

Part 11

Merger and Share Exchange

16-10a-1101 Merger.

- (1) A domestic corporation may merge into another entity if:
 - (a) the board of directors of the domestic corporation adopts and its shareholders, if required by Section 16-10a-1103, approve the plan of merger; and
 - (b) any other entity that plans to merge approves the plan of merger as provided by the statutes governing the entity.
- (2) The plan of merger referred to in Subsection (1) shall set forth:
 - (a) the name of each entity planning to merge and the name of the surviving entity into which each other entity plans to merge;
 - (b) the terms and conditions of the merger;
 - (c) the manner and basis of converting the ownership interests in each entity, in whole or part, into:
 - (i) ownership interests, obligations, or other securities of the surviving entity or another entity; or
 - (ii) cash or other property; and
 - (d) any amendments to the articles of incorporation or organization of the surviving entity to be effected by the merger.
- (3) The plan of merger may set forth other provisions relating to the merger.

Amended by Chapter 244, 2011 General Session

16-10a-1102 Share exchange.

- (1) A domestic corporation may acquire all of the outstanding shares of one or more classes or series of one or more domestic corporations if the board of directors of each corporation adopts a plan of share exchange and the shareholders of the corporation, if required by Section 16-10a-1103, approve the plan of share exchange.
- (2) The plan of share exchange referred to in Subsection (1) shall set forth:
 - (a) the name of each corporation whose shares will be acquired and the name of the acquiring corporation;
 - (b) the terms and conditions of the share exchange; and
 - (c) the manner and basis of exchanging the shares to be acquired for shares, obligations, or other securities of the acquiring or any other corporation or for money or other property in whole or part.
- (3) The plan of share exchange may set forth other provisions relating to the share exchange.
- (4) This section does not limit the power of a corporation to acquire all or part of the shares of one or more classes or series of another corporation through a voluntary exchange of shares or otherwise.

Amended by Chapter 378, 2010 General Session

16-10a-1103 Action on plan.

- (1) After adopting a plan of merger or share exchange, the board of directors of each corporation party to the merger, and the board of directors of each corporation whose shares will be acquired in the share exchange, shall submit the plan of merger to its shareholders for approval, except as provided in:

- (a) Subsection (7);
 - (b) Section 16-10a-1104; or
 - (c) the plan of share exchange.
- (2) For a plan of merger or share exchange to be approved:
- (a) the board of directors shall recommend the plan of merger or share exchange to the shareholders, unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders with the plan; and
 - (b) the shareholders entitled to vote on the plan of merger or share exchange shall approve the plan as provided in Subsection (5).
- (3) The board of directors may condition its submission of the proposed merger or share exchange on any basis.
- (4) The corporation shall give notice of the shareholders' meeting in accordance with Section 16-10a-705 to each shareholder entitled to vote on the plan of merger or share exchange. The notice shall state that one of the purposes of the meeting is to consider the plan of merger or share exchange and contain or be accompanied by a copy or summary of the plan.
- (5) Unless this chapter, the articles of incorporation, the initial bylaws, the amended bylaws, or the board of directors acting pursuant to Subsection (3) requires a greater vote, the plan of merger or share exchange to be authorized shall be approved by each voting group entitled to vote separately on the plan by a majority of all the votes entitled to be cast on the plan by that voting group.
- (6) Separate voting by voting groups is required on a plan of:
- (a) merger if the plan contains a provision that, if contained in an amendment to the articles of incorporation, would require action by one or more separate voting groups on the amendment under Section 16-10a-1004; and
 - (b) share exchange by each class or series of shares included in the share exchange, with each class or series constituting a separate voting group.
- (7) Action by the shareholders of the surviving corporation on a plan of merger is not required if:
- (a) the articles of incorporation of the surviving corporation will not differ, except for amendments enumerated in Section 16-10a-1002, from its articles of incorporation before the merger;
 - (b) each shareholder of the surviving corporation whose shares were outstanding immediately before the merger will hold the same number of shares, with identical designations, preferences, limitations, and relative rights, immediately after the merger;
 - (c) the number of voting shares outstanding immediately after the merger, plus the number of voting shares issuable as a result of the merger either by the conversion of securities issued pursuant to the merger or the exercise of rights and warrants issued pursuant to the merger, will not exceed by more than 20% the total number of voting shares of the surviving corporation outstanding immediately before the merger; and
 - (d) the number of participating shares outstanding immediately after the merger, plus the number of participating shares issuable as a result of the merger either by the conversion of securities issued pursuant to the merger or the exercise of rights and warrants issued pursuant to the merger, will not exceed by more than 20% the total number of participating shares outstanding immediately before the merger.
- (8) As used in Subsection (7):
- (a) "Participating shares" means shares that entitle their holders to participate without limitation in distributions.
 - (b) "Voting shares" means shares that entitle their holders to vote unconditionally in elections of directors.

- (9) After a plan of merger or share exchange is approved, and at any time before the merger or share exchange becomes effective the merger or share exchange may be abandoned, subject to any contractual rights, without further shareholder action, in accordance with the procedure set forth in the plan of merger or share exchange or, if none is set forth, in the manner determined by the board of directors.
- (10) If a merger or share exchange is abandoned after articles of merger or share exchange have been filed by the division pursuant to Section 16-10a-1105 specifying a delayed effective date, the merger or share exchange may be prevented from becoming effective by delivering to the division for filing prior to the specified effective time and date a statement of abandonment stating that by appropriate corporate action the merger or share exchange has been abandoned. The statement of abandonment shall be executed in the same manner as the articles of merger or share exchange.

Amended by Chapter 378, 2010 General Session

16-10a-1104 Merger of parent and subsidiary.

- (1) By complying with the provision of this section, a parent corporation owning at least 90% of the outstanding shares of each class of a subsidiary corporation may either merge the subsidiary into itself or merge itself into the subsidiary.
- (2) The board of directors of the parent shall adopt and its shareholders, if required by Subsection (3), shall approve a plan of merger that sets forth:
 - (a) the names of the parent and subsidiary and the name of the surviving entity;
 - (b) the terms and conditions of the merger;
 - (c) the manner and basis of converting the shares of each corporation into shares, obligations, or other securities of the surviving or any other corporation or into money or other property in whole or part;
 - (d) any amendments to the articles of incorporation of the surviving corporation to be effected by the merger; and
 - (e) any other provisions relating to the merger as may be determined to be necessary or desirable.
- (3) A vote of the shareholders of the subsidiary is not required with respect to the merger. If the subsidiary will be the surviving corporation, the approval of the shareholders of the parent shall be sought in the manner provided in Subsections 16-10a-1103(1) through (6). If the parent will be the surviving corporation, no vote of its shareholders is required if all of the provisions of Subsection 16-10a-1103(7) are met with respect to the merger. If all the provisions are not met, the approval of the shareholders of the parent shall be sought in the manner provided in Subsections 16-10a-1103(1) through (6).
- (4) The parent shall mail a copy or summary of the plan of merger to each shareholder of the subsidiary (other than the parent) who does not waive this mailing requirement in writing.
- (5) The effective date of the merger may not be earlier than the date on which all shareholders of the subsidiary waived the mailing requirement of Subsection (4) or 10 days after the date the parent mailed a copy or summary of the plan of merger to each shareholder of the subsidiary who did not waive the mailing requirement.

Amended by Chapter 184, 1993 General Session

16-10a-1105 Articles of merger or share exchange.

- (1) After a plan of merger or share exchange is approved by the shareholders, or adopted by the board of directors if shareholder approval is not required, the surviving or acquiring corporation shall deliver to the division for filing articles of merger or share exchange setting forth:
 - (a) the plan of merger or share exchange;
 - (b) if shareholder approval was not required, a statement to that effect;
 - (c) if approval of the shareholders of one or more corporations party to the merger or share exchange was required:
 - (i) the designation and number of outstanding shares, and number of votes entitled to be cast by each voting group entitled to vote separately on the plan as to each corporation; and
 - (ii) either the total number of votes cast for and against the plan by each voting group entitled to vote separately on the plan or the total number of undisputed votes cast for the plan separately by each voting group and a statement that the number of votes cast for the plan by each voting group entitled to vote separately was sufficient for approval by that voting group; and
 - (d) if the merger is being effected pursuant to Section 16-10a-1104:
 - (i) a statement that immediately prior to the merger the parent owned at least 90% of the outstanding shares of each class of the subsidiary; and
 - (ii) the effective date of the merger and a statement that the effective date complies with Subsection 16-10a-1104(5).
- (2) A merger or share exchange takes effect upon the effective date of the articles of merger or share exchange, which may not be prior to the date of filing.

Enacted by Chapter 277, 1992 General Session

16-10a-1106 Effect of merger or share exchange.

- (1) When a merger takes effect:
 - (a) Every other corporation party to the merger merges into the surviving corporation and the separate existence of every corporation except the surviving corporation ceases.
 - (b) The title to all real estate and other property owned by each corporation party to the merger is transferred to and vested in the surviving corporation without reversion or impairment. The transfer to and vesting in the surviving corporation occurs by operation of law. No consent or approval of any other person is required in connection with the transfer or vesting unless consent or approval is specifically required in the event of merger by law or by express provision in any contract, agreement, decree, order, or other instrument to which any of the corporations so merged is a party or by which it is bound.
 - (c) The surviving corporation has all liabilities of each corporation party to the merger.
 - (d) A proceeding pending against any corporation party to the merger may be continued as if the merger did not occur, or the surviving corporation may be substituted in the proceeding for the corporation whose existence ceased.
 - (e) The articles of incorporation of the surviving corporation are amended to the extent provided in the plan of merger.
 - (f) The shares of each corporation party to the merger, which are to be converted into shares, obligations, or other securities of the surviving or any other corporation or into money or other property, are converted, and the former holders of the shares are entitled only to the rights provided in the articles of merger or to their rights under Part 13, Dissenters' Rights.
- (2) When a share exchange takes effect, the shares of each acquired corporation are exchanged as provided in the plan, and the former holders of the shares are entitled only to the exchange

rights provided in the articles of share exchange or to their rights under Part 13, Dissenters' Rights.

Amended by Chapter 189, 2014 General Session

16-10a-1107 Merger or share exchange with foreign corporations.

- (1) A domestic corporation may merge with a foreign entity or enter into a share exchange with a foreign corporation if:
 - (a) in a merger, the merger is permitted by the law of the state or country under whose law the foreign entity is incorporated or organized and the foreign entity complies with that law in effecting the merger;
 - (b) in a share exchange, the corporation whose shares will be acquired is a domestic corporation, whether or not a share exchange is permitted by the law of the state or country under whose law the acquiring corporation is incorporated;
 - (c) the foreign corporation complies with Section 16-10a-1105 if it is the surviving corporation of the merger or the acquiring corporation of the share exchange, and provides, in addition to the information required by Section 16-10a-1105, the address of its principal office; and
 - (d) the domestic corporation complies with:
 - (i) the applicable provisions of Sections 16-10a-1101 through 16-10a-1104; and
 - (ii) if it is the surviving corporation of the merger, Section 16-10a-1105.
- (2) Upon the merger or share exchange taking effect, the surviving foreign entity of a merger and the acquiring foreign corporation of a share exchange shall either:
 - (a) agree that service of process in a proceeding to enforce the rights of shareholders of each domestic corporation that is a party to the merger who exercise appraisal rights may be made in the manner provided in Section 16-17-301;
 - (b) promptly pay to the dissenting shareholders of each domestic corporation party to the merger or share exchange the amount, if any, to which they are entitled under Part 13, Dissenters' Rights; and
 - (c) comply with Part 15, Authority of Foreign Corporation to Transact Business, if it is to transact business in this state.
- (3) Service effected pursuant to Subsection (2) is perfected at the earliest of:
 - (a) the date the foreign entity receives the process, notice, or demand;
 - (b) the date shown on the return receipt, if signed on behalf of the foreign entity; or
 - (c) five days after mailing.
- (4) Subsection (2) does not prescribe the only means, or necessarily the required means, of serving a surviving foreign entity of a merger or an acquiring foreign corporation in a share exchange.
- (5) This section does not limit the power of a foreign corporation to acquire all or part of the shares of one or more classes or series of a domestic corporation through a voluntary exchange of shares or otherwise.

Amended by Chapter 244, 2011 General Session