

IC 27-3

ARTICLE 3. CONSOLIDATIONS AND REORGANIZATION

IC 27-3-1

Chapter 1. Exchange of Securities

IC 27-3-1-1

Construction and application

Sec. 1. This chapter shall be supplemental to IC 27-1. All provisions of IC 27-1 shall be fully and completely applicable to this chapter in the same manner as if the provisions of this chapter had been an original part of IC 27-1; provided, that the provisions of this chapter shall be controlling in the event there exists any conflict between the provisions of this chapter and the provisions of IC 27-1. *(Formerly: Acts 1967, c.61, s.1.) As amended by P.L.252-1985, SEC.138.*

IC 27-3-1-2

Authority to adopt plan of exchange

Sec. 2. Any domestic stock insurance company (referred to in this chapter as the "domestic company") may adopt a plan of exchange providing for the exchange by its shareholders of their stock in the domestic company for:

- (i) shares of stock issued by any other stock insurance corporation organized or reorganized under the provisions of IC 27-1 or any statute enacted prior to March 8, 1935, or any stock corporation organized under the provisions of IC 23-1 or any foreign stock corporation (such other corporation is referred to in this chapter as the "acquiring corporation");
- (ii) other securities issued by the acquiring corporation;
- (iii) cash;
- (iv) other consideration; or
- (v) any combination of such stock, such other securities, cash, or other consideration.

(Formerly: Acts 1967, c.61, s.2.) As amended by P.L.252-1985, SEC.139.

IC 27-3-1-3

Manner of adoption of plan of exchange; approvals; compensation of dissenting shareholders

Sec. 3. (a) Subject to section 2 of this chapter, any domestic company may adopt a plan of exchange with any acquiring corporation providing for the exchange of the outstanding stock of the domestic company for shares of stock or other securities issued by the acquiring corporation or cash or other consideration, or any combination, in the following manner. The boards of directors of the domestic company and of the acquiring corporation by resolutions approved by a majority of the whole of each board shall adopt a plan of exchange that sets forth the terms and conditions of the exchange

and the mode of carrying the terms and conditions into effect and other provisions with respect to the exchange as may be deemed necessary or desirable.

(b) The domestic company and the acquiring corporation shall submit to the insurance commissioner three (3) copies of the plan of exchange certified by an officer of each as having been adopted in accordance with subsection (a). The copies of the plan of exchange shall be accompanied by financial statements of the domestic company for its last preceding fiscal year prepared pursuant to IC 27-1-20-21, pro forma financial statements of each corporation based on the assumption that the plan of exchange was effective as proposed at the end of the last preceding fiscal year of the domestic company, an estimate of expenses already incurred and of expenses expected to be incurred in connection with the proposed plan of exchange, and a written statement that sets forth for each corporation the proposed changes, if any, in management policies and in the identity of officers and directors of the domestic company and of the acquiring corporation that are initially contemplated if the plan of exchange is effected as proposed. The insurance commissioner shall hold a hearing upon the fairness of the terms, conditions, and provisions of the plan of exchange and the proposed exchange of stock or other securities of the acquiring corporation or cash or other consideration or any combination thereof for the stock of the domestic company at which the policyholders and the shareholders of both the domestic company and the acquiring corporation and any other interested party may appear and to become party to the proceeding. The commissioner shall require the domestic company and the acquiring corporation to produce evidence as the commissioner considers necessary to establish the foregoing, including evidence concerning the valuation of the respective companies and the method utilized by the management of each corporation to accomplish the valuation, inclusive of the value established with respect to the stock of the domestic company that is proposed to be exchanged as well as the value of the stock, securities, and consideration other than cash to be offered by the acquiring corporation in the exchange. The hearing shall be commenced not less than twenty (20) days after the date on which the plan of exchange is presented to the commissioner. The hearing shall be held in Indianapolis, Indiana, at a place, date, and time specified by the insurance commissioner. Notice of the hearing shall be published in a newspaper of general circulation in the city where the principal office of the domestic company and of the acquiring corporation are located and Indianapolis once a week for two (2) successive weeks. Written notice of the hearing shall be mailed at least ten (10) days before the hearing by the domestic company and by the acquiring corporation to all of their respective shareholders. All expenses of publication shall be borne by the domestic company or the acquiring corporation, or both, as specified in the plan of exchange. Except as otherwise provided in this section, the hearing and the determination are subject to IC 4-21.5-3. The commissioner

shall issue an order approving the plan of exchange as delivered to the commissioner by the domestic company and the acquiring corporation and the modifications approved by a majority of the whole board of directors of each corporation if the commissioner finds:

- (1) that the plan, including all modifications, if effected, will not tend adversely to affect the financial stability or management of the domestic company or the general capacity or intention to continue the safe and prudent transaction of the insurance business of the domestic company, or of the acquiring corporation, if it is a domestic insurance company;
- (2) that the interests of the policyholders and shareholders of the domestic company, and, if the acquiring corporation is a domestic insurance company, the policyholders of the acquiring corporation are protected;
- (3) that the fulfillment of the plan will not affect either the contractual obligations of the domestic company and of the acquiring corporation, if it is a domestic insurance company, to its policyholders or the ability and tendency of either to render service to its policyholders in the future; and
- (4) that the terms and conditions of the plan of exchange and the proposed issuance and exchange are fair and reasonable.

The order of the commissioner approving or disapproving the plan of exchange shall be filed in the department within sixty (60) days after the date the plan of exchange is presented to the commissioner. The department shall give notice of the order in the manner prescribed in IC 4-21.5-3 to all parties to the proceeding, and the department shall endorse the commissioner's approval or disapproval on the plan of exchange in the manner provided in IC 27-1-6-8 and shall deliver copies to the domestic company and to the acquiring corporation. Any party to the proceeding aggrieved by the order are entitled to a judicial review of the order in accordance with IC 4-21.5-5.

(c) The plan of exchange as approved by the insurance commissioner shall then be submitted to a vote of the shareholders of the domestic company at an annual or special meeting of the shareholders. Notice of the submission of the plan to the shareholders shall be included in the notice of the annual or special meeting. The shareholders entitled to vote in respect of the plan may vote in person or by proxy, and each shareholder has one (1) vote for each share of voting stock held by the shareholder. Jointly owned shares may only be voted jointly. The plan shall be approved by the shareholders of the domestic company upon receiving the affirmative votes representing two thirds (2/3) of the outstanding capital stock of the domestic company or a larger proportion as may be specified in the plan of exchange. Notwithstanding shareholder adoption of the plan of exchange and at any time before the filing of the certificate setting forth the plan of exchange by the department, pursuant to section 4 of this chapter, the plan of exchange may be abandoned pursuant to a provision for abandonment, if any, contained in the

plan of exchange.

(d) Within ten (10) days after the plan of exchange is adopted by the shareholders of the domestic company, a written notice of the adoption of the plan of exchange shall be mailed or delivered personally to each shareholder of record of the company who was entitled to vote on the plan. The domestic company shall file with the department an affidavit of the secretary or an assistant secretary of the company or of an officer of the transfer agent of the company that the notice was given.

(e) Any shareholder of the domestic company owning shares not voted in favor of the plan at the meeting at which the plan was approved by the shareholders of the domestic company may object in writing to the plan and demand payment, should the plan become effective, of the fair value of any shares as of the day on which the plan of exchange was approved by the shareholders of the domestic company pursuant to subsection (c). The objection and demand must be received, together with the certificate or certificates representing the shares with respect to which objection and demand have been made for notation that the objection and demand have been made, by the domestic company or its transfer agent within thirty (30) days after the date of the meeting of shareholders. The objection and demand may not pertain to any shares that were voted in favor of the plan. Objection and demand can only be made jointly by the holders of any share jointly held. The objection and demand may not be withdrawn unless the domestic company, by an authorized officer, consents in writing. Upon the plan of exchange becoming effective, the holder of any shares, with respect to which the objection and demand have been made and certificates for which have been delivered to the domestic company or its transfer agent for notation, or any transferee, ceases to be a shareholder of the domestic company with respect to the shares and does not have rights with respect to the shares except the right to receive payment for the shares under this subsection. Every shareholder failing to make objection and demand accompanied by certificates representing the shares with respect to which the objection and demand have been made or withdrawing the objection and demand as provided in this subsection are conclusively presumed to have assented to, and to have agreed to be bound by, the plan of exchange in accordance with its terms. Within forty-five (45) days after the date of the meeting of shareholders of the domestic company at which the plan of exchange was approved by the shareholders, the domestic company, or, if the plan of exchange specifies, the acquiring corporation, shall mail a written offer to each holder of record of shares with respect to which an objection and demand have been made, as provided in this subsection, to pay for the shares a price per share considered by the corporation to be the fair value of the shares as of the date of the meeting. The form of written offer to be used, including the price per share, shall first be submitted to and approved by the insurance commissioner. If the offer is accepted in writing by the holder, the corporation shall pay the holder, within forty-five (45) days after the

date of the plan of exchange becoming effective, the price upon the surrender of the certificate or certificates representing the shares. If, within thirty (30) days after the date of the mailing of the written offer, the domestic company or the acquiring corporation, as the case may be, and a shareholder do not agree, the corporation or the shareholder may, within ninety (90) days after the date of the mailing of the written offer, petition the circuit or the superior court of the county in which the principal office of the domestic company is located to appraise the fair value of the shares as of the date of the meeting of shareholders of the domestic company at which the plan of exchange was approved by the shareholders and payment of the appraised value of the shares shall be made by the domestic company or, if the plan of exchange so specifies, the acquiring corporation within sixty (60) days after the entry of the judgment or order finding the appraised value upon the surrender of the certificate or certificates representing the shares. The practice, procedure, and judgment in the circuit or superior court upon the petition is the same, so far as practical, as that under IC 32-24. The judgment of the circuit or superior court is final. All shares acquired by the domestic company upon payment of the value of the shares shall be canceled by the board of directors of the domestic company upon the plan of exchange becoming effective or at any time after the plan becomes effective and the capital stock of the domestic company shall be decreased in accordance with IC 27-1-8-12. If the plan of exchange does not become effective, the right of shareholders or transferees to be paid the fair value of their shares under this subsection shall cease, and their status shall be the same as that of shareholders who voted in favor of the plan. If a shareholder or the shareholder's transferee with respect to any share or shares for which objection and demand has been made:

- (1) withdraws the objection and demand in the manner provided by this subsection;
- (2) fails to submit a certificate or certificates at the time and in the manner required by this subsection;
- (3) does not file a petition for the determination of fair value within the time and in the manner provided in this subsection and neither the domestic company nor the acquiring corporation files a petition for such determination; or
- (4) is adjudged by a court of competent jurisdiction not to be entitled to the relief provided by this subsection;

the right of the shareholder or the shareholder's transferee to be paid the fair value of the share or shares under this subsection shall cease, and the shareholder's status with respect to the share or shares is the same as that of a shareholder who voted in favor of the plan.

(Formerly: Acts 1967, c.61, s.3.) As amended by P.L.252-1985, SEC.140; P.L.7-1987, SEC.143; P.L.2-2002, SEC.82.

IC 27-3-1-4

Filing; time plan becomes effective

Sec. 4. Not earlier than thirty-one (31) days after the date of the

meeting of shareholders of the domestic company at which the plan of exchange was approved by such shareholders, a certificate setting forth the plan of exchange, the manner of the approval thereof by the directors of the acquiring corporation and the domestic company and the manner of its adoption and the vote by which adopted by the shareholders of the domestic company or setting forth that the plan of exchange has been abandoned shall be signed on behalf of each such corporation by its president or a vice-president and shall then be presented in triplicate to the department at its office for filing. The department shall file one (1) copy of such certificate in its offices and shall deliver copies bearing the date and time of filing endorsed thereon to the domestic company and the acquiring corporation. Upon the filing of such certificate, the plan of exchange and the issuance and exchange provided for therein shall become effective, unless a later date and time is specified in the plan of exchange, in which event the plan of exchange and the issuance and exchange provided for therein shall become effective upon such later date and time.

(Formerly: Acts 1967, c.61, s.4.)

IC 27-3-1-5

Vesting of title to shares without physical transfer or deposit of certificates; rights represented by outstanding certificates

Sec. 5. (a) Upon the plan of exchange becoming effective, the exchange provided for therein shall be deemed to have been consummated, each shareholder of the domestic company shall cease to be a shareholder of such company, the ownership of all shares of the issued and outstanding stock of the domestic company, except shares payment of the value of which is required to be made by the domestic company or the acquiring corporation pursuant to section 3 of this chapter, shall vest in the acquiring corporation automatically without any physical transfer or deposit of certificates representing such shares, and all shares payment of the value of which is required to be made by the domestic company or the acquiring corporation pursuant to section 3 of this chapter shall be deemed no longer outstanding shares of the domestic company. The acquiring corporation shall thereupon become the sole shareholder of the domestic company and shall have all of the rights, privileges, immunities, and powers and, except as otherwise provided in this chapter, shall be subject to all of the duties and liabilities to the extent provided by law of a shareholder of an insurance company organized or reorganized under IC 27-1 or any statute enacted prior to March 8, 1935.

(b) Certificates representing shares of the domestic company prior to the plan of exchange becoming effective, except certificates representing shares payment of the value of which is required to be made pursuant to section 3 of this chapter and bearing a notation thereon that objection and demand pursuant to such section have been made, shall, after the plan of exchange becomes effective, represent:

(i) shares of the issued and outstanding capital stock or other securities issued by the acquiring corporation; and

(ii) the right, if any, to receive such cash or other consideration upon such terms as shall be specified in the plan of exchange; provided, that the plan of exchange may specify that all certificates representing shares of stock of the domestic company, except certificates representing shares payment of the value of which is required to be made pursuant to section 3 of this chapter, shall after the plan of exchange becomes effective represent only the right to receive shares of stock or other securities issued by the acquiring corporation or cash or other consideration or any combination thereof upon such terms as shall be specified in the plan of exchange. Certificates representing shares of the domestic company with respect to which an objection and demand have been made pursuant to section 3 of this chapter and bearing a notation thereon that such objection and demand have been made, shall, after the plan of exchange becomes effective, represent only the right to receive payment therefor, subject to the provisions of this chapter.

(Formerly: Acts 1967, c.61, s.5.) As amended by P.L.252-1985, SEC.141.

IC 27-3-1-6

Effect of acquisition on insurance business conducted

Sec. 6. Nothing contained in this chapter shall be construed to authorize any insurance company to engage in any kind or kinds of insurance business not authorized by its articles of incorporation, or to authorize any acquiring corporation which is not an insurance company to engage directly in the business of insurance. Subsequent to the effective date of the plan of exchange, the insurance department, pursuant to the authority vested in it by IC 27-1-3-7 and IC 27-1-3.1 and having regard to the findings stated in section 3(b) of this chapter, shall have the authority to require that the affairs of the domestic company be conducted in such manner as to assure the continuing safe conduct and transaction of the domestic company's business of insurance.

(Formerly: Acts 1967, c.61, s.7.) As amended by P.L.252-1985, SEC.142; P.L.26-1991, SEC.25.

IC 27-3-1-7

Continuation of domestic corporation and acquiring corporation as separate entities

Sec. 7. The domestic company and the acquiring corporation shall in all respects stand before the law as separate and distinct corporations, with neither of such corporations having any liability to the creditors, policyholders, if any, or shareholders of the other, any acts or omissions of the officers, directors, or shareholders of either or both of such corporations notwithstanding.

(Formerly: Acts 1967, c.61, s.8.)