

BUSINESS ENTITY MERGERS

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: James A. Dunnigan

Senate Sponsor: Jerry W. Stevenson

LONG TITLE

General Description:

This bill modifies the Utah Revised Business Corporation Act to address mergers.

Highlighted Provisions:

This bill:

- ▶ clarifies that a corporation may merge with other business entities; and
- ▶ makes technical and conforming amendments.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

16-10a-1101, as last amended by Laws of Utah 2010, Chapter 378

16-10a-1107, as last amended by Laws of Utah 2008, Chapter 364

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **16-10a-1101** is amended to read:

16-10a-1101. Merger.

(1) [~~One or more domestic corporations~~] A domestic corporation may merge into another [~~domestic corporation~~] entity if:

(a) the board of directors of [~~each~~] the domestic corporation adopts and its shareholders, if required by Section 16-10a-1103, approve the plan of merger[-]; and

30 (b) any other entity that plans to merge approves the plan of merger as provided by the
31 statutes governing the entity.

32 (2) The plan of merger referred to in Subsection (1) shall set forth:

33 (a) the name of each [~~corporation~~] entity planning to merge and the name of the
34 surviving [~~corporation~~] entity into which each other [~~corporation~~] entity plans to merge;

35 (b) the terms and conditions of the merger;

36 (c) the manner and basis of converting the [~~shares of each corporation into shares,~~]
37 ownership interests in each entity, in whole or part, into:

38 (i) ownership interests, obligations, or other securities of the surviving [or any other
39 corporation or into] entity or another entity; or

40 (ii) cash or other property [in whole or part]; and

41 (d) any amendments to the articles of incorporation or organization of the surviving
42 [~~corporation~~] entity to be effected by the merger.

43 (3) The plan of merger may set forth other provisions relating to the merger.

44 Section 2. Section **16-10a-1107** is amended to read:

45 **16-10a-1107. Merger or share exchange with foreign corporations.**

46 (1) [~~One or more domestic corporations may merge~~] A domestic corporation may
47 merge with a foreign entity or enter into a share exchange with [~~one or more foreign~~
48 ~~corporations~~] a foreign corporation if:

49 (a) in a merger, the merger is permitted by the law of the state or country under whose
50 law [~~each~~] the foreign [~~corporation~~] entity is incorporated or organized and [~~each~~] the foreign
51 [~~corporation~~] entity complies with that law in effecting the merger;

52 (b) in a share exchange, the corporation whose shares will be acquired is a domestic
53 corporation, whether or not a share exchange is permitted by the law of the state or country
54 under whose law the acquiring corporation is incorporated;

55 (c) the foreign corporation complies with Section 16-10a-1105 if it is the surviving
56 corporation of the merger or the acquiring corporation of the share exchange, and provides, in
57 addition to the information required by Section 16-10a-1105, the address of its principal office;

58 and

59 (d) [~~each~~] the domestic corporation complies with:

60 (i) the applicable provisions of Sections 16-10a-1101 through 16-10a-1104; and[;]

61 (ii) if it is the surviving corporation of the merger [~~with~~], Section 16-10a-1105.

62 (2) Upon the merger or share exchange taking effect, the surviving foreign
63 [~~corporation~~] entity of a merger and the acquiring foreign corporation of a share exchange shall
64 either:

65 (a) agree that service of process in a proceeding to enforce the rights of shareholders of
66 each domestic corporation that is a party to the merger who exercise appraisal rights may be
67 made in the manner provided in Section 16-17-301;

68 (b) promptly pay to the dissenting shareholders of each domestic corporation party to
69 the merger or share exchange the amount, if any, to which they are entitled under Part 13,
70 Dissenters' Rights; and

71 (c) comply with Part 15, Authority of Foreign Corporation to Transact Business, if it is
72 to transact business in this state.

73 (3) Service effected pursuant to Subsection (2) is perfected at the earliest of:

74 (a) the date the foreign [~~corporation~~] entity receives the process, notice, or demand;

75 (b) the date shown on the return receipt, if signed on behalf of the foreign [~~corporation~~]
76 entity; or

77 (c) five days after mailing.

78 (4) Subsection (2) does not prescribe the only means, or necessarily the required
79 means, of serving a surviving foreign [~~corporation~~] entity of a merger or an acquiring foreign
80 corporation in a share exchange.

81 (5) This section does not limit the power of a foreign corporation to acquire all or part
82 of the shares of one or more classes or series of a domestic corporation through a voluntary
83 exchange of shares or otherwise.