

## CHAPTER 9

### MERGERS AND CONSOLIDATION

#### §901. Procedure for merger

**1. Domestic corporations may merge.** Any 2 or more domestic corporations organized under this Act or under Title 13, chapter 81 may merge into one of such corporations pursuant to a plan of merger approved in the manner provided in this Act.

[PL 2005, c. 531, §2 (AMD).]

**2. Plan of merger.** Each corporation shall adopt a plan of merger setting forth:

A. The names of the corporations proposing to merge, and the name of the corporation into which they propose to merge, which is hereinafter designated as the surviving corporation; [PL 1977, c. 525, §13 (NEW).]

B. The terms and conditions of the proposed merger; [PL 1977, c. 525, §13 (NEW).]

C. A statement of any changes in the articles of incorporation of the surviving corporation to be effected by such merger; and [PL 1977, c. 525, §13 (NEW).]

D. Such other provisions with respect to the proposed merger as are deemed necessary or desirable. [PL 1977, c. 525, §13 (NEW).]

[PL 1977, c. 525, §13 (NEW).]

#### SECTION HISTORY

PL 1977, c. 525, §13 (NEW). PL 2005, c. 531, §2 (AMD).

#### §902. Procedure for consolidation

**1. Domestic corporations may consolidate.** Any 2 or more domestic corporations organized under this Act or under Title 13, chapter 81 may consolidate into a new corporation pursuant to a plan of consolidation approved in the manner provided in this Act.

[PL 2005, c. 531, §3 (AMD).]

**2. Consolidation plan.** Each corporation shall adopt a plan of consolidation setting forth:

A. The names of the corporations proposing to consolidate and the name of the new corporation into which they propose to consolidate, which is hereinafter designated as the new corporation; [PL 1977, c. 525, §13 (NEW).]

B. The terms and conditions of the proposed consolidation; [PL 1977, c. 525, §13 (NEW).]

C. With respect to the new corporation, all of the statements required to be set forth in articles of incorporation for corporations organized under this Act, including the names of each member of the new board of directors; and [PL 1977, c. 525, §13 (NEW).]

D. Such other provisions with respect to the proposed consolidation as are deemed necessary or desirable. [PL 1977, c. 525, §13 (NEW).]

[PL 1977, c. 525, §13 (NEW).]

#### SECTION HISTORY

PL 1977, c. 525, §13 (NEW). PL 2005, c. 531, §3 (AMD).

#### §903. Approval of merger or consolidation

**1. Plan of merger.** A plan of merger or consolidation shall be adopted in the following manner.

A. If the members of any merging or consolidating corporation are entitled to vote thereon, the board of directors of such corporation shall adopt a resolution approving the proposed plan and directing that it be submitted to a vote at a meeting of members entitled to vote thereon, which may be either an annual or a special meeting. Written notice setting forth the proposed plan or a summary thereof shall be given to each member entitled to vote at such meeting within the time and in the manner provided in this Act for the giving of notice of meetings of members. The proposed plan shall be adopted upon receiving at least a majority of the votes which members present at each meeting or represented by proxy are entitled to cast. [PL 1977, c. 525, §13 (NEW).]

B. If any merging or consolidating corporation has no members, or no members entitled to vote thereon, a plan of merger or consolidation shall be adopted at a meeting of the board of directors of such corporation upon receiving the vote of a majority of the directors in office. [PL 1977, c. 525, §13 (NEW).]

[PL 1977, c. 525, §13 (NEW).]

**2. Vote on merger.** The articles of incorporation of any corporation may contain a provision prescribing for approval of a plan of merger or consolidation, a vote greater than, but in no event less than, that prescribed by subsection 1, paragraphs A and B.

[PL 1977, c. 525, §13 (NEW).]

**3. Merger abandoned.** After such approval, and at any time prior to the filing of the articles of merger or consolidation, or pursuant to a majority vote of the members of any participating corporation entitled to vote thereon, or if the corporation has no members entitled to vote pursuant to a majority vote of the board of directors of that corporation, the merger or consolidation may be abandoned.

[PL 1977, c. 525, §13 (NEW).]

**4. Plan of merger approved.** A plan of merger or consolidation may be approved by written consent of all members of a participating corporation entitled to vote by the articles of incorporation or bylaws, as provided by section 606. If such unanimous written consent is given, no resolution of the board of directors of such participating corporation approving, proposing, submitting, recommending or otherwise respecting such plan of merger or consolidation is necessary, and no members of such participating corporation shall be entitled to notice of, or to dissent from, such plan of merger or consolidation.

[PL 1977, c. 525, §13 (NEW).]

## SECTION HISTORY

PL 1977, c. 525, §13 (NEW).

### §904. Articles of merger or consolidation

**1. Form of articles of merger or consolidation.** Upon such approval, articles of merger or articles of consolidation shall be executed by each corporation and shall be delivered for filing pursuant to sections 104 and 106. The articles of merger or consolidation shall set forth:

A. The plan of merger or the plan of consolidation; [PL 1977, c. 525, §13 (NEW).]

B. If the members of any merging or consolidating corporation are entitled to vote thereon, then as to each such corporation (1) a statement setting forth the date of the meeting of members at which the plan was adopted, that a quorum was present at such meeting and that such plan received at least a majority of the votes which members present at such meeting or represented by proxy were entitled to cast, or (2) a statement that such amendment was adopted by a consent in writing signed by all members entitled to vote with respect thereto; [PL 1977, c. 525, §13 (NEW).]

C. If any merging or consolidating corporation has no members, or no members entitled to vote thereon, then as to each such corporation a statement of such fact, the date of the meeting of the

board of directors at which the plan was adopted and a statement of the fact that such plan received the vote of a majority of the directors in office; and [PL 1977, c. 525, §13 (NEW).]

D. When the articles of merger or consolidation are delivered for filing by the Secretary of State, he shall, before filing them, make the same determinations, to the extent applicable, as provided in section 404 in the case of original articles. [PL 1977, c. 525, §13 (NEW).]

[PL 1977, c. 525, §13 (NEW).]

#### SECTION HISTORY

PL 1977, c. 525, §13 (NEW).

#### **§905. Effect of merger or consolidation**

**1. Effect.** Any merger or consolidation under this section shall take effect when the articles of merger or consolidation are filed with the Secretary of State, or on the date specified in the articles of merger or consolidation, not to exceed 60 days after the filing date, if the articles of merger or consolidation so provide.

[PL 1977, c. 525, §13 (NEW).]

**2. Merger or consolidation effected.** When such merger or consolidation has been effected:

A. The several corporations' parties to the plan of merger or consolidation shall be a single corporation, which, in the case of a merger, shall be that corporation designated in the plan of merger as the surviving corporation and, in the case of a consolidation, shall be the new corporation provided for in the plan of consolidation; [PL 1977, c. 525, §13 (NEW).]

B. The separate existence of all corporations' parties to the plan of merger or consolidation, except the surviving or new corporation, shall cease; [PL 1977, c. 525, §13 (NEW).]

C. The surviving or new corporation shall have all the rights, privileges, immunities and powers and shall be subject to all the duties and liabilities of a corporation organized under this Act; [PL 1977, c. 525, §13 (NEW).]

D. The surviving or new corporation shall possess all the rights, privileges, immunities and franchises, of a public nature as well as of a private nature, of each of the merging or consolidating corporations; and all property, real, personal and mixed, and all debts due on whatever account, and all other choses in action, and all and every other interest, of or belonging to or due to each of the corporations so merged or consolidated, shall be taken and deemed to be transferred to and vested in such single corporation without further act or deed; and the title to any real estate, or any interest therein, vested in any of such corporations shall not revert or be in any way impaired by reason of such merger or consolidation; and [PL 1977, c. 525, §13 (NEW).]

E. In the case of a merger, the articles of incorporation of the surviving corporation shall be deemed to be amended to the extent, if any, that changes in its articles of incorporation are stated in the plan of merger; and in the case of a consolidation, the statements set forth in the articles of consolidation and which are required or permitted to be set forth in the articles of incorporation of corporations organized under this Act shall be deemed to be the articles of incorporation of the new corporation.

[PL 1977, c. 525, §13 (NEW).]

[PL 1977, c. 525, §13 (NEW).]

#### SECTION HISTORY

PL 1977, c. 525, §13 (NEW).

#### **§906. Merger or consolidation of domestic and foreign corporations**

**1. Manner of merger.** One or more foreign corporations and one or more domestic corporations may be merged or consolidated in the following manner, if such merger or consolidation is permitted by the laws of the state under which each such foreign corporation is organized.

A. Each domestic corporation shall comply with the provisions of this Act with respect to the merger or consolidation, as the case may be, of domestic corporations and each foreign corporation shall comply with the applicable provisions of the laws of the state under which it is organized. If the domestic corporation is a public benefit corporation, the merger or consolidation must comply with any applicable provisions of Title 5, sections 194-B to 194-K; [PL 2001, c. 550, Pt. C, §20 (AMD); PL 2001, c. 550, Pt. C, §29 (AFF).]

B. If the surviving or new corporation, as the case may be, is to be governed by the laws of any state other than this State, it shall comply with the provisions of this Act with respect to foreign corporations if it is to conduct activities in this State, and in every case it shall execute and deliver to the Secretary of State of this State a document setting forth:

(1) The name of the surviving or new corporation;

(2) An agreement that it may be served with process in this State in any proceeding for the enforcement of any obligation of any domestic corporation which is a party to such merger or consolidation; and

(3) An irrevocable appointment of the Secretary of State of this State as its agent to accept service of process in any such proceeding. [PL 1977, c. 525, §13 (NEW).]

[PL 2001, c. 550, Pt. C, §20 (AMD); PL 2001, c. 550, Pt. C, §29 (AFF).]

**2. Provisions of effect of merger.** The effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations, if the surviving or new corporation is to be governed by the laws of this State. If the surviving or new corporation is to be governed by the laws of any state other than this State, the effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations, except insofar as the laws of the other state provide otherwise.

[PL 1977, c. 525, §13 (NEW).]

**3. Articles delivered for filing.** Whether the surviving or new corporation is or is to be a domestic corporation or a foreign corporation, articles of merger or consolidation shall be executed and delivered for filing as is provided in this Act for mergers and consolidations of domestic corporations.

[PL 1977, c. 525, §13 (NEW).]

**4. Date of effect.** Any merger or consolidation under this section shall take effect when the articles of merger or consolidation are filed with the Secretary of State, or on the date specified in the articles of merger or consolidation, not to exceed 60 days after the filing date, if the articles of merger or consolidation so provide.

[PL 1977, c. 525, §13 (NEW).]

**5. Abandonment.** After approval by the members, and at any time prior to the filing of the articles of merger or consolidation, or pursuant to a majority vote of the members of any participating corporation entitled to vote thereon, or if the corporation has no members entitled to vote pursuant to a majority vote of the board of directors of that corporation, the merger or consolidation may be abandoned pursuant to provisions therefor, if any, set forth in the plan of merger or consolidation.

[PL 1977, c. 525, §13 (NEW).]

## SECTION HISTORY

PL 1977, c. 525, §13 (NEW). PL 2001, c. 550, §C20 (AMD). PL 2001, c. 550, §C29 (AFF).

### §907. Limitations on merger or consolidation by public benefit corporation

**1. Compliance with nonprofit conversion law required.** In addition to complying with provisions of this Title, a public benefit corporation shall comply with all applicable provisions of Title 5, sections 194-B to 194-K.

[PL 2001, c. 550, Pt. C, §21 (NEW); PL 2001, c. 550, Pt. C, §29 (AFF).]

**2. Bequests, devises and gifts.** Any bequest, devise, gift, grant or promise contained in a will or other instrument of donation, subscription or conveyance that is made to a public benefit corporation and that takes effect or remains payable after a merger or consolidation inures to the surviving corporation unless the will or other instrument otherwise specifically provides.  
[PL 2001, c. 550, Pt. C, §21 (NEW); PL 2001, c. 550, Pt. C, §29 (AFF).]

**3. Notice; merger or consolidation.** Written notice of a merger or consolidation of a public benefit corporation into another public benefit corporation must be provided to the Attorney General simultaneously with the filing of the articles of merger or consolidation with the Secretary of State.  
[PL 2001, c. 550, Pt. C, §21 (NEW); PL 2001, c. 550, Pt. C, §29 (AFF).]

#### SECTION HISTORY

PL 2001, c. 550, §C21 (NEW). PL 2001, c. 550, §C29 (AFF).

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