

§1102. Merger

1. General authority of domestic corporations. One or more domestic business corporations may merge with one or more domestic or foreign business corporations or eligible entities pursuant to a plan of merger under this section.

[PL 2003, c. 344, Pt. B, §97 (AMD).]

2. Merger with foreign entities. A foreign business corporation or a foreign eligible entity may be a party to a merger with a domestic business corporation or may be created by the terms of a plan of merger under this section only if the merger is permitted by the laws under which the foreign business corporation or eligible entity is organized or by which it is governed; and

[PL 2003, c. 344, Pt. B, §97 (AMD).]

3. Merger not contemplated in organic law. If the organic law of a domestic eligible entity does not provide procedures for the approval of a merger, a plan of merger may be adopted and approved, the merger effectuated, and appraisal rights exercised in accordance with the procedures in this chapter and chapter 13. For the purposes of applying this chapter and chapter 13:

A. The eligible entity, its members or interest holders, eligible interests and organic documents taken together are deemed to be a domestic business corporation, shareholders, shares and articles of incorporation, respectively and vice versa as the context may require; and [PL 2003, c. 344, Pt. B, §97 (AMD).]

B. If the business and affairs of the eligible entity are managed by a group of persons that is not identical to the members or interest holders, that group is deemed to be the board of directors. [PL 2003, c. 344, Pt. B, §97 (AMD).]

[PL 2003, c. 344, Pt. B, §97 (AMD).]

4. Plan of merger. A plan of merger must include:

A. The name of each domestic or foreign business corporation or eligible entity that will merge and the name of the corporation or eligible entity that will be the survivor of the merger; [PL 2003, c. 344, Pt. B, §97 (AMD).]

B. The terms and conditions of the merger; [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

C. The manner and basis of converting the shares of each merging domestic or foreign business corporation and eligible interests of each merging domestic or foreign eligible entity into shares or other securities, eligible interests, obligations, rights to acquire shares or other securities or eligible interests, cash or other property or any combination thereof; [PL 2003, c. 344, Pt. B, §97 (AMD).]

D. The articles of incorporation of any domestic or foreign business or nonprofit corporation or the organic documents of any domestic or foreign unincorporated entity to be created by the merger or, if a new domestic or foreign business or nonprofit corporation or unincorporated entity is not to be created by the merger, any amendments to the survivor's articles of incorporation or organic documents; and [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

E. Any other provisions required by the laws under which any party to the merger is organized or by which it is governed, or by the articles of incorporation or organic documents of any such person. [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

[PL 2003, c. 344, Pt. B, §97 (AMD).]

5. Extrinsic facts. Terms of a plan of merger may be made dependent upon facts objectively ascertainable outside the plan in accordance with section 121, subsection 10.

[PL 2003, c. 344, Pt. B, §97 (AMD).]

6. Amend plan prior to filing articles of merger. The plan of merger may also include a provision that the plan may be amended prior to filing the articles of merger with the Secretary of State under section 1106, subsection 2. Subsequent to any approval of the plan by shareholders of a domestic corporation that is a party to the merger, the plan may not without further shareholder approval be amended to:

A. Change the amount or kind of shares or other securities, eligible interests, obligations, rights to acquire shares or other securities, cash or other property to be received under the plan by the shareholders or owners of eligible interests in any party to the merger; [PL 2003, c. 344, Pt. B, §97 (AMD).]

B. Change the articles of incorporation or the organic documents of any eligible entity that will survive or be created as a result of the merger, except for changes permitted by section 1005 or by comparable provisions of the organic laws of any such foreign corporation or domestic or foreign eligible entity; or [PL 2003, c. 344, Pt. B, §97 (AMD).]

C. Change any of the other terms or conditions of the plan if the change would adversely affect the shareholders in any material respect. [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

[PL 2005, c. 302, §3 (AMD).]

SECTION HISTORY

PL 2001, c. 640, §A2 (NEW). PL 2001, c. 640, §B7 (AFF). PL 2003, c. 344, §B97 (AMD). PL 2005, c. 302, §3 (AMD).

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