

BUSINESS CORPORATION ACT (EXCERPT)
Act 284 of 1972

450.1753 Disposition of corporate property and assets not in usual and regular course of business; recommendation and submission of transaction; notice; authorization; abandonment; disposition by second corporation; transaction as distribution.

Sec. 753.

(1) Except as provided in section 751, a corporation may sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property and assets, with or without the goodwill, if not in the usual and regular course of its business as conducted by the corporation, on terms and conditions and for a consideration, which may consist in whole or in part of cash or other property, including shares, bonds, or other securities of any other corporation, domestic or foreign, as authorized under this section. A corporation has not disposed of all or substantially all of its property and assets if it retains a significant continuing business activity. For purposes of this subsection, it is conclusively presumed that a corporation has retained a significant continuing business activity if the corporation retains a business activity that represented at least 25% of total assets at the end of the most recently completed fiscal year, and 25% of either income from continuing operations before taxes or revenues from continuing operations for that fiscal year, in each case of the corporation and its subsidiaries on a consolidated basis.

(2) The board must recommend a transaction described in subsection (1) to the shareholders unless section 529 applies or the board determines that because of conflict of interest, events occurring after the board adopts the plan, contractual obligations, or other special circumstances it should make no recommendation. If the board does not recommend the transaction described in subsection (1) to the shareholders, or recommends against the transaction, in either case because 1 or more of the exceptions described in this subsection apply, the board must communicate to the shareholders the basis for its decision.

(3) The board may condition its submission of a transaction described in subsection (1) on any basis.

(4) A transaction described in subsection (1) shall be submitted for approval at a meeting of shareholders. Notice of the meeting shall be given to each shareholder of record whether or not entitled to vote at the meeting within the time and in the manner provided in this act for giving notice of meetings of shareholders. The notice shall include or be accompanied by both of the following:

(a) A statement summarizing the principal terms of the transaction or a copy of any documents containing the principal terms.

(b) A statement informing shareholders that are entitled to dissent under section 762 that they have the right to dissent and to be paid the fair value of their shares by complying with the procedures set forth in sections 762 to 772.

(5) At the meeting described in subsection (4), the shareholders may authorize the transaction described in subsection (1) and may fix, or may authorize the board to fix, any term or condition and the consideration to be received by the corporation. The authorization requires the affirmative vote of the holders of a majority of the outstanding shares of the corporation entitled to vote on the transaction.

(6) Notwithstanding authorization by the shareholders, the board may abandon a transaction described in subsection (1), subject to the rights of third parties under any contracts relating to the sale, lease, exchange, or other disposition, without further action or approval by shareholders.

(7) A sale, lease, exchange, or other disposition of all, or substantially all, of the property and assets of a corporation or other entity a majority of the shares or beneficial interests of which are owned by a second corporation, including a change in shares of the corporation or beneficial interest in another entity held by the second corporation because of a merger or share exchange, is a disposition by the second corporation of its pro rata share of the property and assets of the corporation or other entity on a consolidated basis for purposes of this section.

(8) A transaction that is a distribution is governed by section 345 and not by this section or section 751.

History: 1972, Act 284, Eff. Jan. 1, 1973 ;-- Am. 1989, Act 121, Eff. Oct. 1, 1989 ;-- Am. 1993, Act 91, Eff. Oct. 1, 1993 ;-- Am. 1997, Act 118, Imd. Eff. Oct. 24, 1997 ;-- Am. 2001, Act 57, Imd. Eff. July 23, 2001 ;-- Am. 2012, Act 569, Imd. Eff. Jan. 2, 2013