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1-Short Title

IC 23-0.6-1-1 Short title

Sec. 1. This article may be cited as the Uniform Business Organization Transactions Act.

Comments

1. This article consolidates and harmonizes to the extent appropriate certain provisions governing merger, interest exchange, conversion, and domestication transactions involving corporations, general partnerships, limited liability partnerships, limited partnerships, nonprofit corporations, and limited liability companies, previously set forth in IC 23-1, IC 23-4-1, IC 23-16, IC 23-17, and IC 23-18, respectively. This article also applies to such transactions involving professional corporations, benefit corporations, and series limited liability companies in the circumstances and to the extent authorized by IC 23-1.3, IC 23-1.5, and IC 23-18.1, respectively.

2. Certain transactions are excluded from the coverage of this article. This article does not govern: (a) mergers between (1) domestic corporations and (2) domestic and foreign corporations (such mergers continue to be governed by IC 23-1-40-1 through 9); (b) mergers involving nonprofit corporations (such mergers continue to be governed by IC 23-17-19-1 through 8); and (c) share exchanges between (1) domestic corporations and (2) domestic and foreign corporations (such exchanges continue to be governed by IC 23-1-40-1 through 9).

3. This article is based on the Model Entity Transactions Act (META), adopted by the Uniform Law Commission in 2007 (last amended in 2013), which will be referred to in these Comments as the “Model Act.” Provisions closely resembling the Model Act’s governing conversions and domestications were previously contained in IC 23-1-38.5, adopted in Indiana in P.L. 178-2002, 178-2005, and P.L. 130-2006. Although that chapter was part of IC 23-1 concerning corporations, it was expressly also made applicable to general partnerships and limited liability partnerships (*see* former IC 23-4-1-54), limited partnerships (*see* former IC 23-16-3-14), and limited liability companies (*see* former IC 23-18-7-10).

4. These Comments have been prepared by the Indiana Business Law Survey Commission (BLSC) based on Comments to the Model Act adopted by the Uniform Law

Commission with such changes as the BLSC deemed necessary or appropriate. Unless a Comment indicates otherwise, the language of the statute to which the Comment relates is that of the Model Act or follows it closely.

5. These Comments should be read in conjunction with the Derivation Table also prepared by the BLSC. The Derivation Table shows, with respect to the provisions of this article: (a) that they constitute new law; or (b) the provisions of the former law from which they were derived or relate. Some but not all such derivation information is included in these Comments.

IC 23-0.6-1-2 Application of law; limitations; relation to other laws

Sec. 2. (a) Unless displaced by particular provisions of this article, the principles of law and equity supplement this article.

(b) This article does not authorize an act prohibited by, and does not affect the application or requirements of, law other than this article.

(c) A transaction effected under this article may not create or impair any right or obligation on the part of a person under a provision of the law of Indiana other than this article relating to a change in control, takeover, business combination, control share acquisition, or similar transaction involving a domestic merging, acquired, converting, or domesticating corporation unless:

- (1) if the corporation does not survive the transaction, the transaction satisfies any requirements of the provision; or
- (2) if the corporation survives the transaction, the approval of the plan is by a vote of the shareholders or directors which would be sufficient to create or impair the right or obligation directly under the provision.

Comments

1. Subsection (a), a standard provision in uniform acts, makes clear that unless a particular provision of this article displaces “other law,” the principles of law and equity continue to apply, including with respect to the rights of interest holders, creditors, transferees, assignees, or other similar parties. Thus, subsection (a) preserves case law regarding common law fraud and the rights of creditors under other law.

2. Subsection (b) preserves existing law in general terms. Law other than this article that will apply to transactions under this article include, for example, the uniform fraudulent transfer act (IC 32-18-2); insolvency statutes; federal bankruptcy law; and Articles 8 and 9 of the UCC (IC 26-1-8.1 and 9.1).

3. Subsection (c) provides that the application of change of control and similar statutes will not be affected by a transaction under this article by requiring that the transaction be approved in a manner that would be sufficient to approve changing the application of the change of control statute. If a transaction is approved in that manner, there is no policy reason to prohibit the application of the change of control or similar statute from being varied by a transaction under this article. If the application of a change of control and similar statute cannot be varied by action of an entity subject to it, then a transaction under this article will be permissible only if the

change of control or similar provision continues to apply after the transaction or the transaction itself is permissible under the change of control or similar statute.

IC 23-0.6-1-3 Notice required

Sec. 3. (a) A domestic or foreign entity that is required to give notice to, or obtain the approval of, a governmental agency or officer under the law of Indiana in order to be a party to a merger must give the notice or obtain the approval in order to be a party to an interest exchange, conversion, or domestication.

(b) Property held for a charitable purpose under the law of Indiana by a domestic or foreign entity immediately before a transaction under this article becomes effective may not, as a result of the transaction, be diverted from the objects for which it was donated, granted, or devised unless, to the extent required by or pursuant to the law of Indiana concerning cy pres or other law dealing with nondiversion of charitable assets, the entity obtains an appropriate order specifying the disposition of the property from a court having jurisdiction over the matter.

Comments

1. Subsection (a) provides that transactions under this article are subject to the same regulatory approval under Indiana law as mergers. The consequence of violating subsection (a) should be the same as in the case of a merger consummated without the required approval.

2. This article applies generally to nonprofit corporations. As in the case of laws regulating particular industries, laws governing the nondiversion of charitable property to other uses may not cover some of the transactions authorized by this article. To prevent the procedures in this article from being used to avoid restrictions on the use of charitable property held by nonprofit entities, subsection (b) requires approval of the effect of transactions under this article.

3. An approval or order obtained under subsection (b) may impose conditions or specify the disposition of assets or liabilities in a manner different than would otherwise be the case. In such an instance, the approval or order will control over the provisions of this act specifying the effects of a transaction. *See* IC 23-0.6-2-6 (effect of merger), 23-0.6-3-6 (effect of interest exchange), 23-0.6-4-6 (effect of conversion), and 23-0.6-5-6 (effect of domestication).

IC 23-0.6-1-4 Status of filings

Sec. 4. A filing under this article signed by a domestic entity becomes part of the public organic document of the entity if the entity's organic law provides that similar filings under that law become part of the public organic document of the entity.

IC 23-0.6-1-5 Nonexclusivity

Sec. 5. The fact that a transaction under this article produces a certain result does not preclude the same result from being accomplished in any other manner permitted by law other than this article.

Comment

This section allows a transaction that has the same end result as one of the transactions governed by this article, but that is accomplished in a manner not within the scope of this article, to be exempt from this article. For example, a sale of assets and transfer of liabilities by two entities to a third entity followed by the liquidation of the two transferring entities can be accomplished pursuant to sale of assets statutory provisions such as IC 23-1-41 rather than under IC 23-0.6-2 of this article, even though the end result of the transaction is essentially the same as if the two entities had merged into a third entity.

IC 23-0.6-1-6 Reference to external facts

Sec. 6. (a) If a:

- (1) provision under this article permits any of the terms of a plan to be dependent on facts objectively ascertainable outside the plan; and
 - (2) plan includes terms that are dependent on facts described in subdivision (1);
- the manner in which the facts will operate upon the terms of the plan and the manner in which the facts will become operative must be set forth in the plan.

(b) The facts described under subsection (a) may include any of the following:

- (1) Any of the following that are available in a nationally recognized news or information medium either in print or electronically:
 - (A) Statistical or market indices.
 - (B) Market prices of any security or group of securities.
 - (C) Interest rates.
 - (D) Currency exchange rates.
 - (E) Similar economic or financial data.
 - (2) A determination made or action taken by any person, including the entity or another party to a plan.
 - (3) The terms of, or actions taken under, an agreement to which the entity is a party, or any other agreement or document.
- (c) The following provisions of a plan may not be made dependent on facts outside the plan:
- (1) The name and address of any person required in a filed document.
 - (2) The registered office of any entity required in a filed document.
 - (3) The registered agent of any entity required in a filed document.
 - (4) The number of authorized interests and designation of each class or series of interests.
 - (5) The effective date of a filed document.
 - (6) Any required statement in a plan of the date on which the underlying transaction was approved or the manner in which that approval was given.
- (d) If a provision of a plan is made dependent on a fact ascertainable outside the plan, and:
- (1) the fact is not ascertainable by reference to a source described in subsection (b)(1) or a document that is a matter of public record; and
 - (2) the entity has not provided notice of the fact to the affected interest holders;

the entity shall file with the secretary of state articles of amendment setting forth the fact promptly after the time the fact referred to is first ascertainable or changes.

(e) Articles of amendment filed under subsection (d):

- (1) are considered to be authorized by the plan to which the articles of amendment relate; and
- (2) may be filed by the entity without further action by the governing person.

Comment

This section is from former IC 23-1-18-1.2, 23-4-1-45.7, 23-16-3-7.2, 23-17-29-1.2, and 23-18-12-1.2. Provisions relating to filed documents previously set forth in those five sections are now in IC 23-0.5-1-6.

IC 23-0.6-1-7 Approval of transaction

Sec. 7. Except as otherwise provided in the organic law or organic rules of a domestic entity, approval of a transaction under this article by the unanimous vote or consent of its interest holders satisfies the requirements of this article for approval of the transaction.

Comment

This section makes it clear that a unanimous vote by the interest holders of an entity constitutes the only approval needed of a transaction under this article. That is consistent with the default rules on approval in IC 23-0.6-2 (approval of a merger), 23-0.6-3 (approval of an interest exchange), 23-0.6-4 (approval of a conversion), and 23-0.6-5 (approval of a domestication).

IC 23-0.6-1-8 Appraisal rights

Sec. 8. (a) An interest holder of a domestic merging, acquired, converting, or domesticating entity is entitled to appraisal rights in connection with the transaction if the interest holder would have been entitled to appraisal rights under the entity's organic law in connection with a merger in which the interest of the interest holder was changed, converted, or exchanged unless:

- (1) the organic law permits the organic rules to limit the availability of appraisal rights; and
- (2) the organic rules provide such a limit.

(b) An interest holder of a domestic merging, acquired, converting, or domesticating entity is entitled to contractual appraisal rights in connection with a transaction under this article to the extent provided:

- (1) in the entity's organic rules;
- (2) in the plan; or
- (3) in the case of a business corporation, by action of its governing persons.

(c) If an interest holder is entitled to contractual appraisal rights under subsection (b) and the entity's organic law does not provide procedures for the conduct of an appraisal rights proceeding, [IC 23-1-44](#) applies to the extent practicable or as otherwise provided in the entity's organic rules or the plan.

Comments

1. This section follows the Model Act. It extends the terms of former law applicable only to conversions (IC 23-1-38.5-10(i)) to all transactions covered by this article. *See* IC 23-0.6-2-6(a)(10), 23-0.6-3-6(a)(1), 23-0.6-4-6(a)(9), and 23-0.6-5-6(a)(8).

2. In this section, the term “appraisal rights” is intended to refer to any provision in the entity’s organic law providing for the buy-out of an interest holder that objects to a transaction under this article. For example, IC 23-1-44 is such a provision for a domestic corporation.

3. Under subsection (a), if an entity’s organic law permits the organic rules to limit the availability of appraisal rights, as does, for example, IC 23-1-44-8(c), such a provision of the organic rules will apply to the availability of appraisal rights under this section. This section, however, does not authorize the organic rules to limit the availability of appraisal rights in a transaction under the article if the entity’s organic law does not authorize such a provision of the organic rules.

4. This article permits a plan to set forth the terms and conditions of a transaction. A domestic entity may thus choose to grant optional appraisal rights as part of the terms of a transaction in circumstances where appraisal rights would not be available under this section. Subsection (b) validates the grant of such contractual appraisal rights. Legislative authorization in subsection (b) of the grant of contractual appraisal rights removes any question as to whether a court would have jurisdiction to hear a case in which the parties were attempting to create jurisdiction in the court by private agreement. If the entity’s organic law does not provide procedures for conducting an appraisal rights proceeding, subsection (c) makes the appraisal rights procedures in IC 23-1-44 applicable unless the entity’s organic rules or the plan provide otherwise.

1.5 Definitions

IC 23-0.6-1.5-1 Application of definitions

Sec. 1. Except as otherwise provided by this article, the definitions set forth in [IC 23-0.5-1.5](#) apply to this article.

Comment

The definitions in IC 23-0.5-1.5, the Uniform Business Organizations Administrative Provisions Act, apply to this article unless a particular term is defined differently in this article.

IC 23-0.6-1.5-2 "Acquired entity"

Sec. 2. "Acquired entity" means the entity in which all of one (1) or more classes or series of interests are acquired in an interest exchange.

Comment

This definition recognizes that an interest exchange may involve only the acquisition of a particular “class” or “series” of interests in an entity.

IC 23-0.6-1.5-3 "Acquiring entity"

Sec. 3. "Acquiring entity" means the entity that acquires all of one (1) or more classes or series of interests of the acquired entity in an interest exchange.

Comment

An "acquiring entity" is an entity that acquires the interests of the acquired entity in an interest exchange governed by IC 23-0.6-3.

IC 23-0.6-1.5-4 "Approve"

Sec. 4. "Approve" means, in the case of an entity, for its governing persons and interest holders to take whatever steps are necessary under its organic rules, organic law, and other law to:

- (1) propose a transaction subject to this article;
- (2) adopt and approve the terms and conditions of the transaction; and
- (3) conduct any required proceedings or otherwise obtain any required votes or consents of the governing persons or interest holders.

Comment

The term "approve" encompasses all of the steps necessary for an entity to propose a transaction, adopt and approve the terms and conditions of the transaction, and obtain the necessary action on the transaction by the governing persons and interest holders of the entity. The term includes procedural requirements such as notice to interest holders, preparation of voting lists, etc. The principal laws that will govern approval by an entity of a transaction under this article are the entity's organic law and this article, but regulatory laws may also apply.

IC 23-0.6-1.5-5 "Articles of conversion"

Sec. 5. "Articles of conversion" refers to the filing required by [IC 23-0.6-4-5](#).

IC 23-0.6-1.5-6 "Articles of domestication"

Sec. 6. "Articles of domestication" refers to the filing required by [IC 23-0.6-5-5](#).

IC 23-0.6-1.5-7 "Articles of interest exchange"

Sec. 7. "Articles of interest exchange" refers to the filing required by [IC 23-0.6-3-5](#).

IC 23-0.6-1.5-8 "Articles of merger"

Sec. 8. "Articles of merger" refers to the filing required by [IC 23-0.6-2-5](#).

IC 23-0.6-1.5-9 "Conversion"

Sec. 9. "Conversion" means a transaction authorized by [IC 23-0.6-4](#).

Comments

1. The term “conversion” means a transaction authorized by IC 23-0.6-4 pursuant to which an entity of one type is converted into an entity of another type. As used in this article, the term “conversion” does not include a transaction in which an entity changes the jurisdiction in which it is organized but does not change to a different form of entity; that type of transaction is referred to in this article as a “domestication” and is governed by IC 23-0.6-5.

2. This article authorizes and governs the process by which a domestic entity is converted into a domestic entity of a different type or into a foreign entity of a different type if the conversion is authorized by the law of the foreign jurisdiction. It replaces authority in former law that permitted such conversions by corporations. *See* former IC 23-1-38.5-10(a) through (h). These provisions in former IC 23-1-38.5 were expressly also applicable to general partnerships and limited liability partnerships (see former IC 23-4-1-54); limited partnerships (see former IC 23-16-3-14); and limited liability companies (*see* former IC 23-18-7-10).

3. A nonprofit corporation cannot engage in a conversion. *See* IC 23-0.6-4-1(c)(2) and (e).

IC 23-0.6-1.5-10 "Converted entity"

Sec. 10. "Converted entity" means the converting entity as it continues in existence after a conversion.

Comment

This term is used in IC 23-0.6-4 to refer to the entity that results from a conversion.

IC 23-0.6-1.5-11 "Converting entity"

Sec. 11. "Converting entity" means the domestic entity that approves a plan of conversion under [IC 23-0.6-4-3](#) or the foreign entity that approves a conversion under the law of its jurisdiction of organization.

Comment

A converting entity is the entity that becomes the converted entity under IC 23-0.6-4.

IC 23-0.6-1.5-12 "Domesticated entity"

Sec. 12. "Domesticated entity" means the domesticating entity as it continues in existence after a domestication.

Comment

This term is used in IC 23-0.6-5 and means the entity that is domesticated pursuant to IC 23-0.6-5. By the nature of the transaction, the domesticated entity will be of the same type as the domesticating entity.

IC 23-0.6-1.5-13 "Domesticating entity"

Sec. 13. "Domesticating entity" means the domestic entity that approves a plan of domestication under [IC 23-0.6-5-3](#) or the foreign entity that approves a domestication under the law of its jurisdiction of organization.

Comment

This term is used in IC 23-0.6-5 and means the entity that is domesticated pursuant to IC 23-0.6-5.

IC 23-0.6-1.5-14 "Domestication"

Sec. 14. "Domestication" means a transaction authorized by [IC 23-0.6-5](#).

Comments

1. The term "domestication" means a transaction of the kind authorized by IC 23-0.6-5 pursuant to which an entity may change its *jurisdiction* of formation *but not its entity type* so long as the laws of the foreign jurisdiction permit the domestication. The domestication process of an entity out of Indiana will be governed by the laws of both Indiana and the foreign jurisdiction. It is intended that the domestication provisions of this article will apply to a transaction that may be characterized under another article as a "conversion" if it meets the definition of "domestication" under this article.

2. This article authorizes and governs the process by which a domestic entity may become a domestic entity of the same type in a foreign jurisdiction if the domestication is authorized by the law of the foreign jurisdiction. This article also authorizes and governs the process by which a foreign entity may become a domestic entity of the same type in this state if the domestication is authorized by the law of the foreign entity's jurisdiction of formation.

3. This article replaces authority in prior law that permitted domestications by corporations and nonprofit corporations (former IC 23-1-38.5-4(a) and (b)(first sentence)).

4. This article authorizes and governs domestications not previously authorized by Indiana law in respect of limited liability partnerships, limited partnerships, and limited liability companies.

IC 23-0.6-1.5-15 "Interest exchange"

Sec. 15. "Interest exchange" means a transaction authorized by [IC 23-0.6-3](#).

Comments

1. The term "interest exchange" means a transaction authorized by IC 23-0.6-3 pursuant to which an entity may acquire interests in another entity. The consideration that may be provided to the interest holders whose interests are being acquired in an exchange may consist in whole or part of interests in a third party that is not one of the two parties to the exchange itself. *See* IC 23-0.6-3-1(a).

2. Current Indiana law authorizes and governs “share exchanges” pursuant to which a corporation may acquire shares of another corporation. IC 23-1-40. This authority is not affected by this article and remains in full force and effect. IC 23-0.6-3-0.3. *See* Comment 2(c) to IC 23-0.6-1-1.

3. This chapter authorizes and governs interest exchanges not previously authorized by Indiana law between: (a)(1) a domestic corporation and (2) a domestic or foreign limited liability partnership, limited partnership, or limited liability company; (b)(1) a domestic limited liability partnership and (2) a domestic or foreign corporation, limited liability partnership, limited partnership, or limited liability company; (c)(1) a domestic limited partnership and (2) a domestic or foreign corporation, limited liability partnership, limited partnership, or limited liability company; and (d)(1) a domestic limited liability company and (2) a domestic or foreign corporation, limited liability partnership, limited partnership, or limited liability company

4. A nonprofit corporation cannot engage in an interest exchange. *See* IC 23-0.6-3-0.5.

IC 23-0.6-1.5-16 "Interest holder liability"

Sec. 16. "Interest holder liability" means:

- (1) personal liability for a liability of an entity that is imposed on a person:
 - (A) solely by reason of the status of the person as an interest holder; or
 - (B) by the organic rules of the entity which make one (1) or more specified interest holders liable in their capacity as interest holders for all or specified liabilities of the entity; or
- (2) an obligation of an interest holder under the organic rules of an entity to contribute to the entity.

Comments

1. This section follows the Model Act. It extends the terms of former law applicable only to conversions (former IC 23-1-38.5-10(i)) to all transactions covered by this article. *See* IC 23-0.6-2-6(c) and (d), 23-0.6-3-6(c) and (e), 23-0.6-4-6(c) and (d), and 23-0.6-5-6(c) and (d).

2. This term is used to describe the vicarious liability of an interest holder, by virtue of being an interest holder, for liabilities of the entity. The term includes only personal liability of an interest holder for a debt or obligation of an entity imposed on the interest holder either by statute or by the organic rules to the extent authorized pursuant to the organic law. Liabilities that an interest holder incurs in any other fashion are not interest holder liabilities for purposes of this article. Thus, for example, if a shareholder is personally liable for unpaid wages because of the person’s status as a shareholder, that liability would be an “interest holder liability.” If, on the other hand, a shareholder were to guarantee payment of an obligation of a corporation, that liability would not be an “interest holder liability” because it is a direct liability of the person and not based on the status of being a shareholder. Similarly, the liability to return an improper distribution is not an interest holder liability because it is a direct liability of the interest holder based on receipt of the distribution.

IC 23-0.6-1.5-17 "Merger"

Sec. 17. "Merger" means a transaction in which two (2) or more merging entities are combined into a surviving entity pursuant to a filing with the secretary of state.

Comments

1. Current Indiana law authorizes and governs mergers pursuant to which two or more corporations are combined into a single corporation pursuant to a filing with the secretary of state. IC 23-1-40. This authority is not affected by this article and remains in full force and effect. IC 23-0.6-2-1(c). *See* Comment 2(a) to IC 23-0.6-1-1. Current Indiana law also authorizes and governs mergers pursuant to which two or more nonprofit corporations are combined into a single nonprofit corporation pursuant to a filing with the secretary of state. IC 23-17-19. This authority is not affected by this article and remains in full force and effect. IC 23-0.6-2-1(d). *See* Comment 2(b) to IC 23-0.6-1-1.

2. This chapter authorizes and governs a merger between: (a)(1) a domestic corporation and (2) one or more domestic or foreign limited liability partnerships, limited partnerships, or limited liability companies; (b)(1) a domestic limited liability partnership and (2) one or more domestic or foreign corporations, limited liability partnerships, limited partnerships, or limited liability companies; (c)(1) a domestic limited partnership and (2) one or more domestic or foreign corporations, limited liability partnerships, limited partnerships, or limited liability companies; and (d) (1) a domestic limited liability company and (2) one or more domestic or foreign corporations, limited liability partnerships, limited partnerships, or limited liability companies.

3. Indiana law does not recognize "consolidations," i.e., transactions in which a new entity results from the combination of two or more pre-existing entities.

IC 23-0.6-1.5-18 "Merging entity"

Sec. 18. "Merging entity" means an entity that is a party to a merger and exists immediately before the merger becomes effective.

Comment

The term "merging entity" refers to each entity that is in existence immediately before a merger and is a party to the merger. It will include the surviving entity if the surviving entity exists before the merger becomes effective. It does not include an entity that provides consideration to be received by interest holders if that entity is not a party to the merger.

IC 23-0.6-1.5-19 "Organic law"

Sec. 19. "Organic law" refers to the following:

- (1) The law of an entity's jurisdiction of formation governing the internal affairs of the entity.
- (2) [IC 23-1-40](#) for a domestic business corporation engaged in a transaction under this article.
- (3) [IC 23-17-19](#) for a domestic nonprofit corporation engaged in a transaction under this article.

Comment

Organic law means statutes that govern the internal affairs of an entity. Subsections (2) and (3) identify other statutes applicable to transactions under this article.

IC 23-0.6-1.5-20 "Plan"

Sec. 20. "Plan" means a plan of merger, plan of interest exchange, plan of conversion, or plan of domestication.

Comment

The term "plan" means the plan of merger, interest exchange, conversion, or domestication, as the case may be, depending on which form of transaction is taking place. *See* IC 23-0.6-2-2 (plan of merger), 23-0.6-3-2 (plan of interest exchange), 23-0.6-4-2 (plan of conversion), and 23-0.6-5-2 (plan of domestication).

IC 23-0.6-1.5-21 "Plan of conversion"

Sec. 21. "Plan of conversion" means a plan under [IC 23-0.6-4-2](#).

IC 23-0.6-1.5-22 "Plan of domestication"

Sec. 22. "Plan of domestication" means a plan under [IC 23-0.6-5-2](#).

IC 23-0.6-1.5-23 "Plan of interest exchange"

Sec. 23. "Plan of interest exchange" means a plan under [IC 23-0.6-3-2](#).

IC 23-0.6-1.5-24 "Plan of merger"

Sec. 24. "Plan of merger" means a plan under [IC 23-0.6-2-2](#).

IC 23-0.6-1.5-25 "Surviving entity"

Sec. 25. "Surviving entity" means the entity that continues in existence after a merger under [IC 23-0.6-2](#).

2-Merger

IC 23-0.6-2-1 Right to merge

Sec. 1. (a) Except as otherwise provided in this section, by complying with this chapter:

- (1) one (1) or more domestic entities may merge with one (1) or more domestic or foreign entities into a domestic or foreign surviving entity; and
- (2) two (2) or more foreign entities may merge into a domestic entity.

(b) Except as otherwise provided in this section, by complying with the provisions of this chapter applicable to foreign entities, a foreign entity may be a party to a merger under this chapter or may be the surviving entity in such a merger if the merger is authorized by the law of the foreign entity's jurisdiction of formation.

(c) A merger between or among domestic or foreign business corporations is governed by [IC 23-1-40](#) and not this chapter.

(d) A merger involving domestic or foreign nonprofit corporations is governed by [IC 23-17-19](#) and not this chapter.

Comments

1. See Comments 2 and 3 to IC 23-0.6-1.5-17 for an explanation of the scope of this chapter and the change from prior law. Prior Indiana law that authorizes and governs mergers between two or more corporations and between two or more nonprofit corporations is not changed by this chapter and remains in full force and effect. See subsection 1(d) and Comment 2(b) to IC 23-0.6-1-1.

2. The merger transaction authorized by this article involves the combination of one or more domestic entities with or into one or more other domestic or foreign entities. Upon the effective date of the merger, all the assets and liabilities of the constituent entities vest in the surviving entity as a matter of law. This article authorizes a merger for state entity law purposes. Federal law and other state law will independently determine how a merger transaction will be taxed.

IC 23-0.6-2-2 Plan of merger; contents

Sec. 2. (a) A domestic entity may become a party to a merger under this chapter by approving a plan of merger. The plan must be in a record and contain:

- (1) as to each merging entity, its name, jurisdiction of formation, and type of entity;
- (2) the manner of converting the interests in each party to the merger into interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing;
- (3) any proposed amendments to the surviving entity's:
 - (A) public organic record, if any; and
 - (B) private organic rules that are, or are proposed to be, in a record;
- (4) the other terms and conditions of the merger;
- (5) any other provision required by the law of a merging entity's jurisdiction of formation or the organic rules of a merging entity;
- (6) if a partnership is to be the surviving entity, the names and business addresses of the general partners of the surviving entity; and
- (7) if a limited liability company is to be the surviving entity and management of the limited liability company is vested in one (1) or more managers, the names and business addresses of the managers.

(b) In addition to the requirements of subsection (a), a plan of merger may contain any other provision not prohibited by law.

IC 23-0.6-2-3 Approval of plan or merger

Sec. 3. (a) A plan of merger is not effective unless it has been approved:

- (1) by a domestic merging entity:
 - (A) in accordance with the requirements, if any, in its organic law and organic rules for approval of the merger; or
 - (B) by all the interest holders of the entity entitled to vote on or consent to any matter if, in the case of an entity that is not a business corporation, neither its organic law nor organic rules provide for approval of the merger; and
- (2) in a record, by each interest holder of a domestic merging entity which will have interest holder liability for debts, obligations, and other liabilities that are incurred after the merger becomes effective, unless, in the case of an entity that is not a business corporation or nonprofit corporation:

(A) the organic rules of the entity provide in a record for the approval of a merger in which some or all of its interest holders become subject to interest holder liability by the affirmative vote or consent of fewer than all the interest holders; and

(B) the interest holder consented in a record to or voted for that provision of the organic rules or became an interest holder after the adoption of that provision.

(b) A merger under this chapter involving a foreign merging entity is not effective unless the merger is approved by the foreign entity in accordance with the law of the foreign entity's jurisdiction of formation.

Comments

1. Approval under this section includes whatever actions or procedures by the governing persons and interest holders of an entity are required by its organic law, as modified by its organic rules, to effectuate the merger. In the case of a business corporation, those procedures will include provisions for approval of a “short form” merger without a vote of the shareholders if a merger under this article satisfies the tests for being a short form merger. If the organic rules of an entity prescribe a procedure for the proposal, adoption and/or approval of a merger, the term “approval” includes compliance with all of those rules. See the definition of “approve” in IC 23-0.6-1.5-4.

2. Subsection (a)(1)(B) is new Indiana law. If the organic law of an entity is silent with respect to procedures for approval of a merger, the organic rules may be amended to provide those procedures. Otherwise, the default procedure in subsection (a)(1)(B) requires approval by all the interest holders entitled to vote on any matter.

3. Subsection (a)(2) deals with the situation where an interest holder of an entity that is a party to a merger will have vicarious liability for the liabilities of the surviving entity that are incurred after the merger is effective. The special approval requirement in subsection (a)(2) will be applicable, for example, to shareholders of a corporation that merges into a general partnership that is not a limited liability partnership if the shareholders become general partners of the surviving general partnership. If such a shareholder were to exercise appraisal rights, however, the shareholder would not become subject to owner liability because one effect of exercising appraisal rights is that the shareholder would not become a general partner in the surviving entity; and, in that case, the consent of that shareholder would not be required under subsection (a)(2).

The consent of an interest holder required by subsection (a)(2)(B) may be given either by (i) signing or agreeing generally to the terms of organic rules that include the required provision permitting less than unanimous approval of a merger in which interest holders become subject to owner liability, or (ii) voting for or consenting to an amendment to add such a provision.

4. Where a foreign entity is a party to a merger under this article, subsection (b) defers to the laws of the foreign jurisdiction for the requirements for approval of the merger by the foreign entity. Those laws will include the organic law of the foreign entity and other applicable laws, such as the Model Act if it has been adopted in the foreign jurisdiction. The laws of the foreign jurisdiction will also control the application of any special approval requirements found in the organic rules of the foreign entity.

IC 23-0.6-2-4 Amendment or abandonment of plan of merger

Sec. 4. (a) A plan of merger may be amended only with the consent of each party to the plan, except as otherwise provided in the plan.

(b) A domestic merging entity may approve an amendment of a plan of merger:

(1) in the same manner as the plan was approved, if the plan does not provide for the manner in which it may be amended; or

(2) by its governing persons or interest holders in the manner provided in the plan, but an interest holder that was entitled to vote on or consent to approval of the merger is entitled to vote on or consent to any amendment of the plan that will change:

(A) the amount or kind of interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing, to be received by the interest holders of any party to the plan;

(B) the public organic record, if any, or private organic rules of the surviving entity that will be in effect immediately after the merger becomes effective, except for changes that do not require approval of the interest holders of the surviving entity under its organic law or organic rules; or

(C) any other terms or conditions of the plan, if the change would adversely affect the interest holder in any material respect.

(c) After a plan of merger has been approved and before articles of merger are effective, the plan may be abandoned as provided in the plan. Unless prohibited by the plan, a domestic merging entity may abandon the plan in the same manner as the plan was approved.

(d) If a plan of merger is abandoned after articles of merger have been delivered to the secretary of state for filing, articles of abandonment, signed by a party to the plan, must be delivered to the secretary of state for filing before the articles of merger take effect. Articles of abandonment take effect on filing, and the merger is abandoned and does not become effective. The articles of abandonment must contain:

(1) the name of each party to the plan of merger;

(2) the date on which articles of merger were filed by the secretary of state; and

(3) a statement that the merger has been abandoned in accordance with this section.

Comment

This section constitutes new Indiana law for mergers involving limited liability partnerships and limited partnerships. This section constitutes new Indiana law in part for mergers involving limited liability companies; only IC 23-0.6-2-4(a) and (b) are new.

IC 23-0.6-2-5 Filing articles of merger; contents; surviving entity

Sec. 5. (a) Articles of merger must be signed by each merging entity and delivered to the secretary of state for filing.

(b) Articles of merger must contain:

(1) the name, jurisdiction of formation, and type of entity of each merging entity that is not the surviving entity;

(2) the name, jurisdiction of formation, and type of entity of the surviving entity;

- (3) if the articles of merger are not effective upon filing, the later date and time on which the articles of merger will become effective, which may not be more than ninety (90) days after the date of filing;
 - (4) a statement that the merger was approved by each domestic merging entity, if any, in accordance with this chapter and by each foreign merging entity, if any, in accordance with the law of its jurisdiction of formation;
 - (5) if the surviving entity is a domestic filing entity, any amendment to its public organic record approved as part of the plan of merger; and
 - (6) if the surviving entity is a foreign entity that is not a registered foreign entity, a mailing address and an electronic mailing address to which the secretary of state may send any process served on the secretary of state under section 6(e) of this chapter.
- (c) In addition to the requirements of subsection (b), articles of merger may contain any other provision not prohibited by law.
- (d) If the surviving entity is a domestic entity, its public organic record, if any, must satisfy the requirements of the law of Indiana, except that the public organic record does not need to be signed and may omit any provision that is not required to be included in a restatement of the public organic record.
- (e) A plan of merger that is signed by all the merging entities and meets all the requirements of subsection (b) may be delivered to the secretary of state for filing instead of articles of merger and on filing has the same effect. If a plan of merger is filed as provided in this subsection, references in this article to articles of merger refer to the plan of merger filed under this subsection.
- (f) Articles of merger are effective on the date and time of filing or the later date and time specified in the articles of merger.
- (g) If the surviving entity is a domestic entity, the merger becomes effective when the articles of merger are effective. If the surviving entity is a foreign entity, the merger becomes effective on the later of:
- (1) the date and time provided by the organic law of the surviving entity; or
 - (2) when the articles of merger are effective.
- (h) The surviving entity resulting from a merger may, after the merger has become effective, file for record with the county recorder of each county in Indiana in which the entity has real property at the time of the merger, the title to which will be transferred by the merger, a file-stamped copy of the articles of merger. If the articles of merger set forth amendments to the articles of incorporation of the surviving corporation that change its entity name, a file-stamped copy of the articles of merger may be filed for record with the county recorder of each county in Indiana in which the surviving entity has any real property at the time the merger becomes effective. A failure to record a copy of the articles of merger under this subsection does not affect the validity of the merger or the change in corporate name.

Comments

1. When the articles of merger are effective under subsection (f), the merger transaction occurs. The filing of articles of merger also makes the transaction a matter of public record. Pursuant to IC 23-0.5-2-6, the secretary of state's responsibilities in respect of filing articles of merger are ministerial. *See* Comment 1 to IC 23-0.5-2-6.

2. The names of foreign entities set forth in the articles of merger will be their names in their jurisdiction of formation, except that if a foreign entity has been required to adopt an alternate name in order to register to do business in Indiana, IC 23-0.5-5-6 requires that when the entity does business in Indiana it must use the name adopted for purposes of registering to do business. The name of the entity set forth in the articles of merger must be the name under which the entity was formed or registered to do business in Indiana.

3. The statement in subsection (b)(4) that the plan of merger was approved by each entity in accordance with this article necessarily presupposes that the plan was approved in accordance with any valid, special requirements in the organic rules of each merging entity.

4. Organic laws typically require an initial filing that creates an entity to be signed by the person serving as the incorporator or other organizer. Subsection (d), however, provides that the public organic record of the surviving entity does not need to be signed since it is itself attached to a signed record. Subsection (d) also permits the public organic record of the surviving entity to omit any provision that is not required to be included in a restatement of the public organic record.

5. The effective time of the articles is the effective time of their filing, unless otherwise specified. Articles may specify a delayed effective time and date, and if they do so the articles become effective at the time and date specified. Subsection (f) is subject to the 90-day delayed effective date filing limitation in subsection (b)(3).

6. A merger in which the surviving entity is a domestic entity takes effect when the articles of merger take effect. A merger in which the surviving entity is a foreign entity will usually also take effect when the articles of merger take effect because the practice is to coordinate the filings that need to be made when a merger involves both a domestic entity and also a foreign entity so that the filings in each jurisdiction take effect at the same time. Because of the possibility, however, that the filing in the foreign jurisdiction will take effect at a different time, subsection (g) provides that the merger transaction itself will take effect at the later of (i) when the articles of merger take effect, and (ii) when the merger takes effect under the law of the foreign jurisdiction. That rule avoids the possibility that the merger will take effect in the domestic jurisdiction before it takes effect in the foreign jurisdiction, which would produce the undesirable result that the domestic entity would cease to exist before it has been merged into the foreign entity.

7. This section constitutes new Indiana law for mergers involving limited liability partnerships and limited partnerships. This section constitutes new Indiana law in part for mergers involving corporations (IC 23-0.6-2-5(b)(1), (b)(5), (b)(6), (c), (d), (e), and (g)(second sentence) are new) and limited liability companies (IC 23-0.6-2-5(b)(2), (b)(6), (c), (d), (e), and (g)(second sentence) are new).

IC 23-0.6-2-6 Effect of merger

Sec. 6. (a) When a merger under this chapter becomes effective:

- (1) the surviving entity continues;
- (2) each merging entity that is not the surviving entity ceases to exist;

- (3) all property of each merging entity vests in the surviving entity without transfer, reversion, or impairment;
 - (4) all debts, obligations, and other liabilities of each merging entity are debts, obligations, and other liabilities of the surviving entity;
 - (5) except as otherwise provided by law or the plan of merger, all the rights, privileges, immunities, powers, and purposes of each merging entity vest in the surviving entity;
 - (6) as to the surviving entity:
 - (A) all its property continues to be vested in it without transfer, reversion, or impairment;
 - (B) it remains subject to all its debts, obligations, and other liabilities; and
 - (C) all its rights, privileges, immunities, powers, and purposes continue to be vested in it;
 - (7) the name of the surviving entity may be substituted for the name of any merging entity that is a party to any pending action or proceeding;
 - (8) the surviving entity's:
 - (A) public organic record, if any, is amended to the extent provided in the articles of merger; and
 - (B) private organic rules that are to be in a record, if any, are amended to the extent provided in the plan of merger;
 - (9) a proceeding pending against any 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; and
 - (10) the interests in each merging entity which are to be converted in the merger are converted, and the interest holders of those interests are entitled only the rights provided to them under the plan of merger and to any appraisal rights they have under [IC 23-0.6-1-8](#).
- (b) Except as otherwise provided in the organic law or organic rules of a merging entity, a merger under this chapter does not give rise to any rights that an interest holder, governing person, or third party would have upon a dissolution, liquidation, or winding up of the merging entity.
- (c) When a merger under this chapter becomes effective, a person that did not have interest holder liability with respect to any of the merging entities and becomes subject to interest holder liability with respect to a domestic entity as a result of the merger has interest holder liability only to the extent provided by the organic law of that entity and only for those debts, obligations, and other liabilities that are incurred after the merger becomes effective.
- (d) When a merger becomes effective, the interest holder liability of a person that ceases to hold an interest in a domestic merging entity with respect to which the person had interest holder liability is subject to the following rules:
- (1) The merger does not discharge any interest holder liability under the organic law of the domestic merging entity to the extent the interest holder liability was incurred before the merger became effective.
 - (2) The person does not have interest holder liability under the organic law of the domestic merging entity for any debt, obligation, or other liability that is incurred after the merger becomes effective.
 - (3) The organic law of the domestic merging entity continues to apply to the release, collection, or discharge of any interest holder liability preserved under subdivision (1) as if the merger had not occurred.
 - (4) The person has whatever rights of contribution from any other person as are provided by law other than this article or the organic rules of the domestic merging entity with respect to

any interest holder liability preserved under subdivision (1) as if the merger had not occurred.

(e) When a merger under this chapter becomes effective, a foreign entity that is the surviving entity may be served with process in this state for the collection and enforcement of any debts, obligations, or other liabilities of a domestic merging entity in accordance with applicable law.

(f) When a merger under this chapter becomes effective, the registration to do business in this state of any foreign merging entity that is not the surviving entity is canceled.

Comments

1. With the exception of subsections (c) and (d), this section is similar to statutory provisions on the effect of a merger of a corporation with a corporation contained in IC 23-1-40-6. Subsections (c) and (d) set forth rules for two circumstances that typically do not exist in a merger where all the entities involved are corporations. Subsection (c) deals with the situation where an interest holder that does not have vicarious liability for the obligations of a merging entity before the merger has interest holder liability after the merger. An example would be a corporate shareholder who agrees to be a general partner in a limited partnership that is the surviving entity in a merger between a corporation and a limited partnership. Subsection (d) deals with the situation where an interest holder has vicarious liability for the obligations of one of the merging parties before the merger but ceases to have any interest holder liability for the obligations of the surviving entity after the merger is effective. An example would be a general partner in a general partnership that merges into a corporation. *See* Comments 7, 8, and 9.

2. Under IC 23-0.6-2-3(a)(2), a merger cannot have the effect of making an interest holder of a domestic merging entity subject to interest holder liability for the debts, obligations, or other liabilities of any other person or entity unless the interest holder has executed a separate written consent to become subject to such liability or previously agreed to the effectuation of a transaction having that effect without the interest holder's consent.

3. Subsection (a) states the default rule that in a merger the assets and liabilities of the merging entities automatically vest in the surviving entity. The surviving entity becomes the owner of all real and personal property of the merged entities and assumes all debts, obligations, and liabilities of the merging entities. A merger does not constitute a transfer, assignment, or conveyance of any property held by the merging entities prior to the merger. A merger also does not give rise to a claim that a contract with a merging entity is no longer in effect on the ground of nonassignability, unless the contract specifically provides that it does not survive a merger. The contract rights that are vested in the surviving entity include the right to enforce subscription agreements for interests and obligations to make capital contributions entered into or incurred before the merger.

After a merger becomes effective, the law of the surviving entity's jurisdiction of formation governs the surviving entity.

See IC 23-0.6-1-2(b) and 23-0.6-1-4(b) which modify the provisions of this section with respect to the effects of a merger to the extent a regulatory law provides otherwise or any of the parties holds property committed to charitable purposes.

4. All pending proceedings involving either the survivor or a party whose separate existence ceased as a result of the merger are continued. Under subsection (a)(7), the name of the survivor may be, but need not be, substituted in any pending proceeding for the name of a party to the merger whose separate existence ceased as a result of the merger. The substitution may be made whether the survivor is a complainant or a respondent, and may be made at the instance of either the survivor or an opposing party. Such a substitution has no substantive effect because, whether or not the survivor's name is substituted, the survivor succeeds to the claims, and is subject to the liabilities, of any party to the merger whose separate existence ceased as a result of the merger.

5. Subsection (a)(10) provides that the interest holders in each merging entity are entitled only the rights provided to them under the plan of merger and to any appraisal rights they have under IC 23-0.6-1-8. *See* IC 23-0.6-1-8 and the Comments to IC 23-0.6-1-8.

6. Subsections (c) and (d) set forth rules for "interest holder liability" which is defined in IC 23-0.6-1.5-16.

7. Subsection (c) sets forth the general rule that an interest holder that was not liable for the liabilities of a merging entity before the merger but will have personal liability for the obligations of the surviving entity after the merger will be personally liable only for the liabilities of a domestic surviving entity that are incurred after the effective date of a merger. When a liability is incurred will be determined by other applicable law. Subsection (c) is limited to situations in which a person becomes personally liable with respect to a domestic entity. Personal liability with respect to a foreign entity will be controlled by the law of the foreign jurisdiction.

8. Subsection (d) provides four rules with respect to an interest holder who ceases to have interest holder liability after the effective date of the merger:

- (1) the interest holder remains personally liable for any obligations that were incurred before the effective date of the merger;
- (2) the interest holder does not have any personal liability for obligations of the surviving entity;
- (3) the pre-existing personal liability of the interest holder is enforced against the interest holder on the same basis as if the merger had not taken place; and
- (4) the interest holder has the same rights of contribution from other interest holders of the merging entity as the interest holder would have had if the merger had not occurred.

As noted in Comment 10 below, subsection (d) constitutes new Indiana law in respect of mergers. It is, however, to the same effect as language in prior law in respect of conversions (IC 23-1-38.5-15(d)), and in respect of domestications (IC 23-1-38.5-8(c)). These provisions were incorporated by reference into the prior domestic organic law governing limited liability partnerships, limited partnerships, and limited liability companies and are maintained in this article. *See* IC 23-0.6-4-6(d) and 23-0.6-5-6(d).

9. When a merger becomes effective, subsection (e) provides that a foreign entity that is the surviving entity may be served with process in this state. The proceedings covered by

subsection (e) include a proceeding to enforce the rights of any interest holders of each domestic merging entity who are entitled to and exercise appraisal rights. One of the liabilities that a foreign surviving entity succeeds to is the obligation of a merging entity to pay the amount, if any, to which its interest holders who assert appraisal rights are entitled.

10. This section constitutes new Indiana law for mergers involving limited liability partnerships. This section constitutes new Indiana law in part for mergers involving corporations (IC 23-0.6-2-6(a)(5), (a)(6), (a)(7), (b), (c), (d) and (e) are new); limited partnerships (IC 23-0.6-2-6(a)(1), (a)(2), (a)(6), (a)(7), (a)(8), (a)(10), (b), (c), (d) and (e) are new); and limited liability companies (IC 23-0.6-2-5(a)(5), (a)(6), (a)(7), (b), (c), (d) and (e) are new).

3-Interest exchanges

IC 23-0.6-3-0.3 Governing law

Sec. 0.3. A share exchange between or among domestic or foreign business corporations is governed by [IC 23-1-40](#) and not this chapter.

Comment

See Comments 2 through 4 to IC 23-0.6-1.5-15 and Comment to IC 23-0.6-3-1 for information on the scope of this chapter and change from prior law.

IC 23-0.6-3-0.5 Limitations on application

Sec. 0.5. This chapter does not apply to nonprofit corporations.

Comment

See Comments 2 through 4 to IC 23-0.6-1.5-15 and Comment to IC 23-0.6-3-1 for information on the scope of this chapter and change from prior law.

IC 23-0.6-3-1 Authorization of interest exchange

Sec. 1. (a) Except as otherwise provided in this section, by complying with this article:

(1) a domestic entity may acquire all of one (1) or more classes or series of interests of another domestic or foreign entity in exchange for interests, securities, obligations, rights to acquire interests or securities, cash, or other property, or any combination of the foregoing;

or

(2) all of one (1) or more classes or series of interests of a domestic entity may be acquired by another domestic or foreign entity in exchange for interests, securities, obligations, rights to acquire interests or securities, cash, or other property, or any combination of the foregoing.

(b) Except as otherwise provided in this section, by complying with the provisions of this article applicable to foreign entities, a foreign entity may be the acquiring or acquired entity in an interest exchange under this article if the interest exchange is authorized by the law of the foreign entity's jurisdiction of organization.

Comments

1. See Comments 2 through 4 to IC 23-0.6-1.5-15 for information on the scope of this chapter and change from prior law. Prior Indiana law that authorizes and governs share exchanges is not changed by this chapter and remains in full force and effect. This chapter authorizes and governs interest exchanges not previously authorized by Indiana law between: (a)(1) a domestic corporation and (2) a domestic or foreign limited liability partnership, limited partnership, or limited liability company; (b)(1) a domestic limited liability partnership and (2) a domestic or foreign corporation, limited liability partnership, limited partnership, or limited liability company; (c)(1) a domestic limited partnership and (2) a domestic or foreign corporation, limited liability partnership, limited partnership, or limited liability company; and (d)(1) a domestic limited liability company and (2) a domestic or foreign corporation, limited liability partnership, limited partnership, or limited liability company. In addition, a general partnership may be a party to an interest exchange with a limited liability partnership or another type of entity. A nonprofit corporation cannot engage in an interest exchange.

2. The effect of an interest exchange is that: (a) the separate existence of the acquired entity is not affected; and (b) the acquiring entity acquires all of the interests of one or more classes of the acquired entity. An interest exchange also allows an indirect acquisition through the use of consideration in the exchange that is not provided by the acquiring entity (*e.g.*, consideration from another or related entity).

3. The acquiring entity is not required to acquire all of the interests in the acquired entity. For example, assume that a limited liability company with three classes of membership interests enters into an interest exchange with an acquiring entity. The acquiring entity need only acquire all of the ownership interests of one or more classes of the limited liability company membership interests.

4. A class or series of shares in a corporation may be the subject of a transaction under this article. If classes or series of interests are created in an unincorporated entity, the interests of one or more of those classes or series may be the subject of a transaction under this article.

Indiana has authorized the creation of “series” limited liability companies in which assets and liabilities of the limited liability company may be segregated in different “series” and different interests may be associated with each series. *See* IC 23-18.1. A series in such a limited liability company may be the subject of an interest exchange.

5. Subsection (b) allows a foreign entity to effectuate an interest exchange with a domestic entity if the interest exchange is authorized by the organic law of the foreign entity.

IC 23-0.6-3-2 Plan of interest exchange; contents

Sec. 2. (a) A domestic entity may be the acquired entity in an interest exchange under this article by approving a plan of interest exchange. The plan must be in a record and contain:

- (1) the name and type of the acquired entity;
- (2) the name, jurisdiction of organization, and type of the acquiring entity;

- (3) the manner of converting the interests in the acquired entity into interests, securities, obligations, rights to acquire interests or securities, cash, or other property, or any combination of the foregoing;
 - (4) any proposed amendments to the public organic document or private organic rules that are, or are proposed to be, in a record of the acquired entity;
 - (5) the other terms and conditions of the interest exchange; and
 - (6) any other provision required by the law of this state or the organic rules of the acquired entity.
- (b) A plan of interest exchange may contain any other provision not prohibited by law.

Comments

1. This section sets forth the requirements for the plan of interest exchange, which must be approved by the acquired entity in accordance with IC 23-0.6-3-3. The content of the plan of interest exchange is similar to the content of a plan of merger. *See* IC 23-0.6-2-2.

2. The plan of interest exchange may, but need not, be filed instead of the articles of interest exchange (IC 23-0.6-3-5) so long as it contains all the information required to be in the articles and is delivered to the secretary of state for filing after the plan has been adopted and approved. *See* IC 23-0.6-3-5.

IC 23-0.6-3-3 Approval of plan of interest exchange

Sec. 3. (a) A plan of interest exchange is not effective unless it has been approved:

- (1) by a domestic acquired entity:
 - (A) in accordance with the requirements, if any, in its organic law and organic rules for approval of an interest exchange;
 - (B) except as otherwise provided in subsection (d), if neither its organic law nor organic rules provide for approval of an interest exchange, in accordance with the requirements, if any, in its organic law and organic rules for approval of:
 - (i) in the case of an entity that is not a business corporation, a merger, as if the interest exchange were a merger; or
 - (ii) in the case of a business corporation, a merger requiring approval by a vote of the interest holders of the business corporation, as if the interest exchange were that type of merger; or
 - (C) if neither its organic law nor organic rules provide for approval of an interest exchange or a merger described in clause (B)(ii), by all of the interest holders of the entity entitled to vote on or consent to any matter; and
- (2) in a record, by each interest holder of a domestic acquired entity that will have interest holder liability for liabilities that arise after the interest exchange becomes effective, unless, in the case of an entity that is not a business corporation or nonprofit corporation:
 - (A) the organic rules of the entity provide in a record for the approval of an interest exchange or a merger in which some or all of its interest holders become subject to interest holder liability by the vote or consent of fewer than all the interest holders; and
 - (B) the interest holder voted for or consented in a record to that provision of the organic rules or became an interest holder after the adoption of that provision.

(b) An interest exchange involving a foreign acquired entity is not effective unless it is approved by the foreign entity in accordance with the law of the foreign entity's jurisdiction of formation.

(c) Except as otherwise provided in its organic law or organic rules, the interest holders of the acquiring entity are not required to approve the interest exchange.

(d) A provision of the organic law of a domestic acquired entity that would permit a merger between the acquired entity and the acquiring entity to be approved without the vote or consent of the interest holders of the acquired entity because of the percentage of interests in the acquired entity held by the acquiring entity does not apply to approval of an interest exchange under subsection (a)(1)(B).

Comments

1. This section sets forth the required approval of an interest exchange. An interest exchange transaction governed by this article only requires approval by the acquired entity, unless the applicable organic law or the organic rules of the acquiring entity otherwise provide (*see* subsection (c)). This is the same approval requirement as that for share exchanges governed by IC 23-1-40. *See* IC 23-1-40-3(a).

2. If the acquired entity is a domestic entity, one of three possibilities will be applicable: (a) if the organic law (*see* IC 23-0.6-1.5-19) governing the acquired domestic entity has specific provisions for approval of an interest exchange, or, even if there are no such provisions, the organic rules of the acquired entity have specific provisions for approval of an interest exchange, then the approval provisions in the organic law or organic rules apply; (b) if there are no specific provisions for approval of an interest exchange in the acquired entity's organic law or organic rules but either the organic law governing the acquired entity or the acquired entity's organic rules contain provisions for approval of mergers, then those merger provisions (except for any provisions that allow approval of a merger without a vote of the shareholders in the case of an acquired entity that is a corporation) apply; and (c) if neither (a) or (b) are applicable, then unanimous consent of the acquired entity's interest holders will be required. If the acquired entity is a foreign entity, then approval is in accordance with the laws of the acquired entity's jurisdiction of formation. *See* subsection (b).

3. Many business corporation laws, including IC 23-1-40-3(g), permit a corporation that owns a specified percentage of the shares of another corporation to merge with the subsidiary corporation without a vote of the subsidiary's shareholders. Some corporation laws also permit a merger to be effected without a vote of the shareholders in other situations as well. Subsection(a)(1)(B)(ii) makes clear that those "short form" and other merger rules do not apply to interest exchanges and a vote of the shareholders of an acquired entity that is a corporation is always required to approve an interest exchange under IC 23-0.6-3. *See* Comment 3 to IC 23-0.6-2-3 for an explanation of the interest holder liability provision in subsection(a)(2).

IC 23-0.6-3-4 Amendment or abandonment of plan of interest exchange

Sec. 4. (a) A plan of interest exchange of a domestic acquired entity may be amended:

(1) in the same manner as the plan was approved, if the plan does not provide for the manner in which it may be amended; or

(2) by the governing persons or interest holders of the entity in the manner provided in the plan, but an interest holder that was entitled to vote on or consent to approval of the interest exchange is entitled to vote on or consent to any amendment of the plan that will change:

(A) the amount or kind of interests, securities, obligations, rights to acquire interests or securities, cash, or other property, or any combination of the foregoing, to be received by any of the interest holders of the acquired entity under the plan;

(B) the public organic document or private organic rules of the acquired entity that will be in effect immediately after the interest exchange becomes effective, except for changes that do not require approval of the interest holders of the acquired entity under its organic law or organic rules; or

(C) any other terms or conditions of the plan, if the change would adversely affect the interest holder in any material respect.

(b) After a plan of interest exchange has been approved by a domestic acquired entity and before articles of interest exchange become effective, the plan may be abandoned:

(1) as provided in the plan; or

(2) unless prohibited by the plan, in the same manner as the plan was approved.

(c) If a plan of interest exchange is abandoned after articles of interest exchange have been filed with the secretary of state, articles of abandonment, signed on behalf of the acquired entity, must be filed with the secretary of state before the time the articles of interest exchange become effective. The articles of abandonment take effect upon filing, and the interest exchange is abandoned and does not become effective. The articles of abandonment must contain:

(1) the name of the acquired entity;

(2) the date on which the articles of interest exchange were filed; and

(3) a statement that the interest exchange has been abandoned in accordance with this section.

Comment

This section parallels analogous provisions in this article governing other types of transactions. *See* IC 23-0.6-2-4 (mergers), 23-0.6-4-4 (conversions), and 23-0.6-5-4 (domestications).

IC 23-0.6-3-5 Articles of interest exchange; contents; filing

Sec. 5. (a) Articles of interest exchange must be signed on behalf of a domestic acquired entity and filed with the secretary of state.

(b) Articles of interest exchange must contain:

(1) the name and type of the acquired entity;

(2) the name, jurisdiction of organization, and type of the acquiring entity;

(3) if the articles of interest exchange are not to be effective upon filing, the later date and time on which the articles of interest exchange will become effective, which may not be more than ninety (90) days after the date of filing;

(4) a statement that the plan of interest exchange was approved by the acquired entity in accordance with this chapter; and

(5) any amendments to the acquired entity's public organic document approved as part of the plan of interest exchange.

(c) In addition to the requirements of subsection (b), articles of interest exchange may contain any other provision not prohibited by law.

(d) A plan of interest exchange that is signed on behalf of a domestic acquired entity and meets all of the requirements of subsection (b) may be filed with the secretary of state instead of articles of interest exchange and upon filing has the same effect. If a plan of interest exchange is filed as provided in this subsection, references in this article to articles of interest exchange refer to the plan of interest exchange filed under this subsection.

(e) Articles of interest exchange become effective upon the date and time of filing or the later date and time specified in the articles of interest exchange.

Comment

The filing of articles of interest exchange makes the transaction a matter of public record. The requirements for articles of interest exchange are set forth in subsection (b). They are essentially the same as the requirements for articles of merger in IC 23-0.6-2-5. Pursuant to IC 23-0.5-2-6, the secretary of state's responsibilities in respect of filing articles of interest exchange are ministerial. *See* Comment 1 to IC 23-0.5-2-6.

IC 23-0.6-3-6 Effect of interest exchange

Sec. 6. (a) When an interest exchange becomes effective:

- (1) the interests in the acquired entity that are the subject of the interest exchange cease to exist or are converted or exchanged, and the interest holders of those interests are entitled only to the rights provided to them under the plan of interest exchange and to any appraisal rights they have under [IC 23-0.6-1-8](#) and the acquired entity's organic law;
- (2) the acquiring entity becomes the interest holder of the interests in the acquired entity stated in the plan of interest exchange to be acquired by the acquiring entity;
- (3) the public organic document, if any, of the acquired entity is amended as provided in the articles of interest exchange and is binding on its interest holders; and
- (4) the private organic rules of the acquired entity that are to be in a record, if any, are amended to the extent provided in the plan of interest exchange and are binding on and enforceable by:
 - (A) its interest holders; and
 - (B) in the case of an acquired entity that is not a business corporation or nonprofit corporation, any other person that is a party to an agreement that is part of the acquired entity's private organic rules.

(b) Except as otherwise provided in the organic law or organic rules of the acquired entity, the interest exchange does not give rise to any rights that an interest holder, governing person, or third party would otherwise have upon a dissolution, liquidation, or winding up of the acquired entity.

(c) When an interest exchange becomes effective, a person that did not have interest holder liability with respect to the acquired entity and that becomes subject to interest holder liability with respect to a domestic entity as a result of the interest exchange has interest holder liability only to the extent provided by the organic law of the entity and only for those liabilities that arise after the interest exchange becomes effective.

(d) When an interest exchange under this chapter becomes effective, a foreign entity that is the surviving entity may be served with process in this state for the collection and enforcement of any debts, obligations, or other liabilities of a domestic exchanging entity in accordance with applicable law.

(e) When an interest exchange becomes effective, the interest holder liability of a person that ceases to hold an interest in a domestic acquired entity with respect to which the person had interest holder liability is as follows:

- (1) The interest exchange does not discharge any interest holder liability under the organic law of the domestic acquired entity to the extent the interest holder liability arose before the interest exchange became effective.
- (2) The person does not have interest holder liability under the organic law of the domestic acquired entity for any liability that arises after the interest exchange becomes effective.
- (3) The organic law of the domestic acquired entity continues to apply to the release, collection, or discharge of any interest holder liability preserved under subdivision (1) as if the interest exchange had not occurred.
- (4) The person has whatever rights of contribution from any other person as are provided by the organic law or organic rules of the domestic acquired entity with respect to any interest holder liability preserved under subdivision (1) as if the interest exchange had not occurred.

Comments

1. In contrast to a merger, an interest exchange does not in and of itself affect the separate existence of the parties, vest in the acquiring entity the assets of the acquired entity, or render the acquiring entity liable for the liabilities of the acquired entity. Thus, subsection (a) is significantly simpler than IC 23-0.6-2-6(a) with respect to the effects of a merger.

2. Subsection (c) provides the rule for future interest holder liability and parallels analogous provisions in IC 23-0.6-2 (mergers), 23-0.6-4 (conversions), and 23-0.6-5 (domestications). *See* Comment 7 to IC 23-0.6-2-6(c).

3. Subsection (e) provides the rule for past interest holder liability and parallels analogous provisions in IC 23-0.6-2 (mergers), 23-0.6-4 (conversions), and 23-0.6-5 (domestications). *See* Comment 8 to IC 23-0.6-2-6(d).

4-Conversions

IC 23-0.6-4-1 Authorization of conversion; limitations on use

Sec. 1. (a) Except as otherwise provided in this section, by complying with this article or other law, a domestic entity may become:

- (1) a domestic entity of a different type; or
- (2) a foreign entity of a different type, if the conversion is authorized by the law of the foreign jurisdiction.

(b) Except as otherwise provided in this section, by complying with the provisions of this article applicable to foreign entities, a foreign entity may become a domestic entity of a different type if the conversion is authorized by the law of the foreign entity's jurisdiction of formation.

(c) This chapter may not be used to effect a transaction that:

- (1) converts an insurance company organized on the mutual principle to a company organized on a stock share basis;
- (2) converts a nonprofit corporation to a corporation or other entity; or
- (3) converts a business corporation or other entity to a nonprofit corporation.

(d) If as a result of conversion one (1) or more shareholders or interest holders of a surviving entity become subject to owner liability for the debts, obligations, or liabilities of the surviving entity or any other person or entity, approval of the plan of conversion requires each shareholder or interest holder of the converting entity to execute a separate written consent to become subject to owner liability.

(e) A nonprofit corporation may not engage in a conversion.

Comments

1. See Comment 2 to IC 23-0.6-1.5-9 for information on the scope of this chapter and change from prior law. This chapter replaces authority in prior law that permitted conversions by corporations. See former IC 23-1-38.5-10(a) through (h). These provisions in former IC 23-1-38.5 were expressly also applicable to general partnerships and limited liability partnerships (see former IC 23-4-1-54); limited partnerships (see former IC 23-16-3-14); and limited liability companies (see former IC 23-18-7-10). However, a nonprofit corporation cannot engage in a conversion. *See* subsections (c)(2) and (e).

2. The procedure in this chapter permits an entity to change to a different type of entity in Indiana or in a foreign jurisdiction. A transaction in which an entity changes its jurisdiction of formation, but does not change its type, is a domestication and is subject to IC 23-0.6-5.

3. Subsection (b) allows a foreign entity to effectuate a conversion into a domestic entity only if the conversion is permitted by the laws of the foreign entity's jurisdiction of formation. When a foreign entity becomes a domestic entity pursuant to this article, the effect of the conversion will be as provided in IC 23-0.6-4-6. The procedures by which the conversion is approved, however, will be determined by the laws of the foreign entity's jurisdiction of formation.

IC 23-0.6-4-2 Plan of conversion; contents

Sec. 2. (a) A domestic entity may convert to a different type of entity under this chapter by approving a plan of conversion. The plan must be in a record and contain:

- (1) the name and type of the converting entity;
- (2) the name, jurisdiction of organization, and type of the converted entity;
- (3) the manner of converting the interests in the converting entity into interests, securities, obligations, rights to acquire interests or securities, cash, or other property, or any combination of the foregoing;
- (4) the proposed public organic document of the converted entity if it will be a filing entity;
- (5) the full text of the private organic rules of the converted entity that are proposed to be in a record;
- (6) the other terms and conditions of the conversion; and
- (7) any other provision required by the law of this state or the organic rules of the converting entity.

(b) A plan of conversion may contain any other provision not prohibited by law.

Comments

1. This section sets forth the requirements for the plan of conversion, which must be approved by the converting entity in accordance with IC 23-0.6-4-3. The content of a plan of conversion is similar to the content of a plan of merger. *See* IC 23-0.6-2-2. Subsection (a) lists the mandatory provisions that must be in the plan. Subsection (b) authorizes the plan to contain any other provision the parties wish to include, unless the provision is prohibited by law. The plan of conversion may, but need not, be filed instead of the articles of conversion, so long as it contains all of the information required to be in the articles of conversion and is delivered to the secretary of state for filing after the plan has been adopted and approved. *See* IC 23-0.6-4-5(e).

2. Interest holders in the converting entity may receive interests or other securities of the converted entity or of any other person, obligations, rights to acquire interests or other securities, cash, or other property. *See also* IC 23-0.6-2-2(a)(2) (mergers), 23-0.6-3-2(a)(3) (interest exchanges), and 23-0.6-5-2(a)(3) (domestications).

3. This section constitutes new Indiana law in part for conversions of corporations, limited liability partnerships, limited partnerships, and limited liability companies. IC 23-0.6-4-2(a)(7) and (b) are new for each of these entities.

IC 23-0.6-4-3 Approval of plan of conversion

Sec. 3. (a) A plan of conversion is not effective unless it has been approved:

- (1) by a domestic converting entity:
 - (A) in accordance with the requirements, if any, in its organic rules for approval of a conversion;
 - (B) if its organic rules do not provide for approval of a conversion, in accordance with the requirements, if any, in its organic law and organic rules for approval of:
 - (i) in the case of an entity that is not a business corporation, a merger, as if the conversion were a merger; or

- (ii) in the case of a business corporation, a merger requiring approval by a vote of the interest holders of the business corporation, as if the conversion were that type of merger; or
- (C) by all of the interest holders of the entity entitled to vote on or consent to any matter if, in the case of any entity that is not a business corporation, neither its organic law nor organic rules provide for approval of a conversion or a merger; and
- (2) in a record, by each interest holder of a domestic converting entity which will have interest holder liability for debts, obligations, and other liabilities that are incurred after the conversion becomes effective, unless, in the case of an entity that is not a business corporation:
 - (A) the organic rules of the entity provide in a record for the approval of a conversion or a merger in which some or all of its interest holders become subject to interest holder liability by the vote or consent of fewer than all the interest holders; and
 - (B) the interest holder voted for or consented in a record to that provision of the organic rules or became an interest holder after the adoption of that provision.
- (b) A conversion of a foreign converting entity is not effective unless it is approved by the foreign entity in accordance with the law of the foreign entity's jurisdiction of organization.

Comments

1. As is the case with the other types of transactions authorized by this article, there are three possible ways to obtain approval of a conversion by a domestic entity. The first is to determine if the organic rules (defined in IC 23-0.5-1.5-27) of the converting entity contain specific approval provisions for conversions. If they exist, then those provisions apply to approval of the plan of conversion. If there are no provisions in the organic rules for approval of a conversion, then the provisions for approval of a merger in either the organic law (defined in IC 23-0.6-1.5-19) or organic rules of the entity will apply. If there are no approval provisions for conversions in the entity's organic rules and no approval provisions for mergers in the entity's organic law or organic rules, then unanimous consent of all the entity's interest holders is required.

2. Subsection (a)(1)(B) requires that a conversion be approved by a business corporation in the same manner as a merger that requires approval by a vote of the shareholders. *See* Comment 3 to IC 23-0.6-3-3.

3. *See* Comment 3 to IC 23-0.6-2-3 for an explanation of the interest holder liability provision in subsection (a)(2).

IC 23-0.6-4-4 Amendment or abandonment of plan of conversion

Sec. 4. (a) A plan of conversion of a domestic converting entity may be amended:

- (1) in the same manner as the plan was approved, if the plan does not provide for the manner in which it may be amended; or
- (2) by its governing persons or interest holders in the manner provided in the plan, but an interest holder that was entitled to vote on or consent to approval of the conversion is entitled to vote on or consent to any amendment of the plan that will change:

- (A) the amount or kind of interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing, to be received by any of the interest holders of the converting entity under the plan;
- (B) the public organic record, if any, or private organic rules of the converted entity which will be in effect immediately after the conversion becomes effective, except for changes that do not require approval of the interest holders of the converted entity under its organic law or organic rules; or
- (C) any other terms or conditions of the plan, if the change would adversely affect the interest holder in any material respect.

(b) After a plan of conversion has been approved and before articles of conversion become effective, the plan may be abandoned as provided in the plan or, unless prohibited by the plan, in the same manner as the plan was approved.

(c) If a plan of conversion is abandoned after articles of conversion have been delivered to the secretary of state for filing, articles of abandonment, signed by the converting entity, must be delivered to the secretary of state for filing before the articles of conversion become effective. Articles of abandonment take effect on filing, and the conversion is abandoned and does not become effective. Articles of abandonment must contain:

- (1) the name of the converting entity;
- (2) the date on which articles of conversion were filed by the secretary of state; and
- (3) a statement that the conversion has been abandoned in accordance with this section.

Comment

This section parallels analogous provisions in this article governing other types of transactions. *See* IC 23-0.6-2-4 (mergers), 23-0.6-3-4 (interest exchanges), and 23-0.6-5-4(domestications).

IC 23-0.6-4-5 Articles of conversion; contents; filing; effective date

Sec. 5. (a) Articles of conversion must be signed by the converting entity and delivered to the secretary of state for filing.

(b) Articles of conversion must contain:

- (1) the name, jurisdiction of organization, and type of the converting entity;
- (2) the name (which must satisfy the requirements of applicable law), jurisdiction of organization, and type of the converted entity;
- (3) if the articles of conversion are not to be effective upon filing, the later date and time on which it will become effective, which may not be more than ninety (90) days after the date of filing;
- (4) if the converting entity is a domestic entity, a statement that the plan of conversion was approved in accordance with this article or, if the converting entity is a foreign entity, a statement that the conversion was approved by the foreign entity in accordance with the law of its jurisdiction of formation;
- (5) if the converted entity is a domestic filing entity, its public organic record, as an attachment; and
- (6) if the converted entity is a foreign entity, a mailing address and an electronic mail address to which the secretary of state may send any process served on the secretary of state under section 6(e) of this chapter.

(c) In addition to the requirements of subsection (b), articles of conversion may contain any other provision not prohibited by law.

(d) If the converted entity is a domestic entity, its public organic record, if any, must satisfy the requirements of the law of this state, except that the public organic record does not need to be signed and may omit any provision that is not required to be included in a restatement of the public organic record.

(e) A plan of conversion that is signed by a domestic converting entity and meets all the requirements of subsection (b) may be delivered to the secretary of state for filing instead of articles of conversion and on filing has the same effect. If a plan of conversion is filed as provided in this subsection, references in this article to articles of conversion refer to the plan of conversion filed under this subsection.

(f) Articles of conversion are effective upon the date and time of filing or the later date and time specified in the articles of conversion.

(g) If the converted entity is a domestic entity, the conversion becomes effective when the articles of conversion are effective. If the converted entity is a foreign entity, the conversion becomes effective on the later of:

- (1) the date and time provided by the organic law of the converted entity; or
- (2) when the articles of conversion are effective.

Comments

1. The filing of articles of conversion makes the transaction a matter of public record. The requirements for articles of conversion are set forth in subsection (b). They are essentially the same as the requirements for articles of merger in IC 23-0.6-2-5. Pursuant to IC 23-0.5-2-6, the secretary of state's responsibilities in respect of filing articles of conversion are ministerial. *See* Comment 1 to IC 23-0.5-2-6.

2. A plan of conversion can be used as a substitute for the articles of conversion so long as the plan satisfies the requirements in subsection (e). There was no such authority under prior law to substitute a plan of conversion for articles of conversion.

3. Subsection (g) provides that when articles of conversion are effective under subsection (f), the conversion transaction occurs if the converted entity is a domestic entity. A conversion in which the converted entity is a foreign entity will usually also take effect when the articles of conversion take effect because the best practice will be to coordinate the filings that need to be made when a conversion involves both a domestic entity and also a foreign entity so that the filings in each jurisdiction take effect at the same time. Because of the possibility, however, that the filing in the foreign jurisdiction will take effect at a different time, subsection (g) provides that the conversion transaction itself will take effect at the later of (i) when the articles of conversion take effect, or (ii) when the conversion takes effect under the law of the foreign jurisdiction. That rule avoids the possibility that the conversion will take effect in the domestic jurisdiction before it takes effect in the foreign jurisdiction, which would produce the undesirable result that the converting domestic entity would cease to exist before it has been converted into the foreign entity.

It is only necessary for the filing office to record the effective date of the articles of conversion and the filing office does not need to be concerned with the effective date of the conversion itself. Persons wishing to determine the effective date of a conversion involving both a domestic and a foreign entity will be able to do so by consulting the records of the filing offices in each jurisdiction.

4. This section constitutes new Indiana law in part for conversions of corporations, limited liability partnerships, limited partnerships, and limited liability companies. *See* Comments 2 and 3 above. In addition, IC 23-0.6-4-5(b)(6), (c), (d), and (g) are new for each of these entities.

IC 23-0.6-4-6 Effect of conversion; liability

Sec. 6. (a) When a conversion becomes effective:

(1) the converted entity is:

(A) organized under and subject to the organic law of the converted entity; and

(B) the same entity without interruption as the converting entity;

(2) all property of the converting entity continues to be vested in the converted entity without transfer, reversion, or impairment;

(3) all debts, obligations, and other liabilities of the converting entity continue as debts, obligations, and other liabilities of the converted entity;

(4) except as otherwise provided by law or the plan of conversion, all the rights, privileges, immunities, powers, and purposes of the converting entity remain in the converted entity;

(5) the name of the converted entity may be substituted for the name of the converting entity in any pending action or proceeding;

(6) if a converted entity is a filing entity, its public organic record is effective;

(7) the private organic rules of the converted entity which are to be in a record, if any, approved as part of the plan of conversion are effective;

(8) a proceeding pending against any party to the conversion may be continued as if the conversion did not occur or the surviving entity may be substituted in the proceeding for the entity whose existence ceased; and

(9) the interests in the converting entity are converted, and the interest holders of the converting entity are entitled only to the rights provided to them under the plan of conversion and to any appraisal rights they have under [IC 23-0.6-1-8](#) and the converting entity's organic law.

(b) Except as otherwise provided in the organic law or organic rules of the converting entity, the conversion does not give rise to any rights that an interest holder, governing person, or third party would have upon a dissolution, liquidation, or winding up of the converting entity.

(c) When a conversion becomes effective, a person that did not have interest holder liability with respect to the converting entity and becomes subject to interest holder liability with respect to a domestic entity as a result of a conversion has interest holder liability only to the extent provided by the organic law of the entity and only for those debts, obligations, and other liabilities that are incurred after the conversion becomes effective.

(d) When a conversion becomes effective, the interest holder liability of a person that ceases to hold an interest in a domestic converting entity with respect to which the person had interest holder liability is subject to the following rules:

- (1) The conversion does not discharge any interest holder liability under the organic law of a domestic converting entity to the extent the interest holder liability was incurred before the conversion became effective.
- (2) The person does not have interest holder liability under the organic law of a domestic converting entity for any debt, obligation, or other liability that is incurred after the conversion becomes effective.
- (3) The organic law of the domestic converting entity continues to apply to the release, collection, or discharge of any interest holder liability preserved under subdivision (1) as if the conversion had not occurred.
- (4) The person has whatever rights of contribution from any other person as are provided by other law or the organic rules of the domestic converting entity with respect to any interest holder liability preserved under subdivision (1) as if the conversion had not occurred.
- (e) When a conversion becomes effective, a foreign entity that is the converted entity may be served with process in this state for the collection and enforcement of any of its debts, obligations, and other liabilities in accordance with applicable law.
- (f) If the converting entity is a registered foreign entity, its registration to do business in this state is canceled when the conversion becomes effective.
- (g) A conversion does not require the entity to wind up its affairs and does not constitute or cause the dissolution of the entity.

Comments

1. A converted entity is the same entity as it was before the conversion; it just has a different legal form. The legal effects of this are set forth in subsection (a). The converted entity remains the owner of all real and personal property and remains subject to all the liabilities, actual or contingent, of the converted entity. A conversion is not a conveyance, transfer, or assignment. It does not give rise to claims of reverter or impairment of title based on a prohibited conveyance or transfer. It does not give rise to a claim that a contract with the converting entity is no longer in effect on the ground of nonassignability, unless the contract specifically provides that it does not survive a conversion. The contract rights that remain in the converted entity include, without limitation, the right to enforce subscription agreements for interests and obligations to make capital contributions entered into or incurred before the conversion.

When a conversion becomes effective, the internal affairs of the converting entity are no longer governed by its former organic law but instead by the organic law of the converted entity.

2. Subsection (a)(8) provides that all pending proceedings involving any party to the conversion may be continued as if the conversion did not occur or the surviving entity may be substituted in the proceeding for the entity whose existence ceased. In addition, subsection (a)(5) provides that the name of the converted entity may be, but need not be, substituted in any pending proceeding for the name of the converting entity. There was no such explicit provision under prior law authorizing but not requiring name substitution in such circumstances.

3. Subsection (a)(9) provides that the interest holders in the converting entity are entitled only to the rights provided to them under the plan of conversion and to any appraisal rights they have under IC 23-0.6-1-8. *See* IC 23-0.6-1-8 and the Comments to IC 23-0.6-1-8.

4. Subsections (c) and (d) set forth rules for “interest holder liability” which is defined in IC 23-0.6-1.5-16.

5. Subsection (c) provides the rule for future interest holder liability and parallels analogous provisions in IC 23-0.6-2 (mergers), 23-0.6-3 (interest exchanges), and 23-0.6-5 (domestications). *See* Comment 8 to Section 23-0.6-2-6(c).

6. Subsection (d) provides the rule for past interest holder liability and parallels analogous provisions in IC 23-0.6-2 (mergers), 23-0.6-3 (interest exchanges), and 23-0.6-5 (domestications). *See* Comment 9 to IC 23-0.6-2-6(d).

7. When a domestic converting entity becomes a foreign entity as a result of a conversion, some mechanism is needed to facilitate the enforcement of claims by the creditors and interest holders of the converting entity. Subsection (e), which parallels analogous provisions in IC 23-0.6-2 (mergers) and 23-0.6-5 (domestications), authorizes service of process for all such claims in this state.

8. When a conversion takes effect, the entity continues to exist – simply in a different form. Subsection (g) thus makes clear that the conversion does not require the entity to wind up its affairs and does not constitute or cause the dissolution of the entity.

9. This section constitutes new Indiana law in part for conversions of corporations, limited liability partnerships, limited partnerships, and limited liability companies. *See* Comment 2 above. In addition, IC 23-0.6-4-6(a)(4), (a)(7), and (e) are new for each of these entities.

5-Domestication

IC 23-0.6-5-1 Authorization of domestication.

Sec. 1. (a) Except as otherwise provided in this section, by complying with this article, a domestic entity may become a domestic entity of the same type of entity in a foreign jurisdiction if the domestication is authorized by the law of the foreign jurisdiction.

(b) Except as otherwise provided in this section, by complying with the provisions of this article applicable to foreign entities, a foreign entity may become a domestic entity of the same type of entity in this state if the domestication is authorized by the law of the foreign entity's jurisdiction of formation.

Comments

1. See Comments 2 and 3 to IC 23-0.6-1.5-14 for information on the scope of this chapter and change from prior law. This chapter replaces authority in prior law that permitted such domestications by corporations and nonprofit corporations. IC 23-1-38.5-4. In addition, this chapter authorizes and governs domestications not previously authorized by Indiana law in respect of limited liability partnerships, limited partnerships, and limited liability companies.

2. A domestication authorized by this chapter differs from a conversion in that a domestication requires that the domesticating entity be the same type of entity as the domesticated entity. In a conversion, by contrast, the converting entity changes its type.

As with a conversion, all rights and privileges, debts, obligations, and other liabilities, and actions or proceedings of a domesticating entity vest unimpaired in the domesticated entity. A domestication is not a sale, transfer, assignment, or conveyance and does not give rise to a claim of reverter or impairment of title.

3. This chapter governs the legal effect of a foreign entity domesticating in Indiana. On the other hand, the organic laws of the foreign jurisdiction, and not this chapter, will govern the legal effect of most aspects of a domestication of a domestic entity in another jurisdiction. In the latter scenario, this chapter authorizes the domestication of the domestic entity in the foreign jurisdiction, but this chapter does not create a right in the domestic entity to be received in the foreign jurisdiction. Similarly, this section does not provide a right on the part of a foreign entity to become a domestic entity if the domestication is not authorized by the laws of the foreign jurisdiction. If the foreign jurisdiction does not authorize a domestication, the same result can be accomplished by forming a new entity of the same type in the new state and merging the existing entity into the new entity.

IC 23-0.6-5-2 Plan of domestication; contents

Sec. 2. (a) A domestic entity may become a foreign entity in a domestication by approving a plan of domestication. The plan must be in a record and contain:

- (1) the name and type of entity of the domesticating entity;
- (2) the name and jurisdiction of formation of the domesticated entity;
- (3) the manner of converting the interests in the domesticating entity into interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing;

- (4) the proposed public organic record of the domesticated entity if it is a filing entity;
- (5) the full text of the private organic rules of the domesticated entity that are proposed to be in a record;
- (6) the other terms and conditions of the domestication; and
- (7) any other provision required by the law of this state or the organic rules of the domesticating entity.

(b) In addition to the requirements of subsection (a), a plan of domestication may contain any other provision not prohibited by law.

Comments

1. This section sets forth the requirements for the plan of domestication, which must be approved by the domesticating entity in accordance with IC 23-0.6-5-3. The content of a plan of domestication is similar to the content of a plan of merger. *See* IC 23-0.6-2-2.

2. The plan of domestication, may, but need not, be filed instead of the articles of domestication, so long as it contains all of the information required to be in the articles and is delivered to the secretary of state for filing after the plan has been adopted and approved. *See* IC 23-0.6-5-5(e).

3. This section constitutes new Indiana law for domestications of limited liability partnerships, limited partnerships, and limited liability companies. *See* Comment 1 to IC 23-0.6-5-1. This section constitutes new Indiana law in part for domestications of corporations and nonprofit corporations; IC 23-0.6-5-2(a)(1), (a)(5), (a)(7), and (b) are new for both entities.

IC 23-0.6-5-3 Approval of plan of domestication

Sec. 3. (a) A plan of domestication is not effective unless it has been approved:

- (1) by a domestic domesticating entity:
 - (A) in accordance with the requirements, if any, in its organic rules for approval of a domestication;
 - (B) if its organic rules do not provide for approval of a domestication, in accordance with the requirements, if any, in its organic law and organic rules for approval of:
 - (i) in the case of an entity that is not a business corporation, a merger, as if the domestication were a merger; or
 - (ii) in the case of a business corporation, a merger requiring approval by a vote of the interest holders of the business corporation, as if the domestication were that type of merger; or
 - (C) by all of the interest holders of the entity entitled to vote on or consent to any matter if, in the case of an entity that is not a business corporation, neither its organic law nor organic rules provide for approval of a domestication or merger; and
- (2) in a record, by each interest holder of a domestic domesticating entity that will have interest holder liability for debts, obligations, and other liabilities that are incurred after the domestication becomes effective, unless, in the case of an entity that is not a business corporation or nonprofit corporation:
 - (A) the organic rules of the entity in a record provide for the approval of a domestication or merger in which some or all of its interest holders become subject to interest holder liability by the vote or consent of fewer than all the interest holders; and

(B) the interest holder consented in a record to or voted for that provision of the organic rules or became an interest holder after the adoption of that provision.

(b) A domestication of a foreign domesticating entity is not effective unless it is approved in accordance with the law of the foreign entity's jurisdiction of formation.

Comments

1. As is the case with the other types of transactions authorized by this article, there are three possible ways to obtain approval of a domestication by a domestic entity. The first is to determine if the organic rules of the domesticating entity contain specific approval provisions for a domestication. If they exist, then those provisions apply to approval of the plan of domestication. If there are no domestication approval provisions, then the approval process for a merger in either the entity's organic law (defined in IC 23-0.6-1.5-19) or organic rules (defined in IC 23-0.5-1.5-27) will apply. If there are no specific domestication approval provisions in the entity's organic rules and no merger approval provisions in the entity's organic law or organic rules, then unanimous consent of all the entity's interest holders is required.

In the case of a foreign entity that is domesticating in Indiana, subsection (b) provides that the required approval is determined by the laws of the foreign entity's jurisdiction of formation.

2. Subsection (a)(1)(B) requires that a domestication be approved by a business corporation in the same manner as a merger that requires approval by a vote of the shareholders. *See* Comment 3 to IC 23-0.6-3-3.

3. *See* Comment 3 to IC 23-0.6-2-3 for an explanation of the interest holder liability provision in subsection (a)(2).

4. This section constitutes new Indiana law for domestications of limited liability partnerships, limited partnerships, and limited liability companies. *See* Comment 1 to IC 23-0.6-5-1. This section constitutes new Indiana law in part for domestications of corporations and nonprofit corporations; IC 23-0.6-5-3(a)(2) and (b) are new for both entities.

IC 23-0.6-5-4 Amendment or abandonment of plan of domestication; articles of abandonment; contents

Sec. 4. (a) A plan of domestication of a domestic domesticating entity may be amended:

(1) in the same manner as the plan was approved, if the plan does not provide for the manner in which it may be amended; or

(2) by its governing persons or interest holders of the entity in the manner provided in the plan, but an interest holder that was entitled to vote on or consent to approval of the domestication is entitled to vote on or consent to any amendment of the plan that will change:

(A) the amount or kind of interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing, to be received by any of the interest holders of the domesticating entity under the plan;

(B) the public organic record, if any, or private organic rules of the domesticated entity that will be in effect immediately after the domestication becomes effective, except for changes that do not require approval of the interest holders of the domesticated entity under its organic law or organic rules; or

(C) any other terms or conditions of the plan, if the change would adversely affect the interest holder in any material respect.

(b) After a plan of domestication has been approved by a domestic domesticating entity and before articles of domestication becomes effective, the plan may be abandoned as provided in the plan. Unless prohibited by the plan, a domestic domesticating entity may abandon the plan in the same manner as the plan was approved.

(c) If a plan of domestication is abandoned after articles of domestication have been delivered to the secretary of state for filing, articles of abandonment, signed by the entity, must be delivered to the secretary of state for filing before the time the articles of domestication become effective. The articles of abandonment take effect on filing, and the domestication is abandoned and does not become effective. Articles of abandonment must contain:

- (1) the name of the domesticating entity;
- (2) the date on which articles of domestication were filed by the secretary of state; and
- (3) a statement that the domestication has been abandoned in accordance with this section.

Comment

This section parallels analogous provisions in this article governing other types of transactions. *See* IC 23-0.6-2-4 (mergers), 23-0.6-3-4 (interest exchanges), and 23-0.6-4-4 (conversions).

IC 23-0.6-5-5 Articles of domestication; contents; filing; effective date

Sec. 5. (a) Articles of domestication must be signed by the domesticating entity and delivered to the secretary of state for filing.

(b) Articles of domestication must contain:

- (1) the name, jurisdiction of formation, and type of entity of the domesticating entity;
- (2) the name (which must satisfy the requirements of applicable law) and jurisdiction of formation of the domesticated entity;
- (3) if the articles of domestication are not to be effective upon filing, the later date and time on which the articles of domestication will become effective, which may not be more than ninety (90) days after the date of filing;
- (4) if the domesticating entity is a domestic entity, a statement that the plan of domestication was approved in accordance with this article or, if the domesticating entity is a foreign entity, a statement that the domestication was approved in accordance with the law of its jurisdiction of formation;
- (5) if the domesticated entity is a domestic filing entity, its public organic record, as an attachment; and
- (6) if the domesticated entity is a foreign entity that is not a registered foreign entity, a mailing address and an electronic mail address to which the secretary of state may send any process served on the secretary of state pursuant to section 6(e) of this chapter.

(c) In addition to the requirements of subsection (b), articles of domestication may contain any other provision not prohibited by law.

(d) If the domesticated entity is a domestic entity, its public organic record, if any, must satisfy the requirements of the law of this state, but the public organic record does not need to be signed and may omit any provision that is not required to be included in a restatement of the public organic record.

(e) A plan of domestication that is signed by a domesticating domestic entity and meets all the requirements of subsection (b) may be delivered to the secretary of state for filing instead of articles of domestication and on filing has the same effect. If a plan of domestication is filed as provided in this subsection, references in this article to articles of domestication refer to the plan of domestication filed under this subsection.

(f) Articles of domestication are effective on the date and time of filing or the later date and time specified in the articles of domestication.

(g) A domestication in which the domesticated entity is a domestic entity becomes effective when the articles of domestication are effective. A domestication in which the domesticated entity is a foreign entity becomes effective on the later of:

- (1) the date and time provided by the organic law of the domesticated entity; or
- (2) when the articles of domestication become effective.

Comments

1. The filing of articles of domestication makes the transaction a matter of public record. The requirements for articles of domestication are set forth in subsection (b). They are essentially the same as the requirements for articles of merger in IC 23-0.6-2-5. Pursuant to IC 23-0.5-2-6, the secretary of state's responsibilities in respect of filing articles of domestication are ministerial. *See* Comment 1 to IC 23-0.5-2-6.

2. Subsection (f) provides that the effective date and time of articles of domestication are the date and time of its filing, unless otherwise specified. If a delayed effective date is specified, the articles of domestication are effective on that date and time, subject to the 90 day maximum delayed effective date in subsection (b)(3). There was no such authority under prior law governing domestications to delay the effectiveness of articles of domestication.

3. A plan of domestication can be used as a substitute for the articles of domestication so long as the plan satisfies the requirements in subsection (e). There was no such authority under prior law governing domestications to substitute a plan of domestication for articles of domestication.

4. When the articles of domestication are effective under subsection (f), the domestication transaction occurs if the domesticated entity is a domestic entity. A domestication in which the domesticated entity is a foreign entity will usually also take effect when the articles of domestication take effect because the best practice will be to coordinate the filings that need to be made in each jurisdiction so that they take effect at the same time. Because of the possibility, however, that the filing in the foreign jurisdiction will take effect at a different time, subsection (g) provides that the domestication transaction itself will take effect at the later of (i) when the articles of domestication take effect, or (ii) when the domestication takes effect under the law of the foreign jurisdiction. This rule avoids the possibility that the domestication will take effect in the domestic jurisdiction before it takes effect in the foreign jurisdiction, which would produce

the undesirable result that the domesticating domestic entity would cease to appear as an active entity on the records of this state before it appears as its active domesticated self on the records of the foreign jurisdiction.

It is only necessary for the filing office to record the effective date of the articles of domestication and the filing office does not need to be concerned with the effective date of the domestication itself. Persons wishing to determine the effective date of a domestication will be able to do so by consulting the records of the filing offices in each jurisdiction.

5. This section constitutes new Indiana law for domestications of limited liability partnerships, limited partnerships, and limited liability companies. *See* Comment 1 to IC 23-0.6-5-1. This section constitutes new Indiana law in part for domestications of corporations and nonprofit corporations. *See* Comments 2 and 3 above. In addition, IC 23-0.6-5-6(b)(3) and (c) through (f) are new for both entities.

IC 23-0.6-5-6 Effective date of domestication; effect; liability

Sec. 6. (a) When a domestication becomes effective:

- (1) the domesticated entity is:
 - (A) organized under and subject to the organic law of the domesticated entity; and
 - (B) the same entity without interruption as the domesticating entity;
- (2) all property of the domesticating entity continues to be vested in the domesticated entity without transfer, reversion, or impairment;
- (3) all debts, obligations, and other liabilities of the domesticating entity continue as debts, obligations, and other liabilities of the domesticated entity;
- (4) except as provided by law or the plan of domestication, all the rights, privileges, immunities, powers, and purposes of the domesticating entity remain in the domesticated entity;
- (5) the name of the domesticated entity may be substituted for the name of the domesticating entity in any pending action or proceeding;
- (6) if the domesticated entity is a filing entity, its public organic record is effective;
- (7) the private organic rules of the domesticated entity that are to be in a record, if any, are approved as part of the plan of domestication;
- (8) the interests in the domesticating entity are converted to the extent and as approved in connection with the domestication, and the interest holders of the domesticating entity are entitled only to the rights provided to them under the plan of domestication and to any appraisal rights they have under [IC 23-0.6-1-8](#) and the domesticating entity's organic law; and
- (9) an action or proceeding pending against the entity continues against the entity as if the domestication had not occurred.

(b) Except as otherwise provided in the organic law or organic rules of the domesticating entity, the domestication does not give rise to any rights that an interest holder, governing person, or third party would otherwise have upon a dissolution, liquidation, or winding up of the domesticating entity.

(c) When a domestication becomes effective, a person that did not have interest holder liability with respect to the domesticating entity and becomes subject to interest holder liability with respect to a domestic entity as a result of the domestication has interest holder liability only

to the extent provided by the organic law of the entity and only for those debts, obligations, and other liabilities that are incurred after the domestication becomes effective.

(d) When a domestication becomes effective, the interest holder liability of a person that ceases to hold an interest in a domestic domesticating entity with respect to which the person had interest holder liability is subject to the following rules:

(1) The domestication does not discharge any interest holder liability under the organic law of the domesticating domestic entity to the extent the interest holder liability was incurred before the domestication became effective.

(2) The person does not have interest holder liability under the organic law of a domestic domesticating entity for any debt, obligation, or other liability that is incurred after the domestication becomes effective.

(3) The organic law of a domestic domesticating entity continues to apply to the release, collection, or discharge of any interest holder liability preserved under subdivision (1) as if the domestication had not occurred.

(4) The person has whatever rights of contribution from any other person as are provided by other law or the organic rules of a domestic domesticating entity with respect to any interest holder liability preserved under subdivision (1) as if the domestication had not occurred.

(e) When a domestication becomes effective, a foreign entity that is the domesticated entity may be served with process in this state for the collection and enforcement of any of its debts, obligations, and other liabilities in accordance with applicable law.

(f) If the domesticating entity is a registered foreign entity, the registration to do business in this state of the domesticating entity is canceled when the domestication becomes effective.

(g) A domestication does not require the entity to wind up its affairs and does not constitute or cause the dissolution of the entity.

Comments

1. The domesticated entity is the same entity as the domesticating entity; it has merely changed its jurisdiction of formation. The legal effects of this are set forth in subsection (a). A domestication is not a sale, conveyance, transfer, or assignment and does not give rise to claims of reverter or impairment of title that may be based on a prohibition on transfer, assignment, or conveyance.

2. Under subsection (a)(8), the interests of the domesticating entity are reclassified into whatever rights were negotiated in the domestication and the interest holders of the domesticating entity are only entitled to those rights. Subsection (a)(8), on its face, allows certain owners in the domesticating entity to be entitled to a continuing equity interest in the domesticated entity whereas other owners in the domesticating entity may be cashed out as a result of the transaction.

3. Subsection (a)(8) provides that the interest holders in the domesticating entity are entitled only the rights provided to them under the plan of domestication and to any appraisal rights they have under IC 23-0.6-1-8. *See* IC 23-0.6-1-8 and the Comments to IC 23-0.6-1-8.

4. Subsection (a)(9) provides that all pending proceedings involving any party to the domestication may be continued as if the domestication did not occur or the surviving entity may be substituted in the proceeding for the entity whose existence ceased. In addition, subsection

(a)(5) provides that the name of the domesticated entity may be, but need not be, substituted in any pending proceeding for the name of the domesticating entity. There was no such explicit provision under prior law governing domestications authorizing but not requiring name substitution in such circumstances.

5. Subsections (c) and (d) sets forth rules for “interest holder liability” which is defined in IC 23-0.6-1.5-16.

6. Subsection (c) provides the rule for future interest holder liability and parallels analogous provisions in IC 23-0.6-2 (mergers), 23-0.6-3 (interest exchanges), and 23-0.6-4 (conversions). *See* Comment 7 to IC 23-0.6-2-6.

7. Subsection (d) provides the rule for past interest holder liability and parallels analogous provisions in IC 23-0.6-2 (mergers), 23-0.6-3 (interest exchanges), and 23-0.6-4 (conversions). *See* Comment 8 to IC 23-0.6-2-6.

8. When a domestic domesticating entity becomes a foreign entity as a result of a domestication, some mechanism is needed to facilitate the enforcement of claims by the creditors and interest holders of the domesticating entity. Subsection (e), which parallels analogous provisions in IC 23-0.6-2 (mergers) and 23-0.6-4 (conversions), authorizes service of process for all such claims in this state.

9. When a domestication takes effect, the entity continues to exist – simply as a domestic entity under the laws of a different state. Subsection (g) thus makes clear that the domestication does not require the entity to wind up its affairs and does not constitute or cause the dissolution of the entity.

10. This section constitutes new Indiana law for domestications of limited liability partnerships, limited partnerships, and limited liability companies. *See* Comment 1 to IC 23-0.6-5-1. This section constitutes new Indiana law in part for domestications of corporations and nonprofit corporations. *See* Comment 4 above. In addition, IC 23-0.6-5-6(a)(4), (a)(5), (a)(8), (b), (c), and (e) are new for both entities.

6-Miscellaneous provisions

IC 23-0.6-6-1 Application and construction

Sec. 1. In applying and construing this article, consideration must be given to the need to promote consistency of the law with respect to its subject matter among states that enact it.

IC 23-0.6-6-2 Effect on application of federal electronic signatures law

Sec. 2. This article modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001, et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. 7003(b).

Comment

This section responds to specific language of the Electronic Signatures in Global and National Commerce Act and is designed to avoid preemption of state law under that federal legislation.

IC 23-0.6-6-3 Effect on actions or proceedings commenced or rights accrued before January 1, 2018

Sec. 3. This article does not affect an action or proceeding commenced or a right accrued before January 1, 2018.