

Uniform Unincorporated Organization Acts Amendment Committee
Fourth Meeting: March 29, 2021
12:30 p.m. to 2:30 p.m. Central time

Background Materials for Old Business
(Second Issue, Merger Provisions)

At its Third Meeting (February 16, 2021), the Committee reviewed and generally approved the proposed revisions, pending language pertaining to an interest exchange, drafted to parallel the functional approach of Section 602(3) [as proposed to be revised] pertaining to mergers, conversions, and domestications.¹ Following are the proposed revisions in full, with the suggested new language highlighted in yellow. Query whether the functional approach should be in a comment instead of the statutory text.

SECTION 602. PROTECTED SERIES MAY NOT BE PARTY TO ENTITY

TRANSACTION. Except as otherwise stated in Sections 605(d)(2) and 607(2), a ~~A~~ protected series may not:

~~(1) be an acquiring, acquired, converting, converted, merging, or surviving entity;~~

~~(2) participate in a domestication; or~~

~~(3)~~ be a party to, participate in, or be formed, organized, established, or created in a transaction ~~substantially like~~ that is:

(1) a merger, interest exchange, conversion, or domestication;

(2) a transaction that achieves the same substantive effect as a transaction listed in Section 602(1);

(3) an arrangement through which, by operation of law:

¹ Although the Committee has substituted “same substantive effect” for the vaguer “substantially similar to”, the new phrase does not identify the characteristics to be considered in a “same substantive effect” analysis. The functional approach attempts to provide a belt to accompany the suspenders by identifying sine qua non effect or each type of entity transaction.

- A. the obligations of one legal person become, vest in, or continue as the obligations or another legal person;
- B. an entity of one type becomes an entity of another type; or
- C. an entity organized under, or whose internal affairs are governed by,^[1] the laws of one jurisdiction becomes organized under, or its internal affairs governed by, the laws of another jurisdiction; or

(4) a transaction:

- A. that is effected under a statute;
- B. by which all ownership interests in a legal person, or in a class or subclass of ownership interests in the legal person, are transferred to another person chosen, and on terms established, under the statute; and
- C. that is approved by the vote or consent required by the statute.

^[1] “Governed by” is intended to capture a general partnership. However, query how this language relates to California’s “sticky fingers” approach (purporting to govern particular internal affairs of a foreign corporation with substantial, defined nexus to California).