member that voted against the merger may withdraw from the domestic limited liability company and receive, within a reasonable time, the fair value of the member's interest in the domestic limited liability company, based on the member's share of distributions as determined under section 303.

(7) If a plan of merger is approved, a certificate of merger must be executed as provided in section 103 and filed on behalf of each constituent domestic limited liability company. The certificate of merger must contain all of the following:

(a) The information required under subsection (4)(a) and the statement required under subsection (4)(c).

(b) A statement that the plan of merger was approved by the members of each constituent domestic limited liability company in accordance with subsection (5).

(c) A statement of any assumed names of merging entities transferred to the surviving entity in accordance with section 206(6), specifying each transferred assumed name and the name of the entity from which the assumed name is transferred. If the surviving entity is a domestic limited liability company or a foreign limited liability company authorized to transact business in this state, the certificate may include a statement of 1 or more names or assumed

names of merging entities that are to be treated as new certificates of assumed names of the surviving company under section 206(7).

(d) The effective date of the merger is later than the date the certificate of merger is filed.

(8) A certificate of merger is effective in accordance with section 104.

(9) When a merger is effective under this section, all of the following apply:

(a) Every other constituent entity merges into the surviving entity and the separate existence of every entity except the surviving entity ceases.

(b) The title to all property, real, personal, and mixed, and rights owned by each constituent entity are vested in the surviving entity without reversion or impairment.

(c) A surviving company may use the name and the assumed names of any merging entity if a filing required under section 206(6) or (7) or other applicable statute is made.

(d) The surviving entity has all of the liabilities of each constituent entity. This section does not affect liability, if any, of a person that was an obligated person with respect to a merging entity for acts or omissions that occurred before the merger.

(e) A proceeding pending against any constituent entity may be continued as if the merger did not occur or the surviving entity may be substituted in the proceeding for the entity whose existence ceased.

(f) The articles of organization of a surviving domestic limited liability company are amended to the extent provided in the plan of merger.

(g) The ownership interests of each constituent entity that are being converted into ownership interests or obligations of the surviving entity or into cash or other property are converted.

(10) If the surviving entity is a foreign business organization, it is subject to the laws of this state pertaining to the transaction of business in this state by a foreign business organization if it transacts business in this state. The surviving entity is liable for, and is subject to service of process in a proceeding in this state for the enforcement of, any obligation of a constituent domestic limited liability company, including an obligation to a member of the constituent domestic limited liability company that has dissented from the merger and withdrawn in accordance with subsection (6).

History: Add. 1997, Act 52, Imd. Eff. July 1, 1997 ;-- Am. 2002, Act 686, Imd. Eff. Dec. 30, 2002 ;-- Am. 2014, Act 559, Imd. Eff. Jan. 15, 2015 ;-- Am. 2024, Act 175, Imd. Eff. Dec. 23, 2024