

§1368. Limitations on distribution

1. In violation of partnership agreement. A limited partnership may not make a distribution in violation of the partnership agreement.

[PL 2005, c. 543, Pt. C, §2 (NEW).]

2. Unable to pay debts or satisfy superior preferential rights. A limited partnership may not make a distribution if after the distribution:

A. The limited partnership would not be able to pay its debts as they become due in the ordinary course of the limited partnership's activities; or [PL 2005, c. 543, Pt. C, §2 (NEW).]

B. The limited partnership's total assets would be less than the sum of its total liabilities plus the amount that would be needed, if the limited partnership were to be dissolved, wound up and terminated at the time of the distribution, to satisfy the preferential rights upon dissolution, winding up and termination of partners whose preferential rights are superior to those of persons receiving the distribution. [PL 2005, c. 543, Pt. C, §2 (NEW).]

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3. Basis for determination that distribution not prohibited. A limited partnership may base a determination that a distribution is not prohibited under subsection 2 on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable in the circumstances.

[PL 2005, c. 543, Pt. C, §2 (NEW).]

4. Measuring effect of distribution. Except as otherwise provided in subsection 7, the effect of a distribution under subsection 2 is measured:

A. In the case of distribution by purchase, redemption or other acquisition of a transferable interest in the limited partnership, as of the date money or other property is transferred or debt incurred by the limited partnership; and [PL 2005, c. 543, Pt. C, §2 (NEW).]

B. In all other cases, as of the date:

(1) The distribution is authorized, if the payment occurs within 120 days after that date; or

(2) The payment is made, if payment occurs more than 120 days after the distribution is authorized. [PL 2005, c. 543, Pt. C, §2 (NEW).]

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5. Indebtedness to partner and general, unsecured creditors. A limited partnership's indebtedness to a partner incurred by reason of a distribution made in accordance with this section is at parity with the limited partnership's indebtedness to its general, unsecured creditors.

[PL 2005, c. 543, Pt. C, §2 (NEW).]

6. Indebtedness not considered liability. A limited partnership's indebtedness, including indebtedness issued in connection with or as part of a distribution, is not considered a liability for purposes of subsection 2 if the terms of the indebtedness provide that payment of principal and interest are made only to the extent that a distribution could then be made to partners under this section.

[PL 2005, c. 543, Pt. C, §2 (NEW).]

7. Indebtedness issued as distribution; date payment made. If indebtedness is issued as a distribution, each payment of principal or interest on the indebtedness is treated as a distribution, the effect of which is measured on the date the payment is made.

[PL 2005, c. 543, Pt. C, §2 (NEW).]

SECTION HISTORY

PL 2005, c. 543, §C2 (NEW).

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