

BUSINESS CORPORATION ACT (EXCERPT)
Act 284 of 1972

450.1736 Merger of domestic corporation with business organization.

Sec. 736.

(1) As used in this section:

(a) "Business organization" means a domestic or foreign limited liability company, limited partnership, general partnership, or any other type of domestic or foreign business enterprise, incorporated or unincorporated, except a domestic corporation.

(b) "Entity" means a business organization or domestic corporation.

(c) "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 who, under applicable law, is generally liable for the obligations of the business enterprise.

(2) One or more domestic corporations may merge with 1 or more business organizations if the requirements of this section are satisfied. If all of the business organizations are foreign corporations, the merger shall proceed under section 735, without regard to this section.

(3) The merger is permitted by 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, and each foreign constituent business organization transacting business in this state complies with the applicable laws of this state.

(4) The board of each domestic corporation proposing to participate in a merger shall adopt a plan of merger, setting forth all of the following:

(a) The name of each constituent entity, the name of the constituent entity that will be 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) For the domestic corporation, the designation and number of outstanding shares of each class and series, specifying the classes and series entitled to vote, each class and series entitled to vote as a class, and, if the number of shares is subject to change before the effective date of the merger, the manner in which the change may occur.

(c) 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.

(d) If the surviving entity is to be a domestic corporation, a statement of any amendment to the articles of incorporation of the surviving corporation to be effected by the merger or any restatement of the articles as provided in section 641(1), which shall be in the form of restated articles as provided in section 642.

(e) Other provisions with respect to the proposed merger as the board considers necessary or desirable.

(5) A plan of merger adopted by the board of each constituent domestic corporation shall be submitted for approval at a meeting of the shareholders as provided in section 703a(2).

(6) A domestic corporation that has not commenced business, has not issued any shares, and has not elected a board may merge with any domestic or foreign entity by unanimous consent of its incorporators. To effect the merger, the majority of the incorporators shall execute a certificate of merger in accordance with subsection (7).

(7) After a plan of merger is approved, a certificate of merger shall be executed and filed on behalf of each domestic corporation. The certificate shall set forth all of the following:

(a) A statement of the requirements set forth in subsection (4)(a), (b), and (d), and the manner and basis of converting the ownership interests of each constituent entity as set forth in the plan of merger.

(b) A statement that the plan of merger has been adopted by the board in accordance with subsection (4).

(c) A statement that the plan of merger will be furnished by the surviving entity, on request and without cost, to any shareholder of the domestic corporation.

(d) If approval of the shareholders of the domestic corporation was required, a statement that the plan was approved by the shareholders in accordance with subsection (5).

(e) In the case of a merger governed by subsection (6), a statement that the corporation has not commenced business, has not issued any shares, has not elected a board, and that the plan of merger was approved by the unanimous consent of the incorporators.

(f) A statement of any assumed names of merging entities transferred to the surviving entity as authorized by section 217(3), specifying each transferred assumed name and the name of the entity from which it is transferred. If the surviving entity is a domestic corporation or a foreign corporation authorized to transact business in this state, the certificate may include a statement of the names or assumed names of merging entities that are to be treated as newly filed assumed names of the surviving corporation pursuant to section 217(4).

- (8) The certificate of merger shall become effective in accordance with section 131.
- (9) When a merger takes effect, all of the following apply:
- (a) Every other entity party to the merger merges into the surviving entity and the separate existence of every entity party to the merger except the surviving entity ceases.
- (b) The title to all real estate and other property and rights owned by each entity party to the merger are vested in the surviving entity without reversion or impairment.
- (c) The surviving entity may use the name and the assumed names of any merging entity, if the filings required by section 217(3) or (4) or other applicable statute are made.
- (d) The surviving entity has all liabilities of each constituent entity. This section does not affect the liability, if any, of a person who 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 entity party to the merger 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 incorporation of a surviving domestic corporation are amended to the extent provided in the plan of merger.
- (g) The ownership interests of each entity party to the merger that are to be 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 if it transacts business in this state. The surviving entity is liable, and is subject to service of process in a proceeding in this state, for the enforcement of an obligation of a domestic corporation that is party to the merger, and in a proceeding for the enforcement of a right of a dissenting shareholder of a domestic corporation against the surviving entity.

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