

D R A F T

FOR DISCUSSION ONLY

MODEL ENTITY TRANSACTIONS ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

AMERICAN BAR ASSOCIATION

Draft of February 2, 2004

WITH PREFATORY NOTE AND COMMENTS

Copyright ©2004
Jointly By
NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS
and
AMERICAN BAR ASSOCIATION

The ideas and conclusions set forth in this draft, including the proposed statutory language and any comments or reporter's notes, have not been passed upon by the National Conference of Commissioners on Uniform State Laws, the American Bar Association, or the Drafting Committees acting for those organizations. They do not necessarily reflect the views of the Conference and its Commissioners, the ABA and its Committees, or the Drafting Committees, their Members and Reporters. Proposed statutory language may not be used to ascertain the intent or meaning of any promulgated final statutory proposal.

**DRAFTING COMMITTEE OF NATIONAL CONFERENCE OF
COMMISSIONERS ON UNIFORM STATE LAWS**

HARRY J. HAYNSWORTH, IV, William Mitchell College of Law, 875 Summit Ave., St. Paul, MN 55105, *Chair*

K. KING BURNETT, P.O. Box 910, Salisbury, MD 21803-0910

RONALD W. DEL SESTO, Del Sesto-Hall's Building, 49 Weybosset St., Providence, RI 02903

STANLEY M. FISHER, 30100 Chagrin Blvd., Suite 301, Cleveland, OH 44122, *Enactment Plan Coordinator*

STEVEN G. FROST, Suite 1500, 111 W. Monroe St., Chicago, IL 60603-4006

HENRY M. KITTLESON, P.O. Box 32092, 92 Lake Wire Dr., Lakeland, FL 33802-2092

LEON M. McCORKLE, JR., P.O. Box 256, 4288 W. Dublin-Granville Rd., Dublin, OH 43017-0387

DAVID S. WALKER, Drake University Law School, Des Moines, IA 50311

ANN CONAWAY ANKER, Widener University, School of Law, P.O. Box 7474, Wilmington, DE 19803, *National Conference Reporter*

EX OFFICIO

FRED H. MILLER, University of Oklahoma, College of Law, 300 Timberdell Rd., Room 3056, Norman, OK 73019, *President*

JOANNE B. HUELSMAN, 235 W. Broadway, Suite 210, Waukesha, WI 53187, *Division Chair*

EXECUTIVE DIRECTOR

WILLIAM H. HENNING, University of Alabama, School of Law, P.O. Box 870382, Tuscaloosa, AL 35487-0382, *Executive Director*

WILLIAM J. PIERCE, 1505 Roxbury Road, Ann Arbor, MI 48104, *Executive Director Emeritus*

DRAFTING COMMITTEE OF AMERICAN BAR ASSOCIATION

GEORGE W. COLEMAN, Suite 3200, 1445 Ross Avenue, Dallas, TX 75202, *Chair*

WILLIAM H. CLARK, JR., One Logan Square, 18th & Cherry Streets, Philadelphia, PA 19103-6996, *ABA Reporter*

SECTION ON BUSINESS LAW

JON T. HIRSCHOFF, One Landmark Sq., 14th Floor, Stamford, CT 06901, *Committee on Negotiated Acquisitions*

PAUL L. LION, III, 755 Page Mill Rd., Palo Alto, CA 94304-1018, *Committee on Venture Capital and Private Equity*

LIZABETH E. MOODY, 1401 61st Street, South, St. Petersburg, FL 33707, *Committee on Nonprofit Corporations*

THOMAS E. RUTLEDGE, 1700 PNC Plaza, 500 W. Jefferson St., Louisville, KY 40202-2874, *Committee on Partnerships and Unincorporated Business Entities*

BRYN VAALER, 220 South Sixth Street, Minneapolis, MN 55402, *Committee on Corporate Laws*

SECTION ON REAL PROPERTY, PROBATE AND TRUST LAW

THOMAS EARL GEU, University of South Dakota, School of Law, 414 Clark St., Suite 214, Vermillion, SD 57069-2390

ROBERT R. KEATINGE, Suite 3200, 555 17th Street, Denver, CO 80202-3979, *Committee on Partnerships and Unincorporated Business Entities*

CAROL G. KROCH, RR 1 E College Rd E, P.O. Box 2316, Princeton, NJ 08543

BARRY NEKRITZ, 8000 Sears Tower, 233 S. Wacker Dr., Chicago, IL 60606

SECTION ON TAX LAW

ROBERT R. CASEY, 8555 United Plaza Blvd, Suite 500, Baton Rouge, LA 70809

OBSERVERS

CARTER G. BISHOP, American University Law School, 4801 Massachusetts Ave. NW,
Washington, DC 20016-8181

DANIEL S. KLEINBERGER, William Mitchell College of Law, 875 Summit Ave., St. Paul,
MN 55105

MELISSA WANGEMANN, Kansas Secretary of State, 120 SW 10th Ave., Topeka, KS
66612-1594

Copies of this Act may be obtained from:

**NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS**

211 E. Ontario Street, Suite 1300,

Chicago, Illinois 60611

312/915-0195

www.nccusl.org

**AMERICAN BAR ASSOCIATION
SECTION ON BUSINESS LAW**

750 North Lake Shore Drive

Chicago, Illinois 60611

312/988-6244

www.abanet.org

MODEL ENTITY TRANSACTIONS ACT

TABLE OF CONTENTS

Prefatory Note	1
----------------------	---

[ARTICLE] 1 GENERAL PROVISIONS

SECTION 101. SHORT TITLE	5
SECTION 102. DEFINITIONS	5
SECTION 103. RELATIONSHIP OF [ACT] TO OTHER LAWS	19
SECTION 104. REQUIRED APPROVALS.	22
SECTION 105. FILINGS	24
SECTION 106. FILING FEES	25
SECTION 107. EXCLUDED ENTITIES AND TRANSACTIONS. [OPTIONAL]	25
SECTION 108. APPRAISAL RIGHTS	26

[ARTICLE] 2 MERGER

SECTION 201. MERGER AUTHORIZED	28
SECTION 202. PLAN OF MERGER	29
SECTION 203. APPROVAL OF MERGER	32
SECTION 204. AMENDMENT OR ABANDONMENT OF PLAN OF MERGER	34
SECTION 205. STATEMENT OF MERGER; EFFECTIVE DATE.	36
SECTION 206. EFFECT OF MERGER	38

[ARTICLE] 3 DIVISION

SECTION 301. DIVISION AUTHORIZED	43
SECTION 302. PLAN OF DIVISION	45
SECTION 303. APPROVAL OF DIVISION	47
SECTION 304. AMENDMENT OR ABANDONMENT OF PLAN OF DIVISION	49
SECTION 305. STATEMENT OF DIVISION; EFFECTIVE DATE	51
SECTION 306. EFFECT OF DIVISION	53
SECTION 307. ALLOCATION OF LIABILITIES IN A DIVISION	58

[ARTICLE] 4 INTEREST EXCHANGE

SECTION 401. INTEREST EXCHANGE AUTHORIZED	63
SECTION 402. PLAN OF INTEREST EXCHANGE	66
SECTION 403. APPROVAL OF INTEREST EXCHANGE	67

SECTION 404. AMENDMENT OR ABANDONMENT OF PLAN OF INTEREST EXCHANGE	70
SECTION 405. STATEMENT OF INTEREST EXCHANGE; EFFECTIVE DATE	72
SECTION 406. EFFECT OF INTEREST EXCHANGE.	74

[ARTICLE] 5 CONVERSION

SECTION 501. CONVERSION AUTHORIZED	77
SECTION 502. PLAN OF CONVERSION	79
SECTION 503. APPROVAL OF CONVERSION	80
SECTION 504. AMENDMENT OR ABANDONMENT OF PLAN OF CONVERSION	83
SECTION 505. STATEMENT OF CONVERSION; EFFECTIVE DATE	84
SECTION 506. EFFECT OF CONVERSION	86

[ARTICLE] 6 DOMESTICATION

SECTION 601. DOMESTICATION AUTHORIZED	91
SECTION 602. PLAN OF DOMESTICATION	92
SECTION 603. APPROVAL OF DOMESTICATION	94
SECTION 604. AMENDMENT OR ABANDONMENT OF PLAN OF DOMESTICATION .	95
SECTION 605. STATEMENT OF DOMESTICATION; EFFECTIVE DATE	96
SECTION 606. EFFECT OF DOMESTICATION.	98
SECTION 607. STATEMENT OF CHARTER SURRENDER	101

[ARTICLE] 7 CONFORMING AMENDMENTS AND REPEALS

SECTION 701. MODEL BUSINESS CORPORATION ACT	104
SECTION 702. MODEL NONPROFIT CORPORATION ACT	111
SECTION 703. UNIFORM PARTNERSHIP ACT	120
SECTION 704. UNIFORM LIMITED PARTNERSHIP ACT	128
SECTION 705. PROTOTYPE LIMITED LIABILITY COMPANY ACT	146
SECTION 706. UNIFORM LIMITED LIABILITY COMPANY ACT	155

[ARTICLE] 8 MISCELLANEOUS PROVISIONS

SECTION 801. UNIFORMITY OF APPLICATION AND CONSTRUCTION	166
SECTION 802. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT	166
SECTION 803. SEVERABILITY	166
SECTION 804. EFFECTIVE DATE	167
SECTION 805. APPLICABILITY	167
SECTION 806. SAVINGS CLAUSE	167

MODEL ENTITY TRANSACTIONS ACT

Prefatory Note

1. Development of the Act

The Model Entity Transactions Act (META) is the result of a unique collaborative effort of the National Conference of Commissioners on Uniform State Laws (Conference) and the American Bar Association (ABA) to address an issue that cuts across their traditional areas of expertise.

For over 90 years, the Conference has prepared and periodically revised uniform laws for the organization of unincorporated entities, such as general partnerships, limited partnerships and limited liability companies. Similarly, for over 50 years committees of the ABA have prepared and periodically revised model laws for the incorporation of business corporations and nonprofit corporations.

During the past decade, three new types of business entities – limited liability companies, limited liability partnerships and limited liability limited partnerships – have come into wide use; other forms of business entities once thought to be almost obsolete – most notably business trusts and cooperatives – have received new prominence; and a form of entity previously organized only under the common law – unincorporated nonprofit association – has been recognized by statute. Also during the past decade, restructuring transactions by and between all of the various types of entities began to occur with increased frequency. Because of a lack of clear statutory authority in most states, these restructuring transactions have often been completed in two or three indirect steps rather than directly in a single transaction.

The Conference included provisions permitting mergers among different forms of entities and authorizing the conversion of one form of entity to another in the Uniform Limited Liability Company Act (1996), Uniform Partnership Act (1997) and Uniform Limited Partnership Act (2001). The ABA added similar provisions to the Model Business Corporation Act in 2003. In each case, the new provisions only apply if an entity of the type formed under the statute is a party to the transaction. Both the Conference and the ABA recognized, however, that a better approach would be for states to enact a single statute covering all types of restructuring transactions by and between all types of entity forms. Thus, the Conference and the ABA independently began projects to prepare a comprehensive statute to meet this need.

After beginning their independent drafting projects, both the Conference and the ABA realized that combining their respective areas of expertise would produce the best product for enactment by the statutes. They have accordingly combined their efforts so that the Model Entity Transactions Act (2003) draws on the expertise of the Conference in the law of unincorporated entities and of the ABA in the law of corporations.

2. Scope and Approach of the Act

(a) Background

Prior to the development of this Act, state business organization statutes (both incorporated and unincorporated) varied in their approach to same-species and cross-species mergers, consolidations, divisions, conversions, share/interest exchanges, and domestications by or among domestic and foreign for-profit and nonprofit entities. The dissimilarities in state statutes generally entailed either silence or non-uniformity regarding: (1) which transactions were authorized; (2) whether entities of more than one type could be parties to the same transaction; (3) inclusion of for-profit and nonprofit entities; (4) inclusion of incorporated and unincorporated organizations; and (5) single or dual status for converting, domesticating or transferring entities. For example, The Uniform Partnership Act (1997) (“RUPA”) authorized the conversion or merger of partnerships or limited partnerships. RUPA did not, however, anticipate the conversion or merger of forms of business other than partnerships or limited partnerships nor did it address divisions, interest exchanges, or domestications. The Uniform Limited Partnership Act (1976 with 1985 amendments) (“RULPA”) is silent regarding mergers and any form of cross-species transaction. A RULPA limited partnership could, however, effect a conversion or merger by “linking back” to the limited RUPA merger or conversion provisions. The Uniform Limited Partnership Act (2001) (“Re-RULPA”) anticipated for-profit and nonprofit cross-species conversions and mergers but not cross or same-species interest exchanges, divisions or domestications. The Uniform Limited Liability Company Act (1996) (“ULLCA”) authorized cross-species mergers and conversions but was silent regarding for-profit and nonprofit cross or same-species interest exchanges, divisions and domestications.

New Chapter 9 of the Revised Model Business Corporation Act (“MBCA”) authorized domestic business corporations to become a different form of entity or, conversely, permitted non-domestic business corporations to become a domestic business corporation. The transactions addressed in Chapter 9 of the MBCA include: (1) domestication (a procedure in which a corporation may change its state of incorporation, either domestic to foreign, or foreign to domestic); (2) nonprofit conversion (a procedure that permits a domestic business corporation to become either a domestic nonprofit corporation or a foreign nonprofit corporation); (3) foreign nonprofit domestication and conversion (a procedure that permits a foreign nonprofit corporation to become a domestic business corporation); and (4) entity conversion (procedures that authorize a domestic business corporation to become a domestic or foreign other entity or that permit a foreign other entity to become a domestic business corporation). Chapter 9 of the MBCA anticipated only those transactions that involve a domestic business corporation either at the outset or at the termination of the transaction.

(b) Scope of the Act

Article 1 of this Act sets forth general provisions applicable to the other articles. It defines terms that are used throughout the Act and specifies the general procedures for the filings

1 required under other articles.

2
3 Article 2 governs mergers. Article 2 is derived in large part from existing corporation
4 and unincorporated entity laws. Certain provisions dealing with necessary approvals,
5 information required in the plan of merger and some filing requirements represent an
6 amalgamation of existing law.

7
8 Article 3 governs divisions. A division is the reverse of a merger and permits a dividing
9 entity to subdivide itself into two or more separate and distinct entities. The division provisions
10 of Article 3 reflect the unique nature of the allocations of assets and liabilities that result from a
11 division.

12
13 Article 4 governs interest exchanges. The interest exchange transaction is derived from
14 the share exchange in corporate law and reflected in Chapter 11 of the *MBCA*. Interest
15 exchanges are not authorized as a separate form of transaction in any uniform unincorporated
16 entity act.

17
18 Article 5 governs conversions. A conversion is a statutory procedure authorizing an
19 entity to change its form of organization to another type of entity.

20
21 Article 6 governs domestications. It authorizes a foreign entity to become a domestic
22 entity of the same type and authorizes a domestic entity to become a foreign entity of the same
23 type so long as the laws of the foreign jurisdiction authorize the domestication.

24
25 Article 7 is a series of amendments and repeals to the various model uniform, and
26 prototype entity laws that show an adopting state how to integrate this Act and those entity laws
27 into one coherent statutory system.

28
29 Article 8 sets out certain miscellaneous provisions, including: (1) severability; (2)
30 effective date; (3) repeals of affected provisions in RUPA, ULLCA, Re-RULPA and MBCA; (4)
31 applicability; (5) savings clause; and (6) e-sign language.

32 33 **(c) Approach of the Act**

34
35 Mergers have been an accepted part of corporation law for a long time and are found in
36 all state corporation laws. On the other hand, mergers are a more recent development in
37 unincorporated entity laws. Following the lead of the *MBCA*, some states have begun to
38 authorize cross-species mergers in their corporation laws. States that have adopted RUPA or
39 ULLCA also have provisions on cross-species mergers and conversions in those laws. This Act
40 is drafted on the assumption that states will not be comfortable repealing mergers completely out
41 of their corporation laws or those unincorporated entity laws where merger provisions have
42 begun to appear. To create a consistent pattern across their various entity laws, it is
43 recommended that states limit the existing provisions on mergers in their entity laws to same-

1 specie mergers and add provisions on same-specie mergers to those entity laws where they are
2 currently missing.
3

4 Article 7 of this Act sets forth conforming amendments to the various uniform and model
5 entity laws that will create a consistent and coherent set of entity laws that are fully integrated
6 with this Act. However, this Act is designed so that it can be adopted without the adopting state
7 initially making all of the changes set forth in the Appendix. It will be necessary to amend a
8 state's existing entity laws to eliminate any provisions on cross-species merger that have already
9 been adopted, but the other conforming amendments in Article 7 may be enacted at a later time.
10

1 **MODEL ENTITY TRANSACTIONS ACT**

2
3 **[ARTICLE] 1**

4
5 **GENERAL PROVISIONS**

6
7 **SECTION 101. SHORT TITLE.**

8 This [act] may be cited as the [State] Entity Transactions Act.

9 **SECTION 102. DEFINITIONS.**

10 In this [act]:

11 (1) “Acquiring entity” means the domestic or foreign entity that acquires all of one or
12 more classes or series of interests of the exchanging entity in an interest exchange.

13 (2) “Address” means a street address or rural route box number. The term does not
14 include a post office box number.

15 (3) “Approve” means for an entity and its governors and interest holders to take whatever
16 steps are necessary under its organic rules, organic law, and other applicable law to:

17 (i) propose a transaction subject to this [act],

18 (ii) adopt and approve the terms and conditions of the transaction, and

19 (iii) conduct the required proceedings or otherwise obtain the required votes or
20 consents of the governors or interest holders.

21 (4) “Conversion” means a transaction of the kind authorized by [article] 5.

22 (5) “Converted entity” means the converting entity as it continues in existence after a
23 conversion.

24 (6) “Converting entity” means the domestic entity that approves a plan of conversion
25 pursuant to section 503 or the foreign entity that approves a conversion pursuant to the laws of

1 the foreign jurisdiction.

2 (7) “Dividing entity” means the domestic entity that approves a plan of division pursuant
3 to section 303 or the foreign entity that approves a division pursuant to the laws of the foreign
4 jurisdiction.

5 (8) “Division” means a transaction of the kind authorized by [article] 3.

6 (9) “Domestic entity” means an entity whose internal affairs are governed by the laws of
7 this [state].

8 (10) “Domesticated entity” means the domesticating entity as it continues in existence
9 after a domestication.

10 (11) “Domesticating entity” means the domestic entity that approves a plan of
11 domestication pursuant to section 605 or the foreign entity that approves a domestication
12 pursuant to the laws of the foreign jurisdiction.

13 (12) “Domestication” means a transaction of the kind authorized by [article] 6.

14 (13) “Entity” means an organization or artificial legal person that either has a separate
15 legal existence or has the power to acquire an estate in real property in its own name, and that is
16 not:

17 (i) an association or relationship that is not a partnership by reason of [Section
18 202(c) of the Uniform Partnership Act (1997)];

19 (ii) an estate;

20 (iii) a trust that does not carry on a business; or

21 (iv) a governmental or quasi-governmental subdivision, agency or instrumentality.

22 (14) “Exchanging entity” means the domestic or foreign entity of which all of one or

1 more classes or series of interests are acquired in an interest exchange.

2 (15) “Filing entity” means an entity that is created by the filing of a public organic
3 document.

4 (16) “Foreign entity” means an entity other than a domestic entity.

5 (17) “Governance interest” means the right under the organic law of an entity, other than
6 as a governor, agent, assignee or proxy, to:

7 (i) demand access to information concerning, or the books and records of, the
8 entity;

9 (ii) vote for the election of the governors of the entity; or

10 (iii) receive notice of or vote on any or all issues involving the internal affairs of
11 the entity.

12 (18) “Governor” means a person by or under whose authority the powers of an entity are
13 exercised and under whose direction the business and affairs of the entity are managed pursuant
14 to the organic law of the entity.

15 (19) “Interest” means:

16 (i) a share or membership in a corporation;

17 (ii) a governance interest;

18 (iii) a transferable interest in an unincorporated entity that did not arise by
19 operation of law as a result of a transfer of an interest in the entity; or

20 (iv) a transferable interest in an unincorporated entity, if the transferable interest
21 arose by operation of law because the interest holders of the entity did not agree to a transfer of
22 the governance interest previously associated with the transferable interest and the entity knows

1 that the person who holds the transferable interest does not have a binding agreement with the
2 transferor of the transferable interest concerning the disposition of the consideration to be
3 received with respect to the transferable interest in a merger, division, interest exchange,
4 conversion or domestication.

5 (20) “Interest exchange” means a transaction of the kind authorized by [Article] 4.

6 (21) “Interest holder” means a person who holds of record an interest.

7 (22) “Liability” means a debt, obligation or liability of any kind, arising in any manner
8 and whether or not secured.

9 (23) “Merger” means a transaction of the kind authorized by [article] 2.

10 (24) “Merging entity” means an entity that is a party to a merger and exists immediately
11 before the filing of the statement of merger.

12 (25) “Nonfiling entity” means an entity other than a filing entity.

13 (26) “Nonqualified foreign entity” means a foreign entity that is not authorized to transact
14 business in this state by an appropriate filing with the [Secretary of State].

15 (27) “Organic law” means the statute providing for the creation of an entity or principally
16 governing its internal affairs. **[Issue: Does this definition include UUNAA? And does that**
17 **question matter?]**

18 (28) “Organic rules” means the public organic document and private organic rules of an
19 entity.

20 (29) “Owner liability.” Personal liability for a liability of an entity that is imposed on a
21 person:

22 (i) solely by reason of the status of the person as an interest holder; or

(ii) by the organic rules of the entity pursuant to a provision of the organic law authorizing the organic rules to make one or more specified interest holders liable in their capacity as interest holders for all or specified liabilities of the entity.

(30) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, cooperative, association, joint venture, government, or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(31) “Plan” means a plan of merger, division, interest exchange, conversion or domestication.

(32) “Private organic rules” mean the rules, whether or not in a record, adopted by an entity under its organic law to govern the internal affairs of the entity and that are not part of its public organic document. Where private organic rules have been amended or restated, the term means the private organic rules as last amended or restated.

(33) “Public organic document” means the public record, the filing of which creates an entity, and any amendments to that record. Where a public organic document has been amended or restated, the term means the public organic document as last amended or restated.

(34) “Qualified foreign entity” means a foreign entity that is authorized to transact business in this state by an appropriate filing with the [Secretary of State].

(35) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(36) “Regulatory law” means any statute, other than the entity’s organic law, regulating the business of the entity, and any rule or regulation validly promulgated under such a statute by any department, agency, board, or commission of this [state].

1 (37) “Resulting entity” means a dividing entity that continues in existence after, or an
2 entity that is created by, a division.

3 (38) “Sign” means:

4 (i) to execute or adopt a tangible symbol with the present intent to authenticate a
5 record; or

6 (ii) to attach or logically associate an electronic symbol, sound, or process to or
7 with a record with the present intent to authenticate the record.

8 (39) “State” means a state of the United States, the District of Columbia, Puerto Rico, the
9 United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of
10 the United States.

11 (40) “Surviving entity” means the entity that continues in existence after or is created by
12 a merger.

13 (41) “Transferable interest” means the right under an entity’s organic law to receive
14 distributions from the entity.

15 (42) “Type of entity” means a basic form of entity:

16 (i) recognized at common law; or

17 (ii) organized under an organic law, without regard to whether some entities
18 organized under that organic law may also be subject to certain provisions of that law that create
19 different categories of the form of entity organized under that law.

20 **Comment**

21
22 **“Acquiring entity” [(1)]** - This term is

23
24 **“Address” [(2)]** - This term is

1 **“Approve” [(3)]** - The term “approve” has been introduced as a way of referring
2 collectively in this Act to all of the steps necessary for an entity to propose a transaction and
3 adopt and approve the terms and conditions of the transaction.
4

5 **“Conversion” [(4)]** - The term “conversion” means a transaction of the kind authorized
6 by Article 5 pursuant to which an entity of one type is converted into an entity of another type.
7 As used in this Act, the term “conversion” does not include a transaction in which an entity
8 changes the jurisdiction in which it is organized but does not change to a different form of entity;
9 that type of transaction is referred to in this Act as a “domestication” and is governed by Article
10 6.
11

12 **“Converted entity” [(5)]** - This term is
13

14 **“Converting entity” [(6)]** - This definition is patterned in part after Model Business
15 Corporation Act § 9.50(f)(1) (“converting entity”).
16

17 **“Dividing entity” [(7)]** - “Dividing entity” is used in this Act to refer to the domestic or
18 foreign entity that is to be divided into two or more separate and distinct entities. The dividing
19 entity may or may not be a resulting entity.
20

21 **“Division” [(8)]** - The term “division” means a transaction of the kind authorized by
22 Article 3 pursuant to which an entity may divide itself into two or more resulting entities, which
23 may be either domestic or foreign entities.
24

25 **“Domestic entity” [(9)]** - The term “domestic entity” in this Act refers to entities created
26 under or whose internal affairs are governed by the organic laws of the adopting jurisdiction.
27 This definition is patterned after Model Business Corporation Act § 1.40(6A) (“domestic
28 unincorporated entity”).
29

30 **“Domesticated entity” [(10)]** - This term is
31

32 **“Domesticating entity” [(11)]** - This term is
33

34 **“Domestication” [(12)]** - The term “domestication” means a transaction of the kind
35 authorized by Article 6 pursuant to which an entity may change its *jurisdiction* of formation *but*
36 *not its type* so long as the laws of the foreign jurisdiction permit the domestication. The legal
37 effect of the domestication of an entity out of an adopting state will be governed by the laws of
38 both the adopting state and the foreign jurisdiction.
39

40 **“Entity” [(13)]** - This definition determines the overall scope of the Act because only an
41 “entity” may participate in the transactions authorized by Articles 2, 3, 4, 5, and 6. *See* sections
42 201, 301, 401, 501, and 601.
43

1 This definition is intended to include all forms of private organizations and artificial legal
2 persons other than those excluded by paragraphs (i) through (iv). Thus this definition is broader
3 than the definition of “business entity” in Code of Ala. § 10-15-2(2) which does not include
4 nonprofit entities. This definition also includes regulated entities such as public utilities, banks
5 and insurance companies. If certain types of entities are to be excluded from the scope of this
6 Act for policy reasons, that may be done by listing those types of entities in section 107(a).

7
8 There is some question as to whether a partnership subject to the Uniform Partnership Act
9 (1914) is an entity or merely an aggregation of its partners. That question has been resolved by
10 Section 201 of the Uniform Partnership Act (1997), which makes clear that a general partnership
11 is an entity with its own separate legal existence. Section 8 of the Uniform Partnership Act
12 (1914) gives partnerships subject to it the power to acquire estates in real property and thus such
13 a partnership will be an “entity.” As a result, all general partnerships will be “entities” regardless
14 of whether the state in which they are organized has adopted the new Uniform Partnership Act
15 (1997).

16
17 Paragraph (i) of this definition excludes from the concept of an “entity” any form of co-
18 ownership of property or sharing of returns from property that is not a partnership under the
19 Uniform Partnership Act (1997). In that connection, Section 202(c) of the Uniform Partnership
20 Act (1997) provides in part:

21
22 In determining whether a partnership is formed, the following rules apply:

23 (1) Joint tenancy, tenancy in common, tenancy by the entireties, joint property,
24 common property, or part ownership does not by itself establish a partnership, even
25 if the co-owners share profits made by the use of the property.

26 (2) The sharing of gross returns does not by itself establish a partnership, even
27 if the persons sharing them have a joint or common right or interest in property from
28 which the returns are derived.

29
30 Inter vivos and testamentary trusts are treated in many states as having a separate legal
31 existence, but they have been excluded from the definition of “entity” (and thus are not within
32 the scope of this Act) because of a decision that for public policy reasons they should not be able
33 to engage in transactions under this Act. Trusts that carry on a business, however, such as a
34 Massachusetts trust, real estate investment trust, Illinois land trust, or other common law or
35 statutory business trust are “entities.”

36
37 Section 4 of the Uniform Unincorporated Nonprofit Association Act gives an
38 unincorporated nonprofit association the power to acquire an estate in real property and thus an
39 unincorporated nonprofit association organized in a state that has adopted that act will be an
40 “entity.” At common law, an unincorporated nonprofit association was not a legal entity and did
41 not have the power to acquire real property. Most states that have not adopted the Uniform Act
42 have nonetheless modified the common law rule, but states that have not adopted the Uniform
43 Act should analyze whether they should modify the definition of “entity” to add an express

1 reference to unincorporated nonprofit associations.

2
3 Limited liability partnerships and limited liability limited partnerships are “entities”
4 because they are forms of general partnerships and limited partnerships, respectively, that have
5 made the additional required election claiming that status. A limited liability partnership,
6 however, is not a separate type of entity from the underlying general or limited partnership that
7 has elected limited liability partnership status. Thus, for example, the election of a general
8 partnership to become a limited liability partnership is not a conversion subject to Article 5.
9

10 The term “entity” includes:

11 Business corporation.

12 Business trust.

13 General partnership, whether or not a limited liability partnership.

14 Joint stock association.

15 Limited liability company.

16 Limited partnership, whether or not a limited liability limited partnership.

17 Nonprofit corporation.

18 Unincorporated nonprofit association.

19 The term does not include a sole proprietorship.
20

21 This definition is patterned in part after Model Business Corporation Act § 1.40(24A)
22 (“unincorporated entity”).
23

24 **“Exchanging entity” [(14)]** - This term is
25

26 **“Filing entity” [(15)]** - Whether an entity is a filing entity is determined by reference to
27 its organic law. In some states, for example, a business trust is a filing entity, while in other
28 states business trusts are recognized only by common law.
29

30 The term “filing entity” includes:

31 Business corporation.

32 [*Business trust.*]

33 Limited liability company.

34 Limited partnership.

35 Nonprofit corporation.

36 The term does not include a limited liability partnership because an election filed by a general
37 partnership claiming that status (*e.g.*, a statement of qualification under Uniform Partnership Act
38 (1997), § 1001) does not create the entity. A limited liability limited partnership, on the other
39 hand, is a filing entity because the underlying limited partnership is created by filing a certificate
40 of limited partnership.
41

42 This definition is patterned after Model Business Corporation Act § 1.40(9A) (“filing
43 entity”).

1 **“Foreign Entity” [(16)]** - The term “foreign entity” includes any non-domestic entity of
2 any type. Where a foreign entity is a filing entity, the entity is governed by the laws of the state
3 of filing. A nonfiling foreign entity is governed by the laws governing its internal affairs. It is a
4 factual question whether a general partnership whose internal affairs are governed by *UPA*
5 (1916) is a domestic or foreign partnership. Likely, a *UPA* partnership will be deemed to be a
6 domestic entity where the greatest nexus of contacts are found. The domestic or foreign
7 characterization of *RUPA* partnerships that have not registered as limited liability partnerships
8 will be governed by *RUPA* § 106(a).
9

10 **“Governance interest” [(17)]** - A governance interest is typically only part of the
11 interest that a person will hold in an entity and is usually coupled with a transferable interest (or
12 economic rights). However, memberships in some nonprofit corporations and unincorporated
13 nonprofit associations consist solely of governance interests. In some unincorporated business
14 entities, there is a more limited right to transfer governance interests than there is to transfer
15 transferable interests. An interest holder in such an unincorporated business entity who transfers
16 only a transferable interest and retains the governance interest will also retain the status of an
17 interest holder. Whether a transferee who acquires only a transferable interest will acquire the
18 status of an interest holder is determined by the definition of “interest holder.”
19

20 Shares in a business corporation that are nonvoting nonetheless have a governance
21 interest because they entitle the holder to certain rights of access to information and to certain
22 statutory voting rights on amendments of the articles of incorporation.
23

24 Governors of an entity have the kinds of rights listed in the definition of “governance
25 interest” by reason of their position with the entity. For a governor to have a “governance
26 interest,” however, requires that the governor also have those rights for a reason other than the
27 governor’s status as such. A director who does not own shares in the corporation, for example,
28 will not have a governance interest, but a director who owns shares will have a governance
29 interest arising from the ownership of the shares.
30

31 **“Governor” [(18)]** - This term has been chosen to provide a way of referring to a person
32 in charge of the affairs of an entity that is different from any of the existing terms used in
33 connection with particular types of entities. *Compare* Colo. § 7-90-102(35.7) which uses the
34 term “manager” to refer to this concept, even though “manager” is also a term of art in
35 connection with limited liability companies.
36

37 The term “governor” includes:

- 38 Director of a business corporation.
- 39 Director or trustee of a nonprofit corporation.
- 40 General partner of a general partnership.
- 41 General partner of a limited partnership.
- 42 Manager of a limited liability company.
- 43 Member of a member-managed limited liability company.

1 Trustee of a business trust.

2
3 **“Interest” [(19)]** - In the usual case, the interest held by an interest holder will include
4 both a governance interest and a transferable interest (or economic rights). Members in certain
5 nonprofit corporations or unincorporated nonprofit associations may not have any transferable
6 interest, but such members nonetheless hold an interest and have the status of interest holders
7 under this Act. An interest holder in an unincorporated business entity may transfer all or part of
8 the interest holder’s transferable interest without the transferee acquiring the governance interest
9 of the transferor. In that case, the transferor will retain the status of an interest holder and the
10 transferee will have only that status for purposes of this Act.

11
12 The term “interest” includes:

13 Beneficial interest in a business trust.
14 Membership in a nonprofit corporation.
15 Membership in an unincorporated nonprofit association.
16 Membership interest in a limited liability company.
17 Partnership interest in a general partnership.
18 Partnership interest in a limited partnership.
19 Share in a business corporation.

20
21 This definition is patterned after Model Business Corporation Act § 1.40(13B)
22 (“interest”).

23
24 **“Interest exchange” [(20)]** - The terms “interest exchange” or “exchange” mean a
25 transaction of the kind authorized by Article 4 pursuant to which an entity may acquire interests
26 in another entity. The consideration that may be provided to the interest holders whose interests
27 are being acquired in an exchange may consist in whole or part of interests in a third party that is
28 not one of the two parties to the exchange itself. *See* section 401(a). Thus, an exchange may
29 involve in effect a triangular transaction similar to a triangular merger.

30
31 **“Interest holder” [(21)]** - This Act does not refer to “equity” interests or “equity” owners
32 or holders because the term “equity” could be confusing in the case of a nonprofit entity whose
33 members do not have an interest in the assets or results of operations of the entity but only have a
34 right to vote on its internal affairs. *Compare* Code of Ala. § 10-15-2(4) (“equity owner”).

35
36 The term “interest holder” includes:

37 Beneficiary of a business trust.
38 General partner of a general partnership.
39 General partner of a limited partnership.
40 Limited partner of a limited partnership.
41 Member of a limited liability company.
42 Member of a nonprofit corporation.
43 Member of an unincorporated nonprofit association.
44 Shareholder of a business corporation.

1
2 This definition has been patterned after Model Business Corporation Act § 1.40(13A)
3 (“interest holder”).
4

5 **[Explain difference between “holder of record” “and record.”]**

6
7 **“Liability” [(22)]** - This term is
8

9 **“Merger” [(23)]** - The term “merger” means a transaction of the kind authorized by
10 Article 2 pursuant to which two or more entities are combined into a single entity. The term
11 “merger” in this Act includes the transaction known as a consolidation in which a new entity
12 results from the combination of two or more pre-existing entities.
13

14 **“Merging entity” [(24)]** - This term is
15

16 **“Nonfiling entity” [(25)]** - A “nonfiling entity” is an entity that is not formed by the
17 filing of a public organic document.
18

19 The term “nonfiling entity” includes:

20 *[Business trust.]*

21 General partnership.

22 Unincorporated nonprofit association.
23

24 A general partnership that is also a limited liability partnership does not become a “filing
25 entity” by reason of the filing that makes it a limited liability partnership because that filing does
26 not create the partnership.
27

28 This definition is patterned after Model Business Corporation Act § 1.40(14B)
29 (“nonfiling entity”).
30

31 **“Nonqualified foreign entity” [(26)]** - This term is
32

33 **“Organic law” [(27)]** - This definition is more limited in scope than the definition of
34 “organic statute” in Colo. Stat. 7-90-102(42), because the Colorado definition also includes “all
35 other applicable statutes ... governing the operation of the entity.” To the extent those other
36 statutes should properly be applicable to a transaction under this Act, their effect is preserved by
37 section 103. *See also* section 104.
38

39 Certain entity laws in a few states purport to require that some of their internal
40 governance rules applicable to a domestic entity also apply to a foreign entity with significant ties
41 to the state. *See, e.g.,* Cal. Gen. Corp. Law § 2115, N.Y. N-PCL §§ 1318-1321, 15 Pa.C.S. §
42 6145. Such a “sticky fingers” law is not an organic law for purposes of this [Act] because it is
43 not the statute that “principally” governs the internal affairs of the entity.
44

1 The term “organic law” includes, in the case of domestic entities:

2 [Model Business Corporation Act.]

3 [Model Nonprofit Corporation Act.]

4 [Prototype Limited Liability Company Act.]

5 [Uniform Limited Liability Company Act.]

6 [Uniform Limited Partnership Act.]

7 [Uniform Partnership Act.]

8 [Uniform Unincorporated Nonprofit Association Act.]

9
10 This definition is patterned after Model Business Corporation Act § 1.40(15B) (“organic
11 law”).

12
13 **“Organic rules” [(28)]** - This term is

14
15 **“Owner liability” [(29)]** - This term is used in the context of preserving the personal
16 liability of interest holders when the entity in which they hold interests is the subject of a
17 transaction under this Act. The term includes only derivative liability for an underlying debt of
18 the entity imposed on interest holders either directly by statute or by the organic rules to the
19 extent authorized pursuant to the organic law. Liabilities that an interest holder incurs in any
20 other fashion are not owner liabilities for purposes of this Act. Thus, for example, if a state’s
21 business corporation law were to make shareholders personally liable for unpaid wages, that
22 liability would be an “owner liability.” If, on the other hand, a shareholder were to guarantee
23 payment of an obligation of a corporation, that liability would not be an “owner liability.”
24 Similarly, the liability to return an improper distribution is not an owner liability because it is a
25 direct liability of the interest holder.

26
27 The reason for excluding contractual liabilities from the definition of “owner liability” is
28 because those liabilities are constitutionally protected from impairment and thus do not need to
29 be separately protected in this Act.

30
31 This definition is patterned after Model Business Corporation Act § 1.40(15C) (“owner
32 liability”). *See also* Uniform Limited Partnership Act (2001), § 1101(11) (“personal liability”).

33
34 **“Person” [(30)]** The term “person” is taken from *ULLCA* § 101(14). The drafting
35 committee considered using the definition of “person” from Article 1 of the *UCC*. After
36 consideration of the Article 1 definition, the drafting committee concluded that the *ULLCA*
37 definition reflects the intent of this [Act].

38
39 **“Plan” [(31)]** - This term is

40
41 **“Private organic rules” [(32)]** - The term “organic rules” is intended to include all
42 governing rules of an entity whether or not in written form. The term is intended to include
43 agreements in “record” form as well as oral partnership agreements and oral operating

1 agreements among LLC members. “Private organic rules” represent either the parties’ *actual*,
2 *negotiated* agreement *or, in a default situation, what the law deems* the agreement of the parties
3 to be. Thus, references to the private organic rules in this Act include references to the organic
4 law to the extent of: (1) nonwaivable provisions of the organic law, and (2) matters not addressed
5 in the written or unwritten agreement of the parties. For example, assume in an LLC that three
6 members agree to profit-sharing but do not specify managerial rights. In this circumstance, the
7 parties *actual agreement* reflects rights to receive profits that may be different from those
8 provided for by statute. Further, the parties’ agreement regarding management *is imposed by*
9 *law*. Both the actual and “constructive” (default) agreements constitute the “organic rules” of the
10 entity.

11
12 The term “private organic rules” includes:

- 13 Bylaws of a business corporation.
- 14 Bylaws of a business trust.
- 15 Bylaws of a nonprofit corporation.
- 16 Operating agreement of a limited liability company.
- 17 Partnership agreement of a general partnership.
- 18 Partnership agreement of a limited partnership.
- 19 Constitution and bylaws of an unincorporated nonprofit association.

20
21 **“Public organic document” [(33)]** - A “public organic document” is a document that is
22 filed of public record to *create* an entity. The term does not include a statement of partnership
23 authority filed under [section 303 of the Uniform Partnership Act (1997)] or any of the other
24 statements that may be filed under that act since those statements do not create the partnership.
25 For the same reason, the term also does not include a statement of qualification filed under
26 section 1001 of that act to become a limited liability partnership. Similarly, the term does not
27 include a statement of authority filed under section 5 of the Uniform Unincorporated Nonprofit
28 Association Act or a statement appointing an agent filed under section 10 of that act.

29
30 The term “public organic document” includes:

- 31 Articles of incorporation of a business corporation.
- 32 Articles of incorporation of a nonprofit corporation.
- 33 Articles of association of an unincorporated nonprofit association.
- 34 Certificate of limited partnership.
- 35 Certificate of organization of a limited liability company.
- 36 [Deed of trust of a business trust.]

37
38 This definition is patterned after Model Business Corporation Act § 1.40(17B) (“public
39 organic document”).

40
41 **“Qualified foreign entity” [(34)]** - This term is

42
43 **“Record” [(35)]** - The term “record” is intended to include the broadest degree of
44 information so long as the information is retrievable in a “perceivable” form. This language is

1 taken from ULLCA § 101 (16) and Re-RULPA § 102 (20).

2
3 **“Regulatory law” [(36)]** - This term is

4
5 **“Resulting entity” [(37)]** - The term “resulting entity” refers to the entity in a division
6 that either continues in existence or is created by a division. As such, the resulting entity closely
7 parallels that of the surviving entity in a merger.

8
9 **“Sign” [(38)]** - This term is

10
11 **“State” [(39)]** - This term is

12
13 **“Surviving entity” [(40)]** - This term is

14
15 **“Transferable interest” [(41)]** - This term is

16
17 **“Type of entity” [(42)]** - This term is

18
19
20 **SECTION 103. RELATIONSHIP OF [ACT] TO OTHER LAWS.**

21
22 (a) General rule. – Unless displaced by a specific provision in this [act], the principles of
23 law and equity, including those governing the rights of creditors, transferees or assignees,
24 supplement this [act].

25 (b) Regulatory laws unaffected. – This [act] is not intended to authorize any entity to do
26 any act prohibited by any regulatory law.

27 (c) Effect of transaction. – Except as expressly provided otherwise by or pursuant to
28 regulatory law:

29 (1) The filing by the [Secretary of State] of any document under this [act] shall not
30 be effective to exempt the entity from any of the requirements of any regulatory law.

31 (2) Failure to comply with a regulatory law in connection with a transaction under
32 this [act] shall not affect the valid existence of a surviving, resulting, exchanging, converted or

1 domesticated entity.

2 (3) If a transaction under this [act] is enjoined or reversed because of a violation
3 of a regulatory law after the filing that effected the transaction has become effective, the
4 enjoining or reversal of the transaction shall not affect the valid existence of any merging,
5 dividing, exchanging, converting, or domesticating entity which shall be reinstated upon the
6 filing with the [Secretary of State] by any interested party of a final order not subject to appeal
7 enjoining or reversing the transaction.

8 (4) Any document filed by the [Secretary of State] or any action taken by any
9 person under the authority of this [act] in violation of any regulatory law shall be ineffective as
10 against this [State], including its departments, agencies, boards, and commissions, unless and
11 until the violation is cured.

12 (d) Structural provisions in regulatory laws controlling. — If and to the extent that a
13 regulatory law sets forth provisions relating to the government and regulation of the affairs of an
14 entity that are inconsistent with the provisions of this [act] on the same subject, the provisions of
15 the regulatory law control.

16 (e) Application of organic law.—The organic law of an entity governs any issue not dealt
17 with in this [act].

18 (f) Change of control provisions.—A transaction effected under this [act] may not create
19 or impair any rights or obligations on the part of any person under any provision of the organic
20 law of a domestic merging, dividing, exchanging, converting, or domesticating entity relating to a
21 change in control of that entity unless:

22 (1) if the entity does not survive the transaction, the transaction satisfies any

1 applicable requirements of the change of control provision; or

2 (2) if the entity survives the transaction, the approval of the plan would also be
3 sufficient to create or impair those rights or obligations directly under the change of control
4 provision.

5 **Comment**

6
7 1. **Section 103(a)** - Section 103(a) is included to make clear that unless a particular
8 provision of this Act displaces “other law,” the principles of law and equity continue to apply,
9 *especially including the rights of creditors, transferees, assignees or other appropriate parties.*
10 Examples of “other” law that might govern creditor rights in the transactions set forth in this Act
11 are the various uniform fraudulent transfer and conveyance acts; common law fraud; state
12 insolvency statutes; Title 11 of the U.S.C. regarding creditor rights in federal bankruptcy
13 proceedings; cases interpreting the rights of creditors following leveraged buyouts, spinoffs, asset
14 purchases or other similar transactions; cases interpreting the liability of corporate directors for
15 distributions to executives or shareholders while the corporation is insolvent, or operating in the
16 vicinity of “insolvency”; the rights of creditors during or following real estate transactions;
17 creditor rights under Articles 8 and 9 of the UCC; cases interpreting creditor claims under
18 GAAP; and creditor rights cases arising under the various organic laws of unincorporated
19 entities, including when the right to partner contribution arises and the liability of an
20 unincorporated entity for unlawful distributions during or resulting in insolvency of the entity.
21

22 2. **Section 103(b)** – Subsection (b) preserves existing regulatory law in an adopting state
23 in general terms. Adopting states should consider more carefully integrating this Act with their
24 various regulatory laws. For example, in some states certain professions are limited in their use
25 of limited liability entities. *See, e.g.,* R.I.Gen.Laws § 7-5.1-3 (restricting the corporate practice of
26 certain professions to domestic corporations only). *But see* R.I.Gen.Laws § 7-12-
27 31.1(b)(3)(permitting foreign limited liability partnerships to practice law) and Article II, Rule 10
28 of the Rhode Island Supreme Court Rules (permitting foreign corporations and partnerships to
29 practice law through appropriately licensed attorneys).
30

31 3. **Section 103(c)** - Subsection (c) sets forth rules on the relationship between this Act
32 and regulatory laws. The first clause of subsection (c) recognizes that particular regulatory laws
33 may provide rules different from those in subsections (c)(1) through (3), but the requirement that
34 those other rules be “expressly” stated is intended to indicate that a variation of the rules in
35 subsection (c) should be applied only if clear. While subsection (c) protects the ability of the
36 state to enforce its regulatory laws following a transaction that violates a regulatory law,
37 subsection (c)(2) generally protects the valid existence of the converting, exchanging or surviving
38 entity following the transaction. In many cases, the appropriate remedy for a violation of a
39 regulatory law is not the reversal of the transaction, but a less severe sanction such as the loss of

1 a license to conduct the regulated business or a monetary penalty or fine. Where injunction or
2 reversal of a transaction is ordered, subsection (c)(3) confirms that the entity in existence before
3 the failed transaction continues without change in its existence upon the filing of the order with
4 the secretary of state. A regulatory agency will be an interested party under subsection (c)(3) and
5 will have the power to file the order enjoining or reversing the transaction.
6

7 This section does not create an independent power of a court or regulatory agency to
8 enjoin or reverse a transaction. The appropriate remedy for violation of a regulatory law will be
9 determined under the regulatory law itself. This section simply preserves the effectiveness of the
10 remedy of injunction or reversal where that remedy already independently exists.
11

12 4. Section 103(d)

13 5. Section 103(e)

14
15
16 6. **Section 103(f)** – Many states have enacted “antitakeover” statutes intended to make it
17 more difficult to acquire control of a publicly-traded entity. Those statutes often provide that
18 their application to a particular entity cannot be changed unless the entity obtains certain
19 specified approvals, such as a vote of disinterested directors or a supermajority vote by the
20 interest holders. The purpose of the special requirements on varying the application of an
21 antitakeover statute is to protect against a hostile acquirer faced with the obstacle of an
22 antitakeover statute from first seeking to change the application of the statute to remove it as an
23 obstacle.
24

25 Subsection (f) protects the application of antitakeover statutes from being affected by a
26 transaction under this Act by requiring that the transaction be approved in a manner that would
27 be sufficient to approve changing the application of the antitakeover statute. If a transaction is
28 approved in that manner, there is no policy reason to prohibit the application of the antitakeover
29 from being varied by a transaction under this Act. If the application of an antitakeover statute
30 cannot be varied by action of an entity subject to it, then a transaction under this Act will be
31 permissible only if the antitakeover provision continues to apply after the transaction or the
32 transaction itself is permissible under the antitakeover statute.
33

34 7. **Source** - Subsections (a)-(d) are patterned after 15 Pa.C.S. § 103.
35
36

37 **SECTION 104. REQUIRED APPROVALS.**

38
39 (a) Regulated entities.—If a domestic or foreign entity may not be a party to a merger
40 without the approval of the [attorney general], the [department of banking], the [department of
41 insurance] or the [public utility commission], the entity shall not be a party to a transaction under

1 this [act] without the prior written approval of that agency.

2 (b) Nonprofit entities.--Property held in trust or for charitable purposes under the laws of
3 this [state] by a domestic or foreign entity shall not, by any transaction under this [act], be
4 diverted from the objects for which it was donated, granted or devised, unless and until the entity
5 obtains an order of [name of court] [the attorney general] specifying the disposition of the
6 property to the extent required by or pursuant to [cite state statutory cy pres or other nondiversion
7 statute].

8 **Comment**

9
10 1. **Section 104(a)** - Because at least some of the provisions of this Act will be new in
11 most states, it is likely that existing state laws that require regulatory approval of transactions by
12 businesses such as banks, insurance companies or public utilities may not be worded in a fashion
13 that will include at least some of the transactions authorized by this Act. The purpose of
14 subsection (a) is to ensure that transactions under this Act will be subject to the same regulatory
15 approval as mergers. This section is based on whether a merger by a regulated entity requires
16 prior approval because the transactions authorized by this Act may be effectuated indirectly in
17 many cases under existing law by establishing a wholly-owned subsidiary of the desired type and
18 then merging into it. The list of agencies in subsection (a) should be conformed to the laws of
19 the enacting state. The consequence of violating subsection (a) will be the same as in the case of
20 a merger consummated without the required approval.

21
22 2. **Section 104(b)** - This Act applies generally to nonprofit corporations and
23 unincorporated nonprofit associations. As in the case of laws regulating particular industries, a
24 state's laws governing the nondiversion of charitable and trust property to other uses may not be
25 worded in a fashion that will include at least some of the transactions authorized by this Act. To
26 prevent the procedures in this Act from being used to avoid restrictions on the use of property
27 held by nonprofit entities, subsection (b) requires approval of the effect of transactions under this
28 Act by the appropriate arm of government having supervision of nonprofit entities.

29
30 3. **Source** - Subsection (a) is patterned after Model Business Corporation Act § 9.02.
31 Subsection (b) is patterned after 15 Pa.C.S. § 5547(b).

32 33 34 35 **SECTION 105. FILINGS.**

1 (a) Status.—A filing under this [act] by a domestic entity has the status of a filing under
2 the organic law of the entity for purposes of a provision of that law that makes a filing with the
3 [Secretary of State] a part of the public organic document of the entity.

4 (b) Tax clearance.—A domestic entity shall not file a statement of merger or charter
5 surrender where the surviving or converted entity is a nonqualified foreign entity, and a qualified
6 foreign entity shall not file an application for withdrawal of its authority, unless the statement or
7 application is accompanied by a tax clearance certificate from the [department of revenue]
8 evidencing the payment by the entity of all taxes and charges due the state required by law.

9 (c) Procedures.—Filings with the [Secretary of State] under this [act] are subject to the
10 provisions of [sections 1.24 through 1.26 and 1.29 of the Model Business Corporation Act].

11 **Comment**

12
13 1. **Section 105(a)** - Articles of merger and other similar documents filed under [*the*
14 *Model Business Corporation Act*] are made a part of the articles of incorporation of each
15 domestic business corporation that is a party to the merger by [*section 1.40(1) of the Model*
16 *Business Corporation Act*]. Similar filings under other organic laws may become part of the
17 public organic documents of domestic filing entities. Subsection (a) provides that filings under
18 this Act will similarly become part of the public organic document of a domestic entity.

19
20 2. **Section 105(b)** – Subsection (b) is an optional provision for use in states that require
21 tax clearance before giving effect to fundamental transactions that result in the disappearance of
22 an entity from the state.

23
24 3. **Section 105(c)** - Subsection (c) provides the necessary rules on how filings under the
25 Act are to be handled by reference to the provisions on filings in the [*Model Business*
26 *Corporation Act*]. Whether those provisions are the appropriate ones to incorporate into this Act,
27 and whether provisions on this subject are even necessary, will depend on how a state integrates
28 this Act with its other organic laws.

29 30 4. **Source -**

31 **SECTION 106. FILING FEES.**

The [Secretary of State] shall collect the following fees when the documents described are delivered for filing:

- (1) Statement of merger \$_____
- (2) Statement of abandonment of merger..... \$_____
- (3) Statement of division..... \$_____
- (4) Statement of abandonment of division..... \$_____
- (5) Statement of interest exchange..... \$_____
- (6) Statement of abandonment of interest exchange..... \$_____
- (7) Statement of conversion \$_____
- (8) Statement of abandonment of conversion..... \$_____
- (9) Statement of domestication \$_____
- (10) Statement of abandonment of domestication..... \$_____
- (11) Statement of charter surrender..... \$_____

Comment

This section sets forth a list of the fees to be charged when documents are filed under this Act. Many states may choose to include these fees in the general fee bill for filings with the Secretary of State instead of separately enacting this section.

The documents filed under this Act are referred to as “statements” in order to differentiate them from filings under corporation laws, which are typically referred to as “articles,” and from filings under partnership and other unincorporated entity laws, which are typically referred to as “certificates.”

SECTION 107. EXCLUDED ENTITIES AND TRANSACTIONS. [OPTIONAL]

(a) Excluded entities. – Domestic entities of the following types may not participate in a transaction under this [act]:

1 (1)

2 (2)

3 (b) Excluded transactions. – This [act] may not be used to effect a transaction that:

4 (1) [converts an insurance company organized on the mutual principle to one
5 organized on a stock-share basis];

6 (2)

7 (3)

8 **Comment**

9
10 1. **In General** - Section 107 is an optional provision that may be used to exclude certain
11 types of entities or transactions from the scope of this Act.

12
13 Nonprofit entities may participate in transactions under this Act with for-profit entities,
14 subject to compliance with section 104(b). If a state desires, however, to exclude nonprofit
15 entities from the scope of the Act, that may be done in subsection (a).

16
17 2. **Section 107(a)** - Subsection (a) is limited to domestic entities because a restriction on
18 the power of a foreign entity to engage in a merger, division, interest exchange, conversion, or
19 domestication is more properly placed in the organic law of the foreign entity. More limited
20 provisions that exclude certain types of domestic entities just from certain provisions of this Act
21 are set forth in sections 201(d) (mergers), 301(f) (divisions), 401(e) (interest exchanges), 501(d)
22 (conversions) and 601(e) (domestications).

23
24 3. **Section 107(b)** - A state should use subsection (b) to list those situations in which the
25 state has enacted specific legislation governing certain types of transactions. Conversion of a
26 mutual insurance company to a stock insurance company has been listed in subsection (b)(1) as
27 one example of such a transaction.

28
29 4. **Source** - Subsection (b) is patterned after *MBCA* § 9.01.]

30
31
32 **SECTION 108. APPRAISAL RIGHTS.**

33
34 (a) Statutory appraisal rights.—Except as otherwise provided in its organic law, the
35 interest holders of a merging, dividing, exchanging, converting, or [domesticating] entity shall

1 be entitled to appraisal rights in connection with the transaction if they are entitled to appraisal
2 rights under the organic law of the entity in the event the entity is a party to any type of merger.

3 (b) Contractual appraisal rights.—The organic rules of an entity in a record or a plan may
4 provide that contractual appraisal rights with respect to the interests in an entity that is a party to
5 a transaction under this [Act] shall be available for any class, series or other group of interest
6 holders in connection with the transaction. The [name of court] has jurisdiction to hear and
7 determine any matter relating to such contractual appraisal rights.

8 **Comment**

9
10 Section 108 is an optional provision dealing with appraisal rights. Subsection (a)
11 preserves appraisal rights granted by other laws. Subsection (b) permits an entity to provide
12 appraisal rights in particular instances where they would otherwise not be available by statute.

13
14 As an alternative to enacting subsection (a), a state may wish to amend the appraisal
15 rights provisions of its organic laws to specify which transactions under this Act will give rise to
16 appraisal rights.

17
18 Subsection (b) is patterned after 6 Del. Code §§ 15-120 (general partnerships), 17-212
19 (limited partnerships), and 18-210 (limited liability companies).
20
21

1 [ARTICLE] 2

2
3 MERGER

4
5 SECTION 201. MERGER AUTHORIZED.

6 (a) General rule. – By complying with this [article] and except as otherwise provided in
7 this section:

8 (1) one or more domestic entities may merge with one or more domestic or
9 foreign entities into a domestic or foreign surviving entity; and

10 (2) two or more foreign entities may merge into a domestic surviving entity.

11 (b) Foreign entities. – A foreign entity may be a party to a merger under this [article], or
12 may be created in such a merger, only if the merger is authorized by the laws of the foreign
13 jurisdiction.

14 (c) Other procedures. – This [article] does not apply to a merger described in subsection
15 (a) in which all of the merging entities and the surviving entity are the same type of entity if the
16 laws of this [state] provide procedures for the approval or effectuation of such a transaction.

17 [(d) Excluded entities. – Domestic entities of the following types may not participate in a
18 merger under this [article]:

19 (1)

20 (2)]

21 Comment

22
23 1. **In General** - The merger transaction authorized by this Act involves the combination
24 of one or more domestic entities with or into one or more other domestic or foreign entities. It
25 also contemplates the consolidation of two or more foreign entities into a single domestic entity.
26 Upon the effective date of the merger, all the assets and liabilities of the constituent entities vest
27 in the surviving entity as a matter of law. As such, mergers require the existence of at least two

1 separate entities before the transaction and only one entity may survive the merger. If
2 independent existence of the constituent entities is favored at the conclusion of the transaction, a
3 merger is not the way to accomplish the transfer of assets and liabilities.

4
5 **2. Section 201(a) -**

6
7 **3. Section 201(b) -**

8
9 **4. Section 201(c) –** It is expected that many adopting states will retain provisions on
10 mergers solely between entities of the same type in the organic law governing that type of entity
11 and will add similar provisions to other organic laws. See the discussion [in the prefatory note].
12 On the other hand, there will be some types of entities where it is unlikely that merger provisions
13 will be added to their organic law, for example, unincorporated nonprofit associations. In cases
14 where an organic law provides for a merger involving entities all of the same type, there is no
15 need for this Act; but in cases where an organic law does not provide for mergers, this Act will
16 serve the important function of authorizing mergers just involving entities of that type.
17 Subsection (c) has been drafted in general terms to accommodate both the existing law in an
18 adopting state at the time this Act is enacted and also any changes in organic laws after the
19 enactment of this Act. Subsection (c) could be adopted in the following more specific form
20 identifying the organic laws to which it refers:

21
22 This [article] does not apply to a merger under the following statutes in which
23 all of the merging entities and the surviving entity are the same type of entity:

- 24 (1) Chapter 11 of the MBCA
25 (2) Chapter 11 of the MNCA
26 (3) Article 9 of RUPA
27 (4) Article 11 of Re-RULPA
28 (5) Article 9 of ULLCA
29

30 **5. Section 201(d) -** Subsection (d) is an optional provision that may be used to exclude
31 certain types of entities from the scope of this article. It is limited to domestic entities because a
32 restriction on the power of a foreign entity to engage in a merger is more properly placed in the
33 organic law of the foreign entity. A provision that excludes certain types of domestic entities
34 from the Act generally is set forth in section 107.

35
36 **6. Tax Considerations –** This Act authorizes a merger for state law purposes. Federal
37 law and other state law will independently determine how a merger transaction will be taxed.
38

39 **SECTION 202. PLAN OF MERGER.**

40 (a) Plan of merger required. – A domestic entity may become a party to a merger under

1 this [Article] by approving a plan of merger.

2 (b) Required contents. – A plan of merger must be in a record and contain:

3 (1) as to each merging entity, its name, jurisdiction of formation, and type of
4 entity;

5 (2) if the surviving entity is to be created in the merger, a statement to that effect
6 and its name, jurisdiction of formation and type of entity;

7 (3) the terms and conditions of the merger;

8 (4) the manner and basis of converting the interests in each party to the merger
9 into interests, securities, obligations, rights to acquire interests or securities, cash, other property,
10 or any combination of the foregoing;

11 (5) if the surviving entity is to be created by the merger, its proposed public
12 organic document, if any, and the full text of its organic rules that are proposed to be in a record;

13 (6) if the surviving entity exists before the merger, any proposed amendments to
14 its public organic document or to its organic rules that are in a record; and

15 (7) any other provision required by the organic law or organic rules of each
16 merging entity.

17 (c) Optional contents. – In addition to the provisions required by subsection (b), a plan of
18 merger may contain any other provision not prohibited by applicable law.

19 (d) Reference to extrinsic facts. – Any provision of a plan of merger may be made
20 dependent upon facts ascertainable outside of the plan, if the manner in which the facts will
21 operate upon the provision is contained in the plan.

22 **Comments**

1 **1. Section 202(a)** - The requirements for the approval of the plan of merger are set forth
2 in section 203.

3
4 **2. Section 202(b)(1)** - Section 202(b)(1) requires that the plan of merger identify the
5 parties to the merger. The name of a merging entity as it appears in the plan of merger will be its
6 name in its jurisdiction of organization. See comment __ to section 205.

7
8 **3. Section 202(b)(4)** - Section 202(b)(4) enables constituent organizations to provide for
9 continuing interests in a surviving entity for some equity holders and the payment of some other
10 form of consideration for other equity participants. In addition, constituent entities may use a
11 merger to reorganize the capital structure of the surviving entity. Because section 202(b)(4)
12 ostensibly permits the non-uniform treatment of equity holders in a merger, some concern has
13 been raised as to whether the language of section 202(b)(4) should be modified to either *enable*,
14 *limit or eliminate* an “equity shuffle” in a merger. See *Ann E. Conaway Anker, Restructuring (or*
15 *“Shuffling”) Equity Interests in Cross-Form Mergers and Conversions*, Inter-Entity Mergers and
16 Conversions, presented by the Committee on Taxation and Committee on Partnerships and
17 Unincorporated Business Organizations, Chicago, August 2001. As presently drafted, a non-
18 uniform “equity shuffle” may be accomplished in a merger involving an unincorporated entity
19 and the minority owners of the unincorporated entity will not necessarily be entitled to the
20 statutory appraisal right currently afforded to minority stockholders in merging corporate entities.
21 Arguably, any perceived “unfairness” in the “shuffle” may be resolved under the guise of
22 fiduciary duties, assuming, of course, that such duties have not been contractually modified or
23 eliminated.

24
25 The consideration paid to the interest holders of the merging parties may be supplied in
26 whole or part by a person who is not a party to the merger.

27
28 **4. Section 202(b)(5) and (6)** - Sections 202(b)(5) and (6) provide the interest holders of
29 the parties to a merger with the text of the public organic documents and organic rules of a new
30 entity or any amendments to the public organic documents or organic rules of an existing entity.
31 The “organic rules” that are referenced here include the default rules of the entity to the extent
32 they are not contractually modified by the parties.

33
34 **5. Section 202(c)** - Section 202(c) provides the statutory authority for a merging party to
35 include information in a plan of merger that is not specifically listed in section 202(b). One such
36 possibility is that of appraisal rights. Few state statutes provide for appraisal rights for minority
37 dissenting owners of unincorporated entities. A merging entity, could, however, negotiate such a
38 dissenter’s right and thereafter articulate the right pursuant to section 202(c). Whether the so-
39 called “appraisal right” is that anticipated in corporate law (which, in some states, does not
40 include in the appraisal any element for breach of fiduciary duty) or, in the alternative, that of the
41 “buyout” right of *RUPA* would be jurisdiction-dependent. Likewise, the appropriate degree of
42 judicial scrutiny would depend upon the applicable jurisdiction.

1 **6. Source** – This section is patterned after Model Business Corporation Act § 11.02(c)
2 and (e).

3
4
5 **SECTION 203. APPROVAL OF MERGER.**

6 (a) Domestic entities. – Subject to subsection (c), a plan of merger must be approved by a
7 domestic entity:

8 (1) in accordance with the procedures, if any, in its organic law for approval of a
9 merger;

10 (2) if its organic law does not provide procedures for approval of a merger, then in
11 accordance with the procedures, if any, for approval of a plan of merger in its organic rules; or

12 (3) if neither its organic law nor organic rules provide procedures for approval of a
13 merger, then by all the interest holders of the entity.

14 (b) Foreign entities. – Each merging entity that is a foreign entity must approve the
15 merger in accordance with the laws of the foreign jurisdiction.

16 (c) Consent to owner liability. – If an interest holder of a domestic merging entity will
17 have owner liability with respect to the surviving entity, that person must vote for or consent to
18 the merger in a record, unless:

19 (1) the organic rules of the entity in a record provide for the approval of a merger
20 in which some or all of its interest holders become subject to owner liability with the vote or
21 consent of fewer than all of the interest holders; and

22 (2) the person has voted for or consented in a record to that provision of the
23 organic rules, or became an interest holder after the adoption of that provision.

24 **Comments**

1 **1. In general.** – Approval under section 203 is intended to include whatever actions by
2 the governors and interest holders of an entity are required by either its organic law or organic
3 rules to effectuate the merger. For example, if the organic rules of an entity prescribe a
4 procedure for the proposal, adoption and/or approval of a merger, the term “approval” includes
5 conformance to all of those rules. See the definition of “approval” in section 102. If the organic
6 law and organic rules require only approval by the requisite vote of interest holders, then section
7 203 mandates only that required by the organic rules, nothing more. “Approval” also
8 contemplates any additional requirements attendant to the proposal, adoption and approval of an
9 action by the entity approving the merger. This will include in the case of some incorporated
10 entities rules applicable to voting and records that apply to shareholder votes. On the other hand,
11 section 203 is not intended to impose any greater requirements for effecting a merger than those
12 required by the applicable organic rules or organic law of the entity.
13

14 **2. Section 203(a)** - Subsection (a) provides the substantive rule applicable to the
15 approval of mergers by domestic entities under the Act. Subsection (a) sets out an alternative
16 three-part test:

17 1. Approval of a merger must be in accordance with any procedures in the
18 organic law of the entity. This will include following any procedures in the organic rules
19 of the entity that are enforceable under its organic law.

20 2. If the organic law is silent with respect to procedures for approval of a merger,
21 then approval must be in accordance with any applicable procedures in the entity’s
22 organic rules. If the organic rules do not contain such procedures, they may be added by
23 amendment. It is specifically intended that merger procedures may be added at the time a
24 merger is contemplated and as a first step in the approval of a merger.

25 3. If neither the organic law nor the organic rules provide procedures for approval
26 of a merger, then the necessary procedure becomes unanimous approval by the interest
27 holders. Approval in this manner will be fairly rare and will only occur in those
28 circumstances where an entity does not take advantage of the second option of adding
29 approval procedures to its organic rules.
30

31 The incorporation into this article of the merger procedures in the organic law of a party
32 to a merger should be construed broadly to include not only express statutory procedures, but
33 also applicable common law principles such as fiduciary duty standards of governors and
34 majority interest holders. Statutory provisions on “short-form” mergers without approval of
35 interest holders and voting by classes or voting groups will also be applicable.
36

37 **3. Section 203(b)** – Where a foreign entity is a party to a merger under this Act,
38 subsection (b) defers to the laws of the foreign jurisdiction for the requirements for approval of
39 the merger by the foreign entity. Those laws will include the organic law of the foreign entity
40 and other applicable laws, such as this Act if it has been adopted in the foreign jurisdiction. The
41 laws of the foreign jurisdiction will also control the application of any special approval
42 requirements found in the organic rules of the foreign entity.
43

1 **4. Section 203(c)** – Subsection (c) is patterned in part after Model Business Corporation
2 Act § 11.04(h). Subsection (c) will be applicable, for example, to shareholders of a corporation
3 that merges into a general partnership that is not a limited liability partnership if the shareholders
4 become general partners of the surviving general partnership. If such a shareholder were to
5 exercise appraisal rights, however, the shareholder would not become subject to owner liability
6 because one effect of exercising appraisal rights is that the shareholder would not become a
7 general partner in the surviving entity; and, in that case, the consent of that shareholder would not
8 be required.

9
10 The consent of an interest holder required by subsection (c)(2) may be given either by (i)
11 signing or agreeing generally to the terms of organic rules that includes the required provision
12 permitting less than unanimous approval of a merger in which interest holders become subject to
13 owner liability, or (ii) voting for or consenting to an amendment to add such a provision.

14
15
16 **SECTION 204. AMENDMENT OR ABANDONMENT OF PLAN OF MERGER.**

17 (a) Amendment before filing. – A plan of merger may provide that the plan may be
18 amended by the merging entities or their governors or interest holders prior to the filing of a
19 statement of merger, except that the plan may not be amended without a vote of the interest
20 holders of a domestic merging entity to change:

21 (1) the amount or kind of interests, securities, obligations, rights to acquire
22 interests or securities, cash, or other property to be received by those interest holders under the
23 plan;

24 (2) the public organic document or organic rules of the surviving entity that will
25 be in effect immediately following consummation of the merger, except for changes that would
26 not require the approval of the interest holders of the surviving entity under its organic law; or

27 (3) any of the other terms or conditions of the plan if the change would adversely
28 affect any of those interest holders in any material respect.

29 (b) No amendment after filing. – A plan of merger may not be amended after the filing of

1 a statement of merger.

2 (c) Abandonment. – Unless otherwise provided in a plan of merger or in the organic law
3 of any of the merging entities, after the plan has been approved as required by this [article], and
4 at any time before a statement of merger has become effective, the plan may be abandoned by a
5 domestic merging entity without action by its interest holders in accordance with any procedures
6 set forth in the plan or, if no such procedures are set forth in the plan, in the manner determined
7 by the governors, subject to any contractual rights of the other merging parties.

8 (d) Required abandonment filing.--If a merger is abandoned after a statement of merger
9 has been filed with the [Secretary of State] but before the statement of merger has become
10 effective, a statement that the merger has been abandoned in accordance with this section, signed
11 on behalf of any one of the merging entities, shall be filed with the [Secretary of State] before the
12 effective date of the statement of merger. The statement filed under this subsection shall take
13 effect upon filing and the merger shall be deemed abandoned and shall not become effective.

14 **Comments**

15 Unless otherwise provided in the plan of merger, a party to a merger may abandon the
16 transaction without the approval of its interest holders, even though the transaction has been
17 previously approved by those interest holders. The power of a party under this section to
18 abandon a transaction does not affect any contract rights that other parties may have.

19
20 The manner in which a merger may be abandoned under this section will be determined
21 by the entity's organic law and organic rules. Absent some special provision, abandonment may
22 be authorized in the same manner as any other action. The plan of merger may also provide for
23 the manner in which the governors may abandon the merger.

24
25 This section is patterned after Model Business Corporation Act §§ 11.03(e) and 11.08.
26

1 **SECTION 205. STATEMENT OF MERGER; EFFECTIVE DATE.**

2 (a) Required filing. – A statement of merger must be signed by each merging entity and
3 filed with the [Secretary of State].

4 (b) Contents. – A statement of merger must contain:

5 (1) The name, type of entity, and jurisdiction of formation of each merging entity
6 that is not the surviving entity.

7 (2) The name, type of entity, and jurisdiction of formation of the surviving entity.
8 If the surviving entity is a domestic entity, the name of the surviving entity must satisfy the
9 requirements of the organic law of the surviving entity. If the surviving entity is a qualified
10 foreign entity, its name must be available for use by a foreign entity qualifying to do business in
11 this [state] or it must adopt an available name for that purpose.

12 (3) If the statement of merger is not to be effective upon filing, the later date and
13 time on which it will become effective.

14 (4) The manner in which the plan of merger was approved by each domestic
15 merging entity and, if one or more merging entities are foreign entities, the fact that the merger
16 was approved by each foreign merging entity in accordance with the laws of the foreign
17 jurisdiction.

18 (5) If the surviving entity exists before the merger and is a domestic entity, any
19 amendments to its public organic document approved as part of the plan of merger.

20 (6) If the surviving entity is created by the merger, a copy of its public organic
21 document, if any.

22 (7) If the surviving entity is a domestic entity and is required to maintain a

1 registered agent and registered office in this [state], the name of its registered agent and the
2 address of its registered office in this [state].

3 (8) If the surviving entity is a domestic nonfiling entity, the address of its chief
4 executive office or principal place of business.

5 (9) If the surviving entity is:

6 (i) a qualified foreign entity, the name of its registered agent and address
7 of its registered office in this state; or

8 (ii) a nonqualified foreign entity, the address of its chief executive office
9 or principal place of business.

10 [(10) Any other information that the adopting state may require.]

11 (c) Optional contents. – In addition to the provisions required by subsection (b), a
12 statement of merger may contain any other provision not prohibited by applicable law.

13 (d) Effective date. – A statement of merger becomes effective upon the date and time of
14 filing, or such later date and time as specified in the statement of merger.

15 **Comments**

16
17 **1. Section 205(a)** - The filing of a statement of merger makes the transaction a matter of
18 public record. A separate public filing under the merger provisions of the organic law of a
19 domestic merging entity is not required. The filing requirements and filing fee for a statement of
20 merger are set forth in sections 105 and 106.

21
22 **2. Section 205(b)(1) and (2)** – The names of foreign entities set forth in the statement of
23 merger will generally be their names in their jurisdiction of formation, except that if a foreign
24 entity has been required to adopt a different name in order to qualify to do business in the
25 adopting state, the foreign qualification statute will likely require that the name of the entity as
26 set forth in the statement of merger be the name adopted for purposes of qualifying to do
27 business.

28
29 **3. Section 205(b)(4)** – The statement in subsection (b)(4) as to how the plan of merger

1 was approved by each entity necessarily presupposes that the plan was approved in accordance
2 with any valid, special requirements in the organic rules of the entity.

3
4 **4. Sections 205(b)(8) and (9)** - Subsections 205(b)(8) and (9) require the surviving entity
5 to provide a street address because of the definition of “address” in section 102.

6
7 The chief executive office or principal place of business of a surviving, nonfiling entity
8 need not be within the jurisdiction of formation of the entity. The purpose of subsection (b)(8)
9 and (9)(ii) is to give notice of a specific place at which the nonfiling entity may be found for all
10 purposes, including that of service of process.

11
12 **5. Section 205(d)** - The effective time of the statement is the effective time of its filing,
13 unless otherwise specified. A statement may specify a delayed effective time and date, and if it
14 does so the statement becomes effective at the time and date specified.

15
16 **6. Source** – This section is patterned generally after Model Business Corporation Act §
17 11.06. Subsection (c) is patterned after Model Business Corporation Act § 1.23.

18
19
20 **SECTION 206. EFFECT OF MERGER.**

21 (a) General rule. – When a merger becomes effective:

22 (1) the surviving entity continues or comes into existence;

23 (2) each merging entity that is not the surviving entity ceases to exist;

24 (3) all property owned and contract rights possessed by each merging entity vest
25 in the surviving entity without reversion or impairment;

26 (4) all liabilities of each merging entity become the liabilities of the surviving
27 entity;

28 (5) if the surviving entity exists before the merger:

29 (i) all property owned and contract rights possessed by it remain vested in
30 it without reversion or impairment; and

31 (ii) it remains subject to all of its liabilities;

1 (6) the name of the surviving entity may be substituted in any pending action or
2 proceeding for the name of any merging entity;

3 (7) if the surviving entity exists before the merger, its public organic document, if
4 any, and its organic rules are amended to the extent provided in the plan of merger and are
5 binding upon the owners of the surviving entity;

6 (8) if the surviving entity is created by the merger, its public organic document, if
7 any, and its organic rules become effective and are binding upon the owners of the surviving
8 entity;

9 (9) the interests of each merging entity that are to be converted in the merger are
10 converted, and the interest holders of those interests are entitled only to the rights provided to
11 them under the plan of merger and to any appraisal rights they may have under section 108.

12 (b) Future owner liability. – A person that becomes subject to owner liability with respect
13 to the surviving entity as a result of the merger has owner liability only to the extent provided by
14 the organic law of the surviving entity and only for those liabilities that arise after the merger
15 becomes effective.

16 (c) Past owner liability. – The effect of the merger on the owner liability of a person that
17 is incurred before the merger becomes effective is as follows:

18 (1) The merger does not discharge any owner liability under the organic law of the
19 merging entity in which the person was an interest holder to the extent that owner liability arose
20 before the merger becomes effective.

21 (2) The person does not have owner liability under the organic law of the merging
22 entity in which the person was an interest holder before the merger for any liability that arises

1 after the merger becomes effective.

2 (3) The organic law of the merging entity continues to apply to the collection or
3 discharge of any owner liability preserved by paragraph (1) as if the merger had not occurred.

4 (4) The person has whatever rights of contribution from any other person are
5 provided by the organic law or organic rules of the merging entity with respect to any owner
6 liability preserved by paragraph (1) as if the merger had not occurred.

7 (d) Service of process on foreign surviving entity. – A foreign entity that is a surviving
8 entity:

9 (1) may be served with process in this [state] for the collection and enforcement of
10 any liabilities of any domestic merging entity;

11 (2) appoints the [Secretary of State] as its agent for service of process for the
12 purpose of collecting or enforcing those liabilities; and

13 (3) agrees to provide to the [Secretary of State] the address to which service of
14 process on the surviving entity may be mailed.

15 (e) Cancellation of foreign qualification. – When the merger becomes effective, the
16 certificate of authority or other foreign qualification of any foreign merging entity is canceled.

17 **Comments**

18
19 **1. Section 206(a)** - Subsection (a) states the general understanding that in a merger the
20 assets, contract rights, and liabilities of the merging entities automatically vest in the surviving
21 entity. As such, the surviving entity becomes the owner of all real and personal property of the
22 merged entities and is subject to all debts, obligations and liabilities of the merging entities. A
23 merger does not constitute a transfer, assignment, or conveyance of any property held by the
24 merging entities prior to the merger. A merger does not give rise to a claim that a contract with a
25 merging entity is no longer in effect on the ground of nonassignability, unless the contract
26 specifically provides that it does not survive a merger. The contract rights that are vested in the
27 surviving entity include, without limitation, the right to enforce subscription agreements for

1 interests and obligations to make capital contributions entered into or incurred before the merger.

2
3 After a merger becomes effective, the organic law of the surviving entity governs the
4 surviving entity.

5
6 See section 103 which modifies the provisions of this section with respect to the effects
7 of a merger to the extent a regulatory law provides otherwise.
8

9 **2. Section 206(a)(6)** – All pending proceedings involving either the survivor or a party
10 whose separate existence ceased as a result of the merger are continued. Under subsection (a)(6),
11 the name of the survivor may be, but need not be, substituted in any pending proceeding for the
12 name of a party to the merger whose separate existence ceased as a result of the merger. The
13 substitution may be made whether the survivor is a complainant or a respondent, and may be
14 made at the instance of either the survivor or an opposing party. Such a substitution has no
15 substantive effect, because whether or not the survivor’s name is substituted the survivor
16 succeeds to the claims of, and is subject to the liabilities of, any party to the merger whose
17 separate existence ceased as a result of the merger.
18

19 **3. Section 206(a)(9)** – Subsection (a)(9) is limited to specifying the effects of a merger
20 on those interests of parties to the merger that are converted in the merger. Some or all of the
21 interests of a surviving entity that continues in existence may remain unchanged in a merger,
22 although the holders of those interests may be entitled to appraisal rights.
23

24 **4. Section 206(b)** - Subsection (b) sets forth the general rule that an owner in a surviving
25 entity will be personally liable only for the liabilities of the surviving entity that arise after the
26 effective date of a merger. When a liability arises will be determined by other applicable law.
27 The concept of “liabilities” is defined very expansively in section 102.
28

29 **5. Section 206(c)** - Subsection (c) has four parts:
30

31 (1) An interest holder in a merging entity who had owner liability for the liabilities
32 of the merging entity under the entity’s organic law is not discharged from those
33 liabilities if they arose before the effective date of the merger.

34 (2) An interest holder in a merging entity does not have owner liability for the
35 liabilities of the surviving entity if those liabilities arose after the effective date of the
36 merger.

37 (3) The organic law governing the merging entity continues in effect for the
38 purpose of preserving the owner liability described in paragraph (1) despite the
39 nonexistence of the merging entity after the merger.

40 (4) The organic law of the merging entity continues to apply for the purpose of
41 any contribution rights that may exist with respect to liabilities described in paragraph (1),
42 again notwithstanding the nonexistence of the merging entity after the merger.
43

1 **6. Sections 206(b) and (c)** – The effects of subsections (b) and (c) will depend to a
2 certain extent on how a contractual liability is worded. For example, a lease that provides that
3 the entire rent is due when the lease is signed, but permits that rent to be paid in future
4 installments, will be treated differently from a lease that does not provide that the entire rent is
5 earned upon signing.
6

7 Under section 203(c), a merger cannot have the effect of making any interest holder of a
8 domestic merging entity subject to owner liability for the obligations or liabilities of any other
9 person or entity unless each such interest holder has executed a separate written consent to
10 become subject to such liability or previously agreed to the effectuation of a transaction having
11 that effect without the interest holder's consent.
12

13 **7. Section 206(d)** – When a merger becomes effective, a foreign entity that is the
14 surviving entity is deemed to appoint the secretary of state as its agent for service of process in a
15 proceeding to enforce the rights of any interest holders of each domestic merging entity who are
16 entitled to and exercise appraisal rights. One of the liabilities that a foreign surviving entity
17 succeeds to is the obligation of a merging entity to pay the amount, if any, to which its interest
18 holders who assert appraisal rights are entitled.
19

20 **8. Source.** – Subsection (d) is patterned in part after DRULPA § 17-211(c)(7). This
21 section is patterned generally after Model Business Corporation Act § 11.07.
22
23

1 [ARTICLE] 3

2
3 DIVISION

4
5 SECTION 301. DIVISION AUTHORIZED.

6
7 (a) Division of domestic entities. – By complying with this [article] and except as
8 otherwise provided in this section, a domestic entity may divide into:

9 (1) two or more new domestic entities;

10 (2) the dividing entity and one or more new domestic or foreign entities;

11 (3) one or more new domestic entities and one or more new foreign entities; or

12 (4) two or more new foreign entities.

13 (b) Creation of foreign entities. – A foreign entity may be created by the division of a
14 domestic entity only if the division is authorized by the laws of the foreign jurisdiction.

15 (c) Division of foreign entities. – If the division is authorized by the laws of the foreign
16 jurisdiction, one or more of the resulting entities created in a division of a foreign entity may be a
17 domestic entity except as otherwise provided in this section.

18 (d) Other procedures. – This [article] does not apply to a division described in subsection
19 (a), (b) or (c) in which the dividing entity and all of the resulting entities are the same type of
20 entity if the laws of this [state] provide procedures for the approval or effectuation of such a
21 transaction.

22 (e) Transitional provision. – If any debt security, note, or similar evidence of indebtedness
23 for money borrowed, whether secured or unsecured, or a contract of any kind, issued, incurred, or
24 executed by a domestic entity before the effective date of this [act] contains a provision that
25 applies to a merger or sale of all or substantially all of the assets of the entity but does not refer to

1 a division, the provision applies to a division of the entity until such time as the provision is
2 amended subsequent to that date.

3 [(f) Excluded entities. – Domestic entities of the following types may not divide or be
4 created in a division under this [article]:

5 (1)

6 (2)]

7 **Comments**

8
9 **1. In General** – The division transaction authorized by this article is the reverse of a
10 merger. Instead of two or more entities being merged into one entity, in a division one existing
11 entity is divided into two or more resulting entities. The dividing entity may or may not survive
12 the division, and one or more of the resulting entities may be foreign entities if the laws of the
13 foreign jurisdiction permit the division. As part of the division, the assets and liabilities of the
14 dividing entity are allocated to the resulting entities as provided in the plan of division to the
15 extent permitted by this article.

16
17 **2. Section 301(d)** - It is expected that many adopting states will add provisions
18 authorizing divisions to their organic laws. See the discussion in section 2(c) of the Prefatory
19 Note. On the other hand, there will be some types of entities where it is unlikely that division
20 provisions will be added to the organic law, for example, unincorporated nonprofit associations.
21 In cases where an organic law provides for a division in which the dividing entity and the
22 resulting entities are all of the same type, there is no need for this Act; but in cases where an
23 organic law does not provide for divisions, this Act will serve the important function of
24 authorizing divisions just involving entities of that type. Subsection (d) has been drafted in
25 general terms to accommodate both the existing law in an adopting state at the time this Act is
26 enacted and also any changes in organic laws after the enactment of this Act. Subsection (d)
27 could be adopted in the following more specific form identifying the organic laws to which it
28 refers:

29
30 This [article] does not apply to a division under the following statutes in
31 which the dividing entity and all of the resulting entities are the same type of
32 entity:

33 (1) Chapter 12B of the MBCA

34 (2)

35 (3)

36
37 **3. Section 301(f)** – Subsection (f) is an optional provision that may be used to exclude

1 certain types of entities from the scope of this article. It is limited to domestic entities because a
2 restriction on the power of a foreign entity to engage in a division is more properly placed in the
3 organic law of the foreign entity. A provision that excludes certain types of domestic entities
4 from the Act generally is set forth in section 107.

5
6 **4. Tax Considerations** – This Act authorizes a division for state law purposes. Federal
7 law and other state law will independently determine how a division transaction will be taxed.
8
9

10 **SECTION 302. PLAN OF DIVISION.**

11 (a) Plan of division required. – A domestic entity may divide under this [article] by
12 approving a plan of division.

13 (b) Required contents. – A plan of division must be in a record and contain:

14 (1) as to the dividing entity and each new resulting entity, its name, jurisdiction of
15 formation, and type of entity;

16 (2) the terms and conditions of the division;

17 (3) the manner and basis of:

18 (i) converting the interests of the dividing entity into interests, securities,
19 obligations, rights to acquire interests or securities, cash, other property, or any combination of
20 the foregoing;

21 (ii) allocating the assets and liabilities of the dividing entity between or
22 among the resulting entities; and

23 (iii) disposing of the interests of the resulting entities created in the
24 division;

25 (4) a statement whether the dividing entity will continue after the division;

26 (5) for each resulting entity created by the division, its proposed public organic

document, if any, and the full text of its organic rules that are proposed to be in a record;

(6) if the dividing entity will continue after the division, any proposed amendments to its public organic document or organic rules that are in a record; and

(7) any other provision required by the organic law or organic rules of the dividing entity or a resulting entity.

(c) Optional contents. – In addition to the provisions required by subsection (b), a plan of division may contain any other provision not prohibited by applicable law.

(d) Reference to extrinsic facts. – Any provision of a plan of division may be made dependent upon facts ascertainable outside of the plan, if the manner in which the facts will operate upon the provision is contained in the plan.

Comments

1. Section 302(a) - The requirements for the approval of a plan of division are set forth in section 303.

2. Section 302(b)(3) – [Explain options under paragraph (iii) for disposing of interests in the resulting entities.]

3. Section 302(b)(5) and (6) – Sections 302(b)(5) and (6) provide the interest holders of the dividing entity with the text of the public organic documents and organic rules of the resulting entities and any amendments to the public organic documents or organic rules of the dividing entity. The “organic rules” that are referenced here include the default rules of the entity to the extent they are not contractually modified by the parties.

4. Section 302(c) – Section 302(c) provides the statutory authority for the dividing entity to include information in a plan of division that is not specifically listed in section 302(b). One such possibility is that of appraisal rights. Few state statutes provide for appraisal rights for minority dissenting owners of unincorporated entities. A dividing entity, could, however, provide for appraisal rights in section 302(c).

1 **SECTION 303. APPROVAL OF DIVISION.**

2 (a) Domestic entities. – Subject to subsections (c) and (d), a plan of division must be
3 approved by a domestic dividing entity:

4 (1) in accordance with the procedures, if any, in its organic law for approval of a
5 division;

6 (2) if its organic law does not provide procedures for approval of a division, then
7 in accordance with the procedures, if any, in its organic law for approval of a merger;

8 (3) if its organic law does not provide procedures for approval of either a division
9 or a merger, then in accordance with the procedures, if any, for approval of a plan of division in
10 its organic rules;

11 (4) if its organic law does not provide procedures for approval of either a division
12 or a merger, and its organic rules do not provide procedures for approval of a division, then by all
13 interest holders of the entity.

14 (b) Foreign entities. – A division of a foreign entity in which one or more of the resulting
15 entities is a domestic entity must be approved in accordance with the laws of the foreign
16 jurisdiction.

17 (c) Consent to owner liability. – If an interest holder of a domestic dividing entity will
18 have owner liability with respect to a resulting entity, that person must vote for or consent to the
19 division in a record, unless:

20 (1) the organic rules of the entity in a record provide for the approval of a division
21 in which some or all of its interest holders become subject to owner liability with the vote or
22 consent of fewer than all of the interest holders; and

1 (2) the person has voted for or consented in a record to that provision of the
2 organic rules, or became an interest holder after the adoption of the provision.

3 (d) Transitional provision.—If any provision of the organic rules of a domestic dividing
4 entity, or of an agreement to which any of its governors or interest holders are parties, adopted or
5 entered into before the effective date of this [act] specifies procedures for approval of a merger of
6 the entity but does not refer to approval of a division, the provision shall be deemed to apply to
7 approval of a division until such time as the provision is amended subsequent to that date.

8 **Comments**

9
10 **1. In general.** – Approval under section 303 is intended to include whatever actions by
11 the governors and interest holders of a dividing entity are required by either its organic law or
12 organic rules to effectuate the division. For example, if the organic rules of an entity prescribe a
13 procedure for the proposal, adoption and/or approval of a division, the term “approval” includes
14 conformance to all of those rules. See the definition of “approval” in section 102. If the organic
15 law and organic rules require only approval by the requisite vote of interest holders, then section
16 303 mandates only that required by the organic rules, nothing more. “Approval” also
17 contemplates any additional requirements attendant to the proposal, adoption and approval of an
18 action by the entity approving the division. This will include in the case of some incorporated
19 entities rules applicable to voting and records that apply to shareholder votes. On the other hand,
20 section 303 is not intended to impose any greater requirements for effecting a division than those
21 required by the applicable organic rules or organic law of the entity.

22
23 **2. Section 303(a)** - Subsection (a) provides the substantive rule applicable to the
24 approval of divisions by domestic entities under the Act. Subsection (a) sets out an alternative
25 four-part test:

26 1. Approval of a division must be in accordance with any procedures in the
27 organic law of the entity. This will include following any procedures in the organic rules
28 of the entity that are enforceable under its organic law.

29 2. If the organic law is silent with respect to procedures for approval of a division
30 but contains procedures for approval of a merger, those procedures will also apply to
31 approval of a division.

32 3. If the organic law is silent with respect to procedures for approval of a division
33 or a merger, then approval must be in accordance with any applicable procedures in the
34 entity’s organic rules. If the organic rules do not contain such procedures, they may be
35 added by amendment. It is specifically intended that division procedures may be added at
36 the time a division is contemplated and as a first step in the approval of a division.

1 4. If neither the organic law nor the organic rules provides the necessary
2 procedures, then the necessary procedure becomes unanimous approval by the interest
3 holders. Approval in this manner will be fairly rare and will only occur in those
4 circumstances where an entity does not take advantage of the third option of adding
5 approval procedures to its organic rules.
6

7 The incorporation into this article of the merger or division procedures in the organic law
8 of the dividing entity should be construed broadly to include not only express statutory
9 procedures, but also applicable common law principles such as fiduciary duty standards of
10 governors and majority interest holders. Statutory provisions on voting by classes or voting
11 groups will also be applicable.
12

13 Statutory provision on “short-form” mergers will not be applicable. **[Explain.]**
14

15 **3. Section 303(b)** – Where a foreign entity is the dividing entity, subsection (b) defers to
16 the laws of the foreign jurisdiction for the requirements for approval of the division by the
17 foreign entity. Those laws will include the organic law of the foreign entity and other applicable
18 laws, such as this Act if it has been adopted in the foreign jurisdiction. The laws of the foreign
19 jurisdiction will also control the application of any special approval requirements found in the
20 organic rules of the foreign entity.
21

22 **4. Section 303(c)** – Subsection (c) is patterned in part after Model Business Corporation
23 Act § 11.04(h). Subsection (c) will be applicable, for example, to shareholders of a dividing
24 corporation where one of the resulting entities is a general partnership that is not a limited
25 liability partnership if the shareholders become general partners of the general partnership. If
26 such a shareholder were to exercise appraisal rights, however, the shareholder would not become
27 subject to owner liability because one effect of exercising appraisal rights is that the shareholder
28 would not become a general partner in the resulting entity; and, in that case, the consent of that
29 shareholder would not be required.
30

31 The consent of an interest holder required by subsection (c)(2) may be given either by (i)
32 signing or agreeing generally to the terms of organic rules that includes the required provision
33 permitting less than unanimous approval of a division in which interest holders become subject
34 to owner liability, or (ii) voting for or consenting to an amendment to add such a provision.
35
36

37 **SECTION 304. AMENDMENT OR ABANDONMENT OF PLAN OF DIVISION.**

38 (a) Amendment before filing. – A plan of division of a domestic dividing entity may
39 provide that the plan may be amended by its governors or interest holders prior to the filing of a
40 statement of division, except that the plan may not be amended without a vote of the interest

holders to change:

(1) the amount or kind of interests, securities, obligations, rights to acquire interests or securities, cash, or other property to be received by those interest holders under the plan:

(2) the public organic document or organic rules of any of the resulting entities that will be in effect immediately following consummation of the division, except for changes that would not require the approval of the interest holders of that resulting entity under its organic law; or

(3) any of the other terms or conditions of the plan if the change would adversely affect any of those interest holders in any material respect.

(b) No amendment after filing. – A plan of division may not be amended after the filing of a statement of division.

(c) Abandonment. – Unless otherwise provided in a plan of division, after the plan has been approved as required by this [article], and at any time before a statement of division has become effective, the plan may be abandoned by a domestic dividing entity without action by its interest holders in accordance with any procedures set forth in the plan or, if no such procedures are set forth in the plan, in the manner determined by the governors.

(d) Required abandonment filing. – If a division is abandoned after a statement of division has been filed with the [Secretary of State] but before the statement of division has become effective, a statement that the division has been abandoned in accordance with this section, signed on behalf of the dividing entity, shall be filed with the [Secretary of State] before the effective date of the statement of division. The statement filed under this subsection takes

effect upon filing and the division is deemed abandoned and does not become effective.

Comments

Unless otherwise provided in the plan of division, the dividing entity may abandon the transaction without the approval of its interest holders, even though the transaction has been previously approved by those interest holders.

The manner in which a division may be abandoned under this section will be determined by the entity's organic law and organic rules. Absent some special provision, abandonment may be authorized in the same manner as any other action. The plan of division may also provide for the manner in which the governors may abandon the division.

This section is patterned after Model Business Corporation Act §§ 11.03(e) and 11.08.

SECTION 305. STATEMENT OF DIVISION; EFFECTIVE DATE.

(a) Required filing. – A statement of division must be signed by the dividing entity and filed with the [Secretary of State].

(b) Contents. – A statement of division must contain:

(1) The name, jurisdiction of formation, and type of entity of the dividing entity.

(2) Whether the dividing entity will survive the division.

(3) The name, jurisdiction of formation, and type of entity of each resulting entity created in the division. If such a resulting entity is a domestic entity, its name must satisfy the requirements of its organic law. If such a resulting entity is a qualified foreign entity, its name must be available for use by a foreign entity qualifying to do business in this [state] or it must adopt an available name for that purpose.

(4) If the statement of division is not to be effective upon filing, the later date and time on which it will become effective.

(5) That the plan of division was approved as required by section 303 if the

dividing entity is a domestic entity; or, if the dividing entity is a foreign entity, that the division was approved in accordance with the laws of the foreign jurisdiction.

(6) If the dividing entity is a domestic entity and survives the division, any amendments to its public organic document approved as part of the plan of division.

(7) With respect to each domestic resulting entity created by the division, a copy of its public organic document, if any.

(8) If a resulting entity created by the division is:

(i) a domestic entity and is required to maintain a registered agent and registered office in this [state], the name of its registered agent and the address of its registered office in this [state]; or

(ii) a domestic nonfiling entity, the address of its chief executive office or principal place of business.

(9) If a resulting entity is:

(i) a qualified foreign entity, the name of its registered agent and address of its registered office in this state and any other information required in an application by such an entity for authority to do business in this [state]; or

(ii) a nonqualified foreign entity, the address of its chief executive office or principal place of business.

[(10) Any other information the adopting state may require.]

[Issue: Should the statement of division be required to describe, at least in summary fashion, the allocation of assets and liabilities occurring in the division?]

(c) Optional contents. – In addition to the provisions required by subsection (b), a

statement of division may contain any other provision not prohibited by applicable law.

(d) Effective date. – A statement of division becomes effective upon the date and time of filing, or such later date and time as specified in the statement of division.

Comments

1. Section 305(a) - The filing of a statement of division makes the transaction a matter of public record. The filing requirements and filing fee for a statement of division are set forth in sections 105 and 106.

2. Section 305(b)(5) – The statement in subsection (b)(5) as to how the plan of division was approved by the dividing entity necessarily presupposes that the plan was approved in accordance with any valid, special requirements in the organic rules of the entity.

3. Sections 305(b)(8) and (9) - Subsections 305(b)(8) and (9) require the surviving entity to provide a street address because of the definition of “address” in section 102.

The chief executive office or principal place of business of a surviving, nonfiling entity need not be within the jurisdiction of formation of the entity. The purpose of subsection (b)(8) and (9)(ii) is to give notice of a specific place at which the nonfiling entity may be found for all purposes, including that of service of process.

4. Section 305(d) - The effective time of the statement is the effective time of its filing, unless otherwise specified. A statement may specify a delayed effective time and date, and if it does so the statement becomes effective at the time and date specified.

SECTION 306. EFFECT OF DIVISION.

(a) General rule. – When a division becomes effective:

(1) The dividing entity is divided into the resulting entities named in the plan of division.

(2) If the dividing entity is not to survive the division, the dividing entity ceases to exist.

1 (3) If the dividing entity is to survive the division, the dividing entity continues to
2 exist.

3 (4) The resulting entities created in the division come into existence.

4 (5) All property, causes of action, and contract rights of the dividing entity:
5 (i) are allocated to and vest in the resulting entities created in the division,
6 or remain vested in the dividing entity, in each case without reversion or impairment, to the
7 extent specified in the plan of division;

8 (ii) not allocated by the plan of division remain vested in the dividing
9 entity if the dividing entity survives the division; and

10 (iii) not allocated by the plan of division are allocated to and vest equally
11 in the resulting entities as tenants in common without reversion or impairment if the dividing
12 entity does not survive the division.

13 (6) The name of a resulting entity to which a cause of action is allocated as
14 provided in paragraph (5) may be substituted or added in any pending action or proceeding to
15 which the dividing entity is a party at the effective time of the division.

16 (7) The liabilities of the dividing entity are allocated between or among the
17 resulting entities as provided in section 307.

18 (8) Each resulting entity created in the division holds any property, causes of
19 action, and contract rights and is liable for any liabilities allocated to it as the successor to the
20 dividing entity, and the property, causes of action, contract rights, and liabilities are not deemed
21 to have been assigned to the resulting entity in any manner, whether directly or indirectly, or by
22 operation of law.

1 (9) If the dividing entity survives the division, its public organic document, if any,
2 and its organic rules are amended to the extent provided in the plan of division and remain
3 binding on its interest holders.

4 (10) The public organic document, if any, and the organic rules of each resulting
5 entity created by the division become effective and are binding upon the interest holders of the
6 resulting entity.

7 (11) The interests of the dividing entity that are to be converted in the division are
8 converted, and the interest holders of those interests are entitled only to the rights provided to
9 them under the plan of division and to any appraisal rights they may have under section 108.

10 (b) Future owner liability. – A person that becomes subject to owner liability with respect
11 to a resulting entity as a result of the division has owner liability only to the extent provided by
12 the organic law of that entity and only for those liabilities that are incurred after the division
13 becomes effective.

14 (c) Past owner liability. – The effect of the division on the owner liability of an interest
15 holder of the dividing entity that is incurred before the division becomes effective is as follows:

16 (1) The division does not discharge any owner liability under the organic law of
17 the dividing entity to the extent the owner liability was incurred before the division becomes
18 effective.

19 (2) The person does not have owner liability under the organic law of the dividing
20 entity for any liability that is incurred after the division becomes effective.

21 (3) The organic law of the dividing entity continues to apply to the collection or
22 discharge of any owner liability preserved by paragraph (1) as if the division had not occurred.

1 (4) The person has whatever rights of contribution from any other person are
2 provided by the organic law or organic rules of the dividing entity with respect to any owner
3 liability preserved by paragraph (1) as if the division had not occurred.

4 (d) Service of process on foreign resulting entity. – A foreign entity that is a resulting
5 entity:

6 (1) may be served with process in this [state] for the collection and enforcement of
7 any liabilities of the dividing entity to which it is subject;

8 (2) appoints the [Secretary of State] as its agent for service of process for the
9 purpose of collecting and enforcing those liabilities; and

10 (3) agrees to provide to the [Secretary of State] the address to which service of
11 process on the resulting entity may be mailed.

12 (e) Cancellation of foreign qualification. – If the dividing entity is a qualified foreign
13 entity and does not survive the division, its certificate of authority or other foreign qualification is
14 canceled when the division becomes effective.

15 (f) Qualification of foreign resulting entity. – If a resulting entity created by a division is a
16 qualified foreign entity, it shall be authorized to do business in this [state] when the division
17 becomes effective.

18 [(g) Allocation of real property. – The allocation of any fee or freehold interest or
19 leasehold having a remaining term of ___ years or more in any real property located in this [state]
20 owned by the dividing entity to a resulting entity created by the division shall not be effective
21 until one of the following documents is filed in the [office for the recording of deeds] in which
22 the real property is located:

- (1) a deed, lease or other instrument of confirmation describing the real property;
- (2) a duly executed duplicate original copy of the statement of division;
- (3) a copy of the statement of division certified by the [Secretary of State];
- (4) list other documents that may be filed under the practice in the adopting state].

Comments

1. Section 306(a)(2) and (3) - Subsection (a)(2) and (3) state the general rules that a division results in the division of a single entity into two or more new or existing entities. The filing of a statement of division may either terminate the dividing entity and create two or more new entities or continue the existence of the dividing entity and recognize the new existence of one or more other entities.

2. Section 306(a)(5) - The property, causes of action, and contract rights of the dividing entity may be allocated to the surviving entities without reversion or impairment in any manner stated in the plan. If the plan is silent as to the allocation of these assets, the dividing entity retains the assets if it survives the division; otherwise the surviving entities take the assets as tenants in common. The allocation is, of course, subject to the challenge on the basis of fraud or other violation of law.

3. Section 306(a)(7) – The allocation of liabilities in a division is controlled by section 307. The term “liabilities” is defined very broadly in section 102.

4. Section 306(b)(8) – The allocation of assets and liabilities in a division occurs without an assignment by operation of law. As with a merger, a division should not trigger “assignment” clauses.

5. Section 306(b) - Subsection (b) sets forth the general rule that an owner in a resulting entity will be personally liable only for the liabilities of the resulting entity that arise after the effective date of a division. When a liability arises will be determined by other applicable law. The concept of “liabilities” is defined very expansively in section 102.

6. Section 306(c) - Subsection (c) has four parts:

(1) An interest holder in a dividing entity who had owner liability for the liabilities of the dividing entity under the entity’s organic law is not discharged from those liabilities if they arose before the effective date of the division.

(2) An interest holder in a dividing entity does not have owner liability for the liabilities of a resulting entity if those liabilities arose after the effective date of the division.

1 (3) The organic law governing the dividing entity continues in effect for the
2 purpose of preserving the owner liability described in paragraph (1) despite the
3 nonexistence of the dividing entity after the merger.

4 (4) The organic law of the dividing entity continues to apply for the purpose of
5 any contribution rights that may exist with respect to liabilities described in paragraph (1),
6 again notwithstanding the nonexistence of the dividing entity after the division.
7

8 **7. Sections 306(b) and (c)** – The effects of subsections (b) and (c) will depend to a
9 certain extent on how a contractual liability is worded. For example, a lease that provides that
10 the entire rent is due when the lease is signed, but permits that rent to be paid in future
11 installments, will be treated differently from a lease that does not provide that the entire rent is
12 earned upon signing.
13

14 Under section 303(c), a division cannot have the effect of making any interest holder of a
15 domestic dividing entity subject to owner liability for the obligations or liabilities of any other
16 person or entity unless each such interest holder has executed a separate written consent to
17 become subject to such liability or previously agreed to the effectuation of a transaction having
18 that effect without the interest holder's consent.
19

20 **8. Section 306(g)** - Subsection (g) is intended to prevent the use of a division to avoid
21 real estate transfer taxes. An adopting jurisdiction may wish to require the filing of a plan of
22 division in the county where "divided" real estate or property is located. California, for instance,
23 permits the recording of a plan and title companies are thereafter entitled to rely upon the plan
24 regarding title.
25
26

27 **SECTION 307. ALLOCATION OF LIABILITIES IN A DIVISION**

28 (a) General rule. – When a division becomes effective, the liabilities of the dividing entity
29 are allocated between or among the resulting entities as follows:

30 (1) The resulting entities are each responsible as separate and distinct entities only
31 for those liabilities that each resulting entity subsequently undertakes or incurs in its own name,
32 except that each resulting entity shall also be liable for the liabilities of the dividing entity to the
33 extent provided in this section.

34 (2) All liabilities of the dividing entity:

35 (i) are allocated to and become the liabilities of the resulting entities

1 created in the division, or remain the liabilities of the dividing entity, to the extent specified in
2 the plan of division;

3 (ii) not allocated by the plan of division remain the liabilities solely of the
4 dividing entity if the dividing entity survives the division; and

5 (iii) not allocated by the plan of division are allocated to and become the
6 joint and several liabilities of the resulting entities if the dividing entity does not survive the
7 division.

8 (3) One or more, but less than all, of the resulting entities shall be free of a
9 particular liability of the dividing entity to the extent, if any, provided in paragraph (2) if:

10 (i) no violation of law is effected thereby;

11 (ii) the allocations of assets and liabilities in the division is not fraudulent
12 as to the creditor who is owed the liability under [cite fraudulent transfer law of adopting state];
13 and

14 (iii) the division does not materially increase the risk of nonpayment or
15 nonperformance of the liability.

16 (b) Optional notice to creditors. – A resulting entity may notify a known creditor of the
17 division at any time after its effective date as follows:

18 (1) The notice must be in a record and:

19 (i) describe the division in sufficient detail to permit the creditor
20 reasonably to evaluate the effects of the division on the liability owed to the creditor;

1 (ii) state the deadline, which may not be fewer than 120 days after the date
2 the notice is given, by which the resulting entity must receive an objection to the allocation to the
3 resulting entity of the liability owed to the creditor;

4 (iii) provide a mailing address where an objection may be sent; and

5 (iv) state that if an objection is not received by the deadline, the liability
6 owed to the creditor will be allocated in the manner described in the notice.

7 (2) If a creditor who has received notice under this subsection does not deliver an
8 objection to the resulting entity by the deadline set forth in the notice, the liability owed to the
9 creditor shall be allocated as provided in the plan of division without regard to the application of
10 the tests in subsection (a)(3).

11 (c) Publication of notice to creditors. – A resulting entity may publish notice of the
12 division at any time after its effective date as follows:

13 (1) The notice must be in a record and:

14 (i) be published one time in a newspaper of general circulation in the
15 county where the principal office of the dividing entity (or, if none in this [state], its registered
16 office) is or was last located;

17 (ii) describe the division in sufficient detail to permit persons to whom
18 liabilities are owed reasonably to evaluate the effects of the division on those liabilities;

19 (iii) provide a mailing address where an objection may be sent; and

20 (iv) state that if an objection is not received from a creditor of the dividing
21 entity within three years after the publication of the notice, the liability owed to the creditor will
22 be allocated in the manner described in the notice.

1 (2) If the resulting entity publishes a notice as provided in this subsection, the
2 liability owed to a creditor who was not known to the dividing entity at the effective time of the
3 division and who does not deliver an objection to the resulting entity by the deadline set forth in
4 the notice shall be allocated as provided in the plan of division without regard to the application
5 of the tests in subsection (a)(3).

6 (d) Commencement of judicial proceeding by creditor. – If a resulting entity that has
7 received an objection under subsection (b) or (c) rejects the objection, the creditor may
8 commence a proceeding in the [name or describe] court of the county where the principal office
9 (or, if none in this [state], the registered office) of the resulting entity is located within 90 days
10 after the date that the creditor is notified by the resulting entity of the rejection. If the creditor
11 does not commence a proceeding within that time period, the allocation of the liability shall be
12 conclusively deemed to satisfy the requirements of subsection (a)(3).

13 (e) Commencement of judicial proceeding by resulting entity. – A resulting entity may
14 commence a proceeding in the [name or describe] court of the county where the principal office
15 (or, if none in this [state], the registered office) of the resulting entity is located for a
16 determination of whether the allocation of some or all of the liabilities of the dividing entity
17 satisfies the requirements of subsection (a)(3).

18 (f) Award of fees and costs. – The court may award costs and attorneys fees to a creditor
19 in such amount as the court finds reasonable in a proceeding under subsection (d) or (e) without
20 regard to the outcome of the proceeding if the court finds that there was a reasonable basis for the
21 creditor to object to the allocation of the liability owed to the creditor.

1 (g) Preservation of liabilities. – If a resulting entity accepts the objection of a creditor or it
2 is determined pursuant to subsection (d) or (e) that the allocation of a liability does not satisfy the
3 requirements of subsection (a)(3), the rights of the creditor shall not be impaired by the division;
4 and any claim existing or action or proceeding pending by or against the dividing entity with
5 respect to that liability may be prosecuted to judgment as if the division had not taken place, or
6 the resulting entities may be proceeded against or substituted in place of the dividing entity as
7 joint and several obligors on the liability, regardless of any provision of the plan of division
8 allocating the liability.

9 (h) Liens preserved. – Liens, security interests and other charges upon the property of the
10 dividing entity shall not be impaired by the division, notwithstanding any otherwise enforceable
11 allocation of liabilities of the dividing entity.

12 **Comments**

- 13
14 1. **[An entity can always contract with a creditor for a different result than is provided in**
15 **this section.]**
16
17

1 [ARTICLE] 4

2
3 INTEREST EXCHANGE

4
5 SECTION 401. INTEREST EXCHANGE AUTHORIZED.

6 (a) General rule. – By complying with this [article] and except as otherwise provided in
7 this section:

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

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

14 (b) Foreign entities. – A foreign entity may be a party to an interest exchange under this
15 [article] only if the interest exchange is authorized by the laws of the foreign jurisdiction.

16 (c) Other procedures. – This [article] does not apply to an interest exchange described in
17 subsection (a) in which the exchanging entity and the acquiring entity are the same type of entity
18 if the laws of this [state] provide procedures for the approval or effectuation of such a
19 transaction.

20 (d) Transitional provision. – If any debt security, note, or similar evidence of
21 indebtedness for money borrowed, whether secured or unsecured, or a contract of any kind,
22 issued, incurred, or executed by a domestic entity before the effective date of this [act] contains a
23 provision that applies to a merger of the entity but does not refer to an interest exchange, the
24 provision applies to an interest exchange until such time as the provision is amended subsequent

1 to that date.

2 (e) Excluded entities. – Domestic entities of the following types may not be a party to an
3 interest exchange under this [article]:

4 (1)

5 (2)]

6 **Comments**

7
8 **1. In General** – An interest exchange is the same type of transaction as the share
9 exchange provided for in Section 11.03 of the *MBCA*. The effect of an interest exchange is that:
10 (1) the separate existence of the exchanging entity is not affected; and (2) the acquiring entity
11 acquires all of the interests of one or more classes of the exchanging entity. An interest exchange
12 permits accomplishment of the same result as a triangular merger in which the acquiring entity
13 first forms a new subsidiary entity and the target entity is then merged into the new subsidiary,
14 with the result that the target becomes a subsidiary of the acquiring entity. An interest exchange
15 also allows an indirect acquisition through the use of consideration in the exchange that is not
16 provided by the acquiring entity (*e.g.*, consideration from another or related entity).
17

18 Neither share exchanges nor interest exchanges are universally recognized in either
19 corporation or unincorporated entity laws. To date, jurisdictions adopting the *MBCA* provide for
20 a share exchange within their corporate law. Non-*MBCA* jurisdictions are not uniform in their
21 acceptance of share exchanges. For example, Delaware does not permit share exchanges.
22

23 Many states have not provided for an interest exchange within their unincorporated entity
24 laws. For jurisdictions that do provide for interest exchanges *see Texas Business Corporation*
25 *Act, Article 5.02 and Texas Revised Partnership Act, Article 6132b-9,03* (Texas provides for both
26 share and interest exchanges); and *NRS Chapter 92A* (permitting an interest exchange).
27

28 **2. Section 401(a)** – The acquiring entity is not required to acquire all of the interests in
29 the exchanging entity. For example, assume that an LLC with three classes of membership
30 interests enters into an interest exchange with another LLC. The acquiring entity need only
31 acquire all of the ownership interests of *one or more classes* of the LLC membership interests.
32

33 **3. Section 401(b)** - Subsection (b) allows a foreign entity to effectuate an interest
34 exchange with a domestic entity if the interest exchange is authorized by the organic law of the
35 foreign entity. *See* Comments to section 201(c) regarding potential legal issues arising under
36 section 401(a).
37

38 **4. Section 401(c)** – It is expected that many adopting states will add provisions

1 authorizing interest exchanges to their organic laws. See the discussion [in the prefatory note].
2 On the other hand, there will be some types of entities where it is unlikely that interest exchange
3 provisions will be added to the organic law, for example, unincorporated nonprofit associations.
4 In cases where an organic law provides for an interest exchange involving entities all of the same
5 type, there is no need for this Act; but in cases where an organic law does not provide for interest
6 exchanges, this Act will serve the important function of authorizing interest exchanges just
7 involving entities of that type. Subsection (c) has been drafted in general terms to accommodate
8 both the existing law in an adopting state at the time this Act is enacted and also any changes in
9 organic laws after the enactment of this Act. Subsection (c) could be adopted in the following
10 more specific form identifying the organic laws to which it refers:
11

12 This [article] does not apply to a merger under the following statutes in which
13 all of the merging entities and the surviving entity are the same type of entity:

- 14 (1) Chapter 11 of the MBCA
15 (2)
16 (3)
17

18 **5. Section 401(d)** – Because the concept of an interest exchange is new, a person
19 contracting with an entity or loaning it money who drafted and negotiated special rights relating
20 to the transaction before the enactment of this chapter should not be charged with the
21 consequences of not having dealt with the concept of an interest exchange in the context of those
22 special rights. Subsection (d) accordingly provides a transitional rule that is intended to protect
23 such special rights. If, for example, an entity is a party to a contract that provides that the entity
24 cannot participate in a merger without the consent of the other party to the contract, the
25 requirement to obtain the consent of the other party will also apply to an interest exchange in
26 which the entity is the exchanging entity. If the entity fails to obtain the consent, the result will
27 be that the other party will have the same rights it would have if the entity were to participate in a
28 merger without the required consent.
29

30 The purpose of subsection (d) is to protect the third party to a contract with the entity, and
31 subsection (d) should not be applied in such a way as to impair unconstitutionally the third
32 party's contract. As applied to the entity, subsection (d) is an exercise of the reserved power of
33 the state legislature set forth in the entity's organic law.
34

35 The transitional rule in subsection (d) ceases to apply at such time as the provision of the
36 agreement or debt instrument giving rise to the special rights is first amended after the effective
37 date of this article because at that time the provision may be amended to address expressly an
38 interest exchange.
39

40 A similar transitional rule governing the application to an interest exchange of special
41 voting rights of governors or interest holders and other internal procedures is found in section
42 403(e).
43

1 **6. Section 401(e)** – Subsection (e) is an optional provision that may be used to exclude
2 certain types of entities from the scope of this chapter. It is limited to domestic entities because a
3 restriction on the power of a foreign entity to engage in an interest exchange is more properly
4 placed in the organic law of the foreign entity. A provision that excludes certain types of
5 domestic entities from the Act generally is set forth in section 107.
6

7 **7. Source** - Subsections (a) and (b) are patterned after Model Business Corporation Act §
8 11.03(a) and (b). Subsection (d) is patterned after Model Business Corporation Act § 9.50(e).
9

10 **SECTION 402. PLAN OF INTEREST EXCHANGE.**

12 (a) Plan of interest exchange required. – A domestic entity may become the exchanging
13 entity in an interest exchange under this [article] by approving a plan of interest exchange.

14 (b) Required contents. – A plan of interest exchange must be in a record and contain:

15 (1) the name of the exchanging entity;

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

17 (3) the terms and conditions of the interest exchange;

18 (4) the manner and basis of converting the interests of the exchanging entity into
19 interests, securities, obligations, rights to acquire interests or securities, cash, other property, or
20 any combination of the foregoing;

21 (5) any proposed amendments to the public organic document or organic rules that
22 are in a record of the exchanging entity; and

23 (6) any other provision required by the organic law or organic rules of the
24 exchanging entity.

25 (c) Optional contents. – In addition to the provisions required by subsection (b), a plan of
26 interest exchange may contain any other provision not prohibited by applicable law.

27 (d) Reference to extrinsic facts. – Any provision of a plan of interest exchange may be

made dependent upon facts ascertainable outside of the plan, if the manner in which the facts will operate upon the provision is contained in the plan.

Comments

1. Section 402(a) - The requirements for the approval of the plan of entity interest exchange are set forth in section 403.

2. Section 402(b) – This article imposes virtually no restrictions or limitations on the terms or conditions of an interest exchange, except for those set forth in subsection (b). Interest holders in the exchanging entity may receive interests or securities of the acquiring entity or of a party other than the acquiring entity, obligations, rights to acquire interests or securities, cash or other property. The capitalization of the exchanging entity may be restructured in the exchange, and its organic documents may be amended in the exchange in any way deemed appropriate.

Although this article imposes virtually no restrictions or limitations on the terms or conditions of an interest exchange, this section requires that the terms and conditions be set forth in the plan of exchange. However, the plan of exchange need not be set forth in the statement of exchange that is delivered to the secretary of state for filing after the exchange has been adopted and approved. *See* section 405.

3. Section 402(b)(1) and (2) –

4. Section 402(b)(4) - Subsection (b)(4) poses the same “shuffling” issue as section 202(b)(4) with respect to the exchanging entity. Subsection (b)(4) permits the non-uniform elimination or modification of ownership or transferee rights in an entity interest exchange

5. Section 402(c) - Subsection (c) permits an exchanging entity to include information in the plan of entity interest exchange that otherwise would not be mandated by its organic law or organic rules. Subsection (c) provides the statutory authority for entities to include this information despite its absence in section 403. One type of provision that might be added is that for contractual appraisal rights under section 108.

6. Source – This section is patterned after Model Business Corporation Act § 11.03(c) and (e).

SECTION 403. APPROVAL OF INTEREST EXCHANGE.

(a) Domestic entities. – Subject to subsections (d) and (e), a plan of interest exchange must be approved by a domestic exchanging entity:

1 (1) in accordance with the procedures, if any, in its organic law for approval of an
2 interest exchange;

3 (2) if its organic law does not provide procedures for approval of an interest
4 exchange, then in accordance with the procedures, if any, in its organic law for approval of a
5 merger;

6 (3) if its organic law does not provide procedures for approval of either an interest
7 exchange or a merger, then in accordance with the procedures, if any, for approval of an interest
8 exchange in its organic rules;

9 (4) if its organic law does not provide procedures for approval of with an interest
10 exchange or a merger, and its organic rules do not provide procedures for approval of an interest
11 exchange, then by all interest holders of the entity.

12 (b) Foreign entities. – An interest exchange in which the exchanging entity is a foreign
13 entity must be approved by the entity in accordance with the laws of the foreign jurisdiction.

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

16 (d) Consent to owner liability. – If an interest holder of a domestic exchanging entity will
17 have owner liability as a result of the interest exchange, that person must vote for or consent to
18 the interest exchange in a record, unless:

19 (1) the organic rules of the entity in a record provide for the approval of an interest
20 exchange in which some or all of its interest holders become subject to owner liability with the
21 vote or consent of fewer than all of the interest holders; and

22 (2) the person has voted for or consented in a record to that provision of the

1 organic rules, or became an interest holder after the adoption of the provision.

2 (e) Transitional provision.—If any provision of the organic rules of a domestic
3 exchanging entity, or of an agreement to which any of its governors or interest holders are
4 parties, adopted or entered into before the effective date of this [act] specifies procedures for
5 approval of a merger of the entity but does not refer to approval of an interest exchange, the
6 provision shall be deemed to apply to approval of an interest exchange until such time as the
7 provision is amended subsequent to that date.

8 **Comments**

9 **1. Section 403(a)** – The incorporation into this chapter of the merger or exchange
10 procedures in the organic law of a party to an exchange should be construed broadly to include
11 not only express statutory procedures, but also applicable common law principles such as
12 fiduciary duty standards of governors and majority interest holders.
13

14 If merger procedures are applicable under subsection (c), statutory provisions on “short-
15 form” mergers without approval of interest holders and voting by classes or voting groups will
16 also be applicable. Any special approval rights with regard to a merger in an entity’s organic
17 documents will also be applicable.
18

19 In the case of a domestic exchanging entity whose organic law does not provide for either
20 mergers or exchanges (such as an unincorporated nonprofit association subject to the [*Uniform*
21 *Unincorporated Nonprofit Association Act*]) or a common law entity (such as, in many states, a
22 business trust), subsection (d) looks to the organic rules of the entity for the necessary exchange
23 procedures. If the organic rules do not provide those procedures, they may presumably be added
24 by amendment in accordance with the applicable procedures for amending the organic rules .
25

26 **2. Section 403(d)** – Subsection (d) will be applicable, for example, to shareholders of a
27 corporation that is acquired in an interest exchange by a general partnership if the shareholders
28 become general partners and the partnership is not a limited liability partnership. If such a
29 shareholder were to exercise appraisal rights, however, the shareholder would not become
30 subject to owner liability because one effect of exercising appraisal rights is that the shareholder
31 would not become a general partner; and, in that case, the consent of the shareholder would not
32 be required.
33

34 The consent of an interest holder required by subsection (d)(2) may be given either by (i)
35 signing or agreeing generally to the terms of an organic document that includes the required

1 provision permitting less than unanimous approval of an exchange in which interest holders
2 become subject to owner liability, or (ii) voting for or consenting to an amendment to add such a
3 provision.
4

5 **3. Section 403(e)** – Because the concept of an interest exchange is new, persons who
6 negotiated special rights for governors or interest holders before the enactment of this article
7 should not be charged with the consequences of not having dealt with the concept of an interest
8 exchange in the context of these special rights. Subsection (e) accordingly provides a transitional
9 rule that is intended to protect such special rights. Other documents, in addition to the organic
10 rules, that may contain such special rights include agreements among interest holders, voting
11 agreements or other similar arrangements. If, for example, its organic rules provide that an entity
12 cannot participate in a merger without a supermajority vote of the interest holders, that
13 supermajority requirement will also apply to an interest exchange in which the entity is the
14 exchanging entity.
15

16 The purpose of subsection (e) is to protect persons who negotiated special rights for
17 governors or interest holders whether in a contract or the organic rules, and subsection (e) should
18 not be applied in such a way as to impair unconstitutionally the rights of any party to a contract
19 with the entity. As applied to the entity, subsection (e) is an exercise of the reserved power of the
20 state legislature under the entity's organic law.
21

22 The transitional rule in subsection (e) ceases to apply at such time as the provision of the
23 organic rules or agreement giving rise to the special rights is first amended after the effective date
24 of this article because at that time the provision may be amended to address expressly an interest
25 exchange.
26

27 A similar transitional rule with regard to the application to an interest exchange of special
28 contractual rights of third parties is found in section 401(d).
29

30 **4. Source** – Subsection (d) is patterned after Model Business Corporation Act §
31 11.04(h). Subsection (e) is patterned after Model Business Corporation Act § 9.52(6).
32
33

34 **SECTION 404. AMENDMENT OR ABANDONMENT OF PLAN OF INTEREST** 35 **EXCHANGE.**

36 (a) Amendment before filing. – A plan of interest exchange with respect to a domestic
37 exchanging entity may provide that the plan may be amended by the governors or interest holders
38 of the entity prior to the filing of a statement of interest exchange, except that the plan may not be

1 amended without a vote of the interest holders to change:

2 (1) the amount or kind of interests, securities, obligations, rights to acquire
3 interests or securities, cash, or other property to be received by those interest holders under the
4 plan:

5 (2) the public organic document or organic rules of any of the exchanging entity
6 that will be in effect immediately following consummation of the interest exchange, except for
7 changes that would not require the approval of the interest holders of the exchanging entity under
8 its organic law; or

9 (3) any of the other terms or conditions of the plan if the change would adversely
10 affect any of those interest holders in any material respect.

11 (b) No amendment after filing. – A plan of interest exchange may not be amended after
12 the filing of a statement of interest exchange.

13 (c) Abandonment. – Unless otherwise provided in a plan of interest exchange or in the
14 organic law of the acquiring or exchanging entity, after the plan has been approved as required by
15 this [article], and at any time before a statement of interest exchange has become effective, the
16 plan may be abandoned by a domestic exchanging entity without action by its interest holders in
17 accordance with any procedures set forth in the plan or, if no such procedures are set forth in the
18 plan, in the manner determined by the governors, subject to any contractual rights of the
19 acquiring entity.

20 (d) Required abandonment filing. – If an interest exchange is abandoned after a statement
21 of interest exchange has been filed with the [Secretary of State] but before the statement of
22 interest exchange has become effective, a statement that the interest exchange has been

1 abandoned in accordance with this section, signed on behalf of the exchanging entity, shall be
2 filed with the [Secretary of State] before the effective date of the statement of interest exchange.
3 The statement filed under this subsection shall take effect upon filing and the interest exchange
4 shall be deemed abandoned and shall not become effective.

5 **Comments**

6 Section 404 permits abandonment or termination by a domestic entity according to a
7 provision in a plan of interest exchange or, unless prohibited by the plan, by the same consent as
8 required to approve the plan.

9
10 **[Subsection (c) only applies to the exchanging entity because approval by the**
11 **interest holders of the acquiring entity is not required generally.]**
12

13 14 **SECTION 405. STATEMENT OF INTEREST EXCHANGE; EFFECTIVE DATE.**

15
16 (a) Required filing. – A statement of interest exchange must be signed by the exchanging
17 entity and the acquiring entity and filed with the [Secretary of State].

18 (b) Contents. – A statement of interest exchange must contain:

- 19 (1) the name, jurisdiction of formation, and type of entity of the exchanging entity;
20 (2) the name, jurisdiction of formation, and type of entity of the acquiring entity;
21 (3) if the statement of interest exchange is not to be effective upon filing, the later
22 date and time on which it will become effective;
23 (4) that the plan of interest exchange was approved as required by section 403 if
24 the exchanging entity is a domestic entity; or, if the exchanging entity is a foreign entity, that the
25 interest exchange was approved in accordance with the laws of the foreign jurisdiction;
26 (5) if the exchanging entity is a domestic entity, any amendments to its public
27 organic document approved as part of the plan of interest exchange;

1 (6) if the acquiring entity:

2 (i) is a foreign entity, the address to which service of process made on the
3 [Secretary of State] may be mailed;

4 (ii) is a qualified foreign entity, the name of its registered agent and
5 address of its registered office in this [state]; or

6 (iii) is a nonqualified foreign entity, the address of its chief executive
7 office or principal place of business[; and

8 (7) any other information the adopting state may require].

9 (c) Optional contents. – In addition to the provisions required by subsection (b), a
10 statement of interest exchange may contain any other provision not prohibited by applicable law.

11 (d) Effective date. – A statement of interest exchange becomes effective upon the date
12 and time of filing, or such later date and time as specified in the statement of interest exchange.

13 **Comments**

14
15 **1. Section 405(a)** – The filing of a statement of interest exchange makes the transaction a
16 matter of public record. A separate public filing under the organic law of the exchanging entity
17 is not required. The filing requirements for a statement of exchange are set forth in sections 105
18 and 106. The effective time of the statement is the effective time of its filing, unless otherwise
19 specified. A statement may specify a delayed effective time and date, and if it does so the
20 statement becomes effective at the time and date specified.

21
22 This section does not require that the plan of interest exchange be filed of public record,
23 although a plan of interest exchange could be used as a substitute for the statement of interest
24 exchange so long as the plan is appropriately approved and reflects all the information required
25 to be contained in the statement under this section.

26
27 **2. Source** – This section is patterned after Model Business Corporation Act § 11.06.
28 Subsection (b) is patterned after Model Business Corporation Act § 1.23.
29
30
31

1 **SECTION 406. EFFECT OF INTEREST EXCHANGE.**

2 (a) General rule. – When an interest exchange becomes effective:

3 (1) The interests of the exchanging entity that are to be converted or exchanged in
4 the interest exchange cease to exist or are converted or exchanged, and the interest holders those
5 interests are entitled only to the rights provided to them under the plan of interest exchange and
6 to any appraisal rights they may have under section 108.

7 (2) The acquiring entity becomes the interest holder of the interests in the
8 exchanging entity stated in the plan of interest exchange to be acquired by the acquiring entity.

9 (3) The public organic document and organic rules of the exchanging entity are
10 amended to the extent provided in the plan of interest exchange and remain binding upon the
11 interest holders of the exchanging entity.

12 (b) Future owner liability. – A person that becomes subject to owner liability as a result of
13 an interest exchange has owner liability only to the extent provided by the organic law of the
14 entity with respect to which the person becomes subject to owner liability and only for those
15 liabilities that are incurred after the interest exchange becomes effective.

16 (c) Past owner liability. – The effect of the interest exchange on the owner liability of an
17 interest holder of the exchanging entity that is incurred before the interest exchange becomes
18 effective as follows:

19 (1) The interest exchange does not discharge any owner liability under the organic
20 law of the exchanging entity to the extent the owner liability was incurred before the interest
21 exchange becomes effective.

22 (2) The person does not have owner liability under the organic law of the

exchanging entity for any liability that is incurred after the interest exchange becomes effective.

(3) The organic law of the exchanging entity continues to apply to the collection or discharge of any owner liability preserved by paragraph (1) as if the interest exchange had not occurred.

(4) The person has whatever rights of contribution from any other person are provided by the organic law or organic rules of the exchanging entity with respect to any owner liability preserved by paragraph (1) as if the interest exchange had not occurred.

Comments

1. Section 406(a) - 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 exchanging entity, or render the acquiring entity liable for the liabilities of the exchanging entity. Thus, subsection (a) is significantly simpler than section 406(a) with respect to the effects of a merger.

When an interest exchange becomes effective: (1) the interests of the exchanging entity are exchanged, converted or canceled as provided in the plan; (2) the only rights of the former interest holders of the exchanging entity whose interests are affected by the interest exchange are those rights related to the exchange, conversion or cancellation; (3) the acquiring entity becomes the owner of the exchanging entity's interests as provided in the plan; and (4) the organic rules of the exchanging entity are amended as provided in the statement of interest exchange, thus obviating the need for repetitive filings (i.e., a filing as to the entity interest exchange and another filing to reflect amendments to public organic documents as required by the laws governing the exchanging entity).

2. Section 406(b) - Subsection (b) states the rule for future owner liability and parallels analogous provisions in Articles 2 (mergers), 3 (divisions), 5 (conversion) and 6 (domestications).

3. Section 406(c) - Subsection (c) states the rule for past owner liability. Subsection (c) has four parts: (1) an owner in an exchanging entity who had personal liability for the debts and obligations of the exchanging entity under the entity's organic law is not discharged from those debts and obligations if the debts arose before the effective date of the exchange; (2) an owner in an exchanging entity shall not have owner's liability for the debts and obligations of the acquiring entity if those debts arose after the effective date of the exchange; (3) the organic law or the exchanging entity continue to apply for any past owner's liability that is preserved under

1 subsection (1); and (4) the organic law of the exchanging entity continue to apply regarding any
2 contribution rights among owners that were preserved under subsection (1).
3

4 Under section 406(c) an interest exchange cannot have the effect of making an interest
5 holder of a domestic exchanging entity subject to owner liability for the obligations or liabilities
6 of any other person or entity unless each such interest holder has signed a separate written
7 consent to become subject to such liability or previously agreed to the effectuation of a
8 transaction having that effect without the interest holder's consent.
9

10 See section 103 (relating to relationship of Act to other laws), which modifies the
11 provisions of this section with respect to the effects of an exchange to the extent a regulatory law
12 provides otherwise.
13

14 **4. Source** – This section is patterned in part after Model Business Corporation Act §
15 11.07(b).
16
17

1 **[ARTICLE] 5**

2 **CONVERSION**

3 **SECTION 501. CONVERSION AUTHORIZED.**

4 (a) Domestic entities. – By complying with this [article] and except as otherwise provided
5 in this section, a domestic entity may become:

6 (1) a domestic entity of a different type; or

7 (2) a foreign entity of a different type, if the conversion is authorized by the
8 organic law of the foreign entity.

9 (b) Foreign entities. – A foreign entity may become a domestic entity of a different type
10 pursuant to this [article] if the conversion is authorized by the laws of the foreign jurisdiction.

11 (c) Transitional provision. – If any debt security, note, or similar evidence of indebtedness
12 for money borrowed, whether secured or unsecured, or a contract of any kind, issued, incurred, or
13 executed by a domestic entity before the effective date of this [act] contains a provision that
14 applies to a merger of the entity but does not refer to a conversion, the provision applies to a
15 conversion of the entity until such time as the provision is amended subsequent to that date.

16 [(d) Excluded entities.—Entities of the following types may not be converted under this
17 [article]:

18 (1)

19 (2)]

20 **Comments**

1 **1. Section 501(a)** – The procedure in this article permits an entity to change to a different
2 form of entity. A transaction in which an entity changes its jurisdiction of organization but does
3 not change its form is the subject of Article 6.
4

5 When a foreign entity becomes a domestic entity pursuant to this chapter, the effect of the
6 conversion will be as provided in section 506. The procedures by which the conversion is
7 approved, however, will be determined by the laws of the foreign jurisdiction.
8

9 **2. Section 501(b)** – The
10

11 **3. Section 501(c)** - Because the concept of conversion is new, a person contracting with
12 an entity or loaning it money who negotiated special rights relating to the transaction before the
13 enactment of this article should not be charged with the consequences of not having dealt with
14 the concept of conversion in the context of those special rights. Subsection (c) accordingly
15 provides a transitional rule that is intended to protect such special rights. If, for example, an
16 entity is a party to a contract that provides that the entity cannot participate in a merger without
17 the consent of the other party to the contract, the requirement to obtain the consent of the other
18 party will also apply to the conversion of the entity. If the entity fails to obtain the consent, the
19 result will be that the other party will have the same rights it would have if the entity were to
20 participate in a merger without the required consent.
21

22 The purpose of subsection (c) is to protect the third party to a contract with the entity, and
23 subsection (c) should not be applied in such a way as to impair unconstitutionally the third
24 party's contract. As applied to the entity, subsection (c) is an exercise of the reserved power of
25 the state legislature set forth in the entity's organic law.
26

27 The transitional rule in subsection (c) ceases to apply at such time as the provision of the
28 agreement or debt instrument giving rise to the special rights is first amended after the effective
29 date of this chapter because at that time the provision may be amended to address expressly a
30 conversion of the entity.
31

32 A similar transitional rule governing the application to a conversion of special voting
33 rights of governors and interest holders and other internal procedures is found in section 503(e).
34

35 **4. Section 501(d)** – Subsection (d) is an optional provision that may be used to exclude
36 certain types of entities from the scope of this article. It is limited to domestic entities because a
37 restriction on the power of a foreign entity to engage in a conversion is more properly placed in
38 the organic law of the foreign entity. A provision that excludes certain types of domestic entities
39 from the Act generally is set forth in section 107.
40

41 **5. Source** – Subsection (d) is patterned after Model Business Corporation Act § 9.50(e).
42
43

1 **SECTION 502. PLAN OF CONVERSION.**

2 (a) Plan of conversion required. – A domestic entity may convert to a different type of
3 entity under this [article] by approving a plan of conversion.

4 (b) Required contents. – A plan of conversion must be in a record and contain:

5 (1) the name, jurisdiction of formation, and type of entity of the converting entity;

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

7 (3) the terms and conditions of the conversion;

8 (4) the manner and basis of converting the interests of the converting entity into
9 interests, securities, obligations, rights to acquire interests or securities, cash, or other property,
10 or any combination of the foregoing;

11 (5) if the converted entity is to be a filing entity, a copy of its proposed public
12 organic document and the full text of its organic rules that are to be in a record;

13 (6) if the converted entity is to be a nonfiling entity, the full text of its proposed
14 organic rules that are to be in a record; and

15 (7) any other provision required by the organic law or organic rules of the
16 converting entity.

17 (c) Optional contents. – In addition to the provisions required by subsection (b), a plan of
18 conversion may contain any other provision not prohibited by applicable law.

19 (d) Reference to extrinsic facts. – Any provision of a plan of conversion may be made
20 dependent upon facts ascertainable outside of the plan, if the manner in which the facts will
21 operate upon the provision is contained in the plan.

22 **Comments**

1
2 **1. Section 502(a)** - The requirements for approval of a plan of conversion are set forth in
3 section 503.
4

5 This article imposes virtually no restrictions or limitations on the terms or conditions of a
6 conversion. Interest holders in the converting entity may receive interests or other securities of
7 the converted entity or any other person, obligations, rights to acquire interests or other securities,
8 cash, or other property. The capitalization of the converted entity may be restructured in the
9 conversion, and its organic rules may be amended in the conversion, in any way deemed
10 appropriate.
11

12 **2. Section 502(b)** – Although this chapter imposes virtually no restrictions or limitations
13 on the terms or conditions of a conversion, subsection (b) requires that the terms and conditions
14 be set forth in the plan of conversion. However, the plan of conversion need not be set forth in
15 the statement of conversion that is delivered to the secretary of state for filing after the
16 conversion has been adopted and approved. *See* section 505.
17

18 **3. Source** – This section is patterned after Model Business Corporation Act § 9.51.
19
20

21 **SECTION 503. APPROVAL OF CONVERSION.**

22 (a) Domestic converting entity. – Subject to subsections (c) and (d), a plan of conversion
23 must be approved by a domestic converting entity:

24 (1) in accordance with the procedures, if any, in its organic rules for approval of a
25 conversion;

26 (2) if its organic rules do not provide procedures for approval of a conversion,
27 then in accordance with the procedures, if any, for approval of a merger in its organic law; or

28 (3) if neither its organic law nor organic rules provide procedures for approval of a
29 conversion or a merger, then by all the interest holders of the entity.

30 (b) Foreign converting entity. – A converting entity that is a foreign entity must approve
31 the conversion in accordance with the laws of the foreign jurisdiction.

1 (c) Consent to owner liability. – If an interest holder of a domestic converting entity will
2 have owner liability with respect to the converted entity, that person must vote for or consent to
3 the conversion in a record, unless:

4 (1) the organic rules of the entity in a record provide for the approval of a
5 conversion in which some or all of its interest holders become subject to owner liability with the
6 vote or consent of fewer than all of the interest holders; and

7 (2) the person has voted for or consented in a record to the provision of the
8 organic rules, or became an interest holder after the adoption of the provision.

9 (d) Transitional provision.—If any provision of the organic rules of a domestic converting
10 entity, or of an agreement to which any of its governors or interest holders are parties, adopted or
11 entered into before the effective date of this [act] specifies procedures for approval of a merger of
12 the entity but does not refer to approval of a conversion, the provision shall be deemed to apply
13 to approval of a conversion until such time as the provision is amended subsequent to that date.

14 **Comments**

15
16 **1. Section 503(a)** - The incorporation into this article of the merger procedures in the
17 organic law of the converting entity should be construed broadly to include not only express
18 statutory procedures, but also applicable common law principles such as fiduciary duty standards
19 of governors and majority interest holders. Statutory provisions on “short-form” mergers without
20 approval of interest holders and voting by classes or voting groups will also be applicable. Any
21 special approval rights with regard to a merger in an entity’s organic documents will also be
22 applicable.
23

24 In the case of a domestic converting entity whose organic law does not provide for
25 mergers (such as an unincorporated nonprofit association subject to the [*Uniform*
26 *Unincorporated Nonprofit Association Act*]), or a common law entity (such as, in many states, a
27 business trust), subsection (b) looks to the organic rules of the entity for the necessary merger
28 procedures. If the organic documents do not provide those procedures, they may presumably be
29 added by amendment in accordance with the applicable procedures for amending the organic
30 documents.

1 **2. Section 503(b) -**
2

3 **3. Section 503(c)** – Subsection (c) will be applicable, for example, to shareholders of a
4 corporation that converts to a general partnership if the shareholders become general partners and
5 the partnership is not a limited liability partnership. If such a shareholder were to exercise
6 appraisal rights, however, the shareholder would not become subject to owner liability because
7 one effect of exercising appraisal rights is that the shareholder would not become a general
8 partner; and, in that case, the consent of the shareholder would not be required.
9

10 The consent of an interest holder required by subsection (c)(2) may be given either by (i)
11 signing or agreeing generally to the terms of an organic document that includes the required
12 provision permitting less than unanimous approval of a conversion in which interest holders
13 become subject to owner liability, or (ii) voting for or consenting to an amendment to add such a
14 provision.
15

16 **4. Section 503(d)** – Because the concept of conversion is new, persons who drafted and
17 negotiated special rights for governors or interest holders before the enactment of this article
18 should not be charged with the consequences of not having dealt with the concept of conversion
19 in the context of those special rights. Subsection (d) accordingly provides a transitional rule that
20 is intended to protect such special rights. Other documents, in addition to organic rules, that may
21 contain such special rights include agreements among interest holders and voting agreements, or
22 other similar arrangements. If, for example, the organic rules provide that the entity cannot
23 participate in a merger without a supermajority vote of the interest holders, that supermajority
24 requirement will also apply to the conversion of the entity.
25

26 The purpose of subsection (d) is to protect persons who negotiated special rights for
27 governors or interest holders whether in a contract with the entity or in the organic documents,
28 and subsection (d) should not be applied in such a way as to impair unconstitutionally the rights
29 of any party to a contract with the entity. As applied to the entity, subsection (d) is an exercise of
30 the reserved power of the state legislature set forth in the entity's organic law.
31

32 The transitional rule in subsection (d) ceases to apply at such time as the provision of the
33 organic rules or agreement giving rise to the special rights is first amended after the effective date
34 of this article because at that time the provision may be amended to address expressly a
35 conversion of the entity.
36

37 A similar transitional rule governing the application to a conversion of special contractual
38 rights of third parties is found in section 501(e).
39

40 **5. Source** – Subsections (c) and (d) are patterned after Model Business Corporation Act
41 § 9.52(6) and (7).
42
43

1 **SECTION 504. AMENDMENT OR ABANDONMENT OF PLAN OF CONVERSION.**

2 (a) Amendment before filing. – A plan of conversion of a domestic converting entity may
3 provide that the plan may be amended by its governors or interest holders prior to the filing of a
4 statement of conversion, except that the plan may not be amended without a vote of the interest
5 holders to change:

6 (1) the amount or kind of interests, securities, obligations, rights to acquire
7 interests or securities, cash, or other property to be received by those interest holders under the
8 plan:

9 (2) the public organic document or organic rules of the converted entity that will
10 be in effect immediately following consummation of the conversion, except for changes that
11 would not require the approval of the interest holders of the converting entity under its organic
12 law; or

13 (3) any of the other terms or conditions of the plan if the change would adversely
14 affect any of those interest holders in any material respect.

15 (b) No amendment after filing. – A plan of conversion may not be amended after the
16 filing of a statement of conversion.

17 (c) Abandonment. – Unless otherwise provided in a plan of conversion , after the plan has
18 been approved as required by this [article], and at any time before a statement of conversion has
19 become effective, the plan may be abandoned by a domestic converting entity without action by
20 its interest holders in accordance with any procedures set forth in the plan or, if no such
21 procedures are set forth in the plan, in the manner determined by the governors.

22 (d) Required abandonment filing. – If a conversion is abandoned after a statement of

conversion is filed with the [Secretary of State] and before the statement of conversion has become effective, a statement that the conversion has been abandoned in accordance with this section, signed on behalf of the converting entity, shall be filed with the [Secretary of State] before the effective date of the statement of conversion. The statement filed under this subsection takes effect upon filing. A statement of abandonment takes effect upon filing and the conversion is deemed abandoned and does not become effective.

Comments

Section 504 permits abandonment or termination by a domestic entity according to a provision in a plan of conversion or, unless prohibited by the plan of conversion, by the same consent as required to approve the plan.

Unless otherwise provided in the plan of conversion, the converting entity may abandon the transaction without the approval of its interest holders, even though the transaction has been previously approved by those interest holders.

This section is patterned after Model Business Corporation Act § 9.56.

SECTION 505. STATEMENT OF CONVERSION; EFFECTIVE DATE.

(a) Required filing. – A statement of conversion must be signed by the converting entity and filed with the [Secretary of State].

(b) Contents. – A statement of conversion must contain:

(1) The name, jurisdiction of formation, and type of entity of the converting entity.

(2) The name, jurisdiction of formation, and type of entity of the converted entity.

If the converted entity is a domestic entity, its name must satisfy the requirements of its organic law. If the converted entity is a qualified foreign entity, its name must be available for use by a foreign entity qualifying to do business in this [state] or it must adopt an available name for that

1 purpose.

2 (3) If the statement of conversion is not to be effective upon filing, the later date
3 and time on which it will become effective.

4 (4) That the plan of conversion was approved as required by section 503 if the
5 converting entity is a domestic entity; or, if the converting entity is a foreign entity, that the
6 conversion was approved in accordance with the laws of the foreign jurisdiction.

7 (5) If the converted entity is a domestic filing entity, a copy of its public organic
8 document, if any.

9 (6) If the converted entity is a domestic nonfiling entity, the address of its chief
10 executive office or principal place of business.

11 (7) If the converted entity is:

12 (i) a qualified foreign entity, the name of its registered agent and address
13 of its registered office in this state; or

14 (ii) a nonqualified foreign entity, the address of its chief executive office
15 or principal place of business.

16 [(8) Any other information the adopting state may require.]

17 (c) Optional contents. – In addition to the provisions required by subsection (b), a
18 statement of conversion may contain any other provision not prohibited by applicable law.

19 (d) Effective date. – A statement of conversion becomes effective upon the date and time
20 of filing, or such later date and time as specified in the statement of conversion.

21 **Comments**

22 **1. Section 505(a)** - The filing of a statement of conversion makes the transaction a

1 matter of public record. A separate public filing under the organic laws of the converting or
2 surviving entity is not required. The filing requirements for a statement of conversion are set
3 forth in sections 106 and 107. The effective time of the statement is the effective time of its
4 filing, unless otherwise specified. A statement may specify a delayed effective time and date,
5 and if it does so the statement becomes effective at the time and date specified.
6

7 This section is patterned after Model Business Corporation Act § 9.53. Subsection (c) is
8 patterned after Model Business Corporation Act § 1.23.
9

10 **SECTION 506. EFFECT OF CONVERSION.**

11 (a) General rule. – When a conversion becomes effective:

12 (1) The converted entity is deemed to:

13 (i) be organized under and subject to the organic law of the converted
14 entity for all purposes;

15 (ii) be the same entity without interruption or dissolution as the converting
16 entity; and

17 (iii) have been organized on the date and time that the converting entity
18 was originally organized.

19 (2) All property, causes of action, and contract rights of the converting entity vest
20 in the converted entity without reversion or impairment.

21 (3) All liabilities of the converting entity continue as liabilities of the converted
22 entity.

23 (4) The name of the converted entity may be substituted in any pending action or
24 proceeding for the name of the converting entity.

25 (5) Unless prohibited by law other than this [act], all of the rights, privileges,
26 immunities, powers, and purposes of the converting entity remain in the converted entity.
27

1 (6) Unless otherwise provided by the organic law of the converting entity, the
2 conversion does not require the dissolution of the converting entity.

3 (7) If a converted entity is a filing entity, its public organic document becomes
4 effective and is binding upon the interest holders of the converted entity.

5 (8) The private organic rules of the converted entity that are contained in the plan
6 of conversion become effective and are binding upon the owners of the converted entity.

7 (9) The interests of the converting entity are converted and the interest holders of
8 the converting entity are entitled only to the rights provided to them under the plan of conversion
9 and to any appraisal rights they may have under section 108.

10 (b) Future owner liability. – A person that becomes subject to owner liability with respect
11 to a converted entity as a result of the conversion has owner liability only to the extent provided
12 by the organic law of the entity and only for those liabilities that are incurred after the conversion
13 becomes effective.

14 (c) Past owner liability. – The effect of the conversion on the owner liability of an interest
15 holder of the converting entity that is incurred before the conversion becomes effective is as
16 follows:

17 (1) The conversion does not discharge any owner liability under the organic law of
18 the converting entity to the extent the owner liability was incurred before the conversion becomes
19 effective.

20 (2) The person does not have owner liability under the organic law of the
21 converting entity for any liability that is incurred after the conversion becomes effective.

22 (3) The organic law of the converting entity continues to apply to the collection or

1 discharge of any owner liability preserved by paragraph (1) as if the conversion had not occurred.

2 (4) The person has whatever rights of contribution from any other person are
3 provided by the organic law or organic rules of the converting entity with respect to any owner
4 liability preserved by paragraph (1) as if the conversion had not occurred.

5 (d) Service of process on foreign converted entity. – A foreign entity that is the converted
6 entity:

7 (1) may be served with process in this [state] for the collection and enforcement of
8 any liabilities of the converting entity;

9 (2) appoints the [Secretary of State] as its agent for service of process for the
10 purpose of collecting and enforcing those liabilities; and

11 (3) agree to provide to the [Secretary of State] the address to which service of
12 process on the converted entity may be mailed.

13 (e) Cancellation of foreign qualification. – If the converting entity is a qualified foreign
14 entity, the certificate of authority or other foreign qualification of the converting entity is
15 canceled when the conversion becomes effective.

16 (f) Confirmation in land records. – A converted entity may file a copy of the statement of
17 conversion in the [office for recording deeds] in any county in which the converting entity held
18 an interest in real property. [A transfer tax or fee shall not be collected in connection with the
19 filing, but the converted entity may be required to pay a filing fee of not more than \$____.]

20 **Comments**

21 **1. In General** – When a conversion becomes effective, the internal affairs of the
22 converting entity are no longer governed by its former organic law and it is governed instead by
23 the organic law of the converted entity. As a result, filings that may have been made under the

1 organic law of the converting entity, such as the following, will no longer be effective: a
2 statement of qualification as a limited liability partnership under Section 1001 of the Uniform
3 Partnership Act (1997), a statement of partnership authority under Section 303 of the Uniform
4 Partnership Act (1997) or a statement of authority under Section 5 of the Uniform
5 Unincorporated Nonprofit Association Act.
6

7 See section 103 (relating to relationship of Act to other laws), which modifies the
8 provisions of this section with respect to the effects of a conversion to the extent a regulatory law
9 provides otherwise.
10

11 **2. Section 506(a)(2)** – The converted entity automatically becomes the owner of all real
12 and personal property and becomes subject to all the liabilities, actual or contingent, of the
13 converted entity. A conversion is not a conveyance, transfer or assignment. It does not give rise
14 to claims of reverter or impairment of title based on a prohibited conveyance or transfer. It does
15 not give rise to a claim that a contract with the converting entity is no longer in effect on the
16 ground of nonassignability, unless the contract specifically provides that it does not survive a
17 conversion. The contract rights that remain in the converted entity include, without limitation,
18 the right to enforce subscription agreements for interests and obligations to make capital
19 contributions entered into or incurred before the conversion.
20

21 **3. Section 506(a)(4)** – All pending proceedings involving the converting entity are
22 continued. The name of the converted entity may be, but need not be, substituted in any pending
23 proceeding for the name of the converting entity.
24

25 **4. Section 506(a)(6)** – One consequence of subsection (a)(6) is that the converting entity
26 is not required to wind up its affairs, or to pay its liabilities and distribute its assets.
27

28 **5. Section 506(a)(8)** – Subsection (a)(8) provides that all of the interest holders are
29 deemed to have agreed to the terms of its organic rule. Except as properly modified by its
30 organic rules, the default rules in the organic law of the converted entity will also be part of the
31 contract among the interest holders.
32

33 **6. Section 506(b)** - Subsection (b) provides the rule for future owner's liability. Section
34 506(b) states the general rule that an owner in a converted entity shall be personally liable only
35 for the debts and obligations of the converted entity that are incurred after the effective date of
36 the conversion.
37

38 **7. Section 506(c)** - Subsection (c) provides the rule for past owner's liability. Subsection
39 (c) has four parts: (1) an owner in a converting entity who had personal liability for the debts of
40 the converting entity under the entity's organic law is not discharged from those debts if the debts
41 arose before the effective date of the conversion; (2) an owner in a converting entity shall not
42 have owner's liability for the debts of the converted entity if those debts arose after the effective
43 date of the conversion; (3) the organic laws of the converting entity continue to apply for any past

1 owner's liability preserved under section 506(c)(1)(past personal liability regarding the
2 converting entity); and (4) the organic laws of the converting entity relative to rights of
3 contribution among owners in the converting entity continue to apply for owner's liabilities
4 preserved under section 506(c)(1)(contribution rights among owners in a converting entity).
5 Sections 506(b) and (c) do not address the circumstance where owner's liability exists before and
6 after a conversion.
7

8 **8. Section 506(d)** - Section 506(d) states the rule governing the *legal effect of a*
9 *conversion where the converted entity is a foreign entity*. According to § 506(d), a foreign
10 converted entity: (1) is deemed to appoint the [Secretary of State] as its agent for service of
11 process to enforce any rights of owners or transferees in the domestic converting entity; and (2)
12 agrees to pay any amount owed to the owners of the converted entity arising either in contract or
13 from the organic laws of the converting entity. Section 506(d) is intended to protect creditors
14 where the converting entity can no longer be found in the domestic jurisdiction for purpose of
15 service of process. Likewise, § 506(b) protects owners and transferees in the domestic
16 converting entity who have not received payment of whatever consideration was owed to them in
17 the conversion. The converted foreign entity in the latter circumstance not only agrees to pay
18 those claims but also is deemed to appoint the [Secretary of State] as its agent for service of
19 process.
20

21 **9. Section 506(f)** – Subsections (a)(2) and (f) deal with the chain of title to interests in
22 real property held by a converting entity. A statement of conversion filed under section 505
23 should be adequate evidence of the title of the converted entity to such interests, but subsection
24 (f) provides an optional method of creating a record of the conversion in the appropriate land
25 records. Similar provisions are not necessary in chapter 2 because the effect of a merger under
26 this Act on the title to real estate should be the same as in a merger under existing organic laws.
27 *Compare* Code of Ala. §10-15-3(d)(2).
28

29 **10. Source** – This section is patterned after Model Business Corporation Act § 9.55.
30
31

1 [ARTICLE] 6

2
3 DOMESTICATION

4
5 SECTION 601. DOMESTICATION AUTHORIZED.

6 (a) Domestic domesticating entity. – By complying with this [article] and except as
7 otherwise provided in this section, a domestic entity may become a foreign entity of the same
8 type of entity.

9 (b) Foreign domesticating entity. – A foreign entity may become a domestic entity of the
10 same type of entity pursuant to this [article], if the domestication is authorized by laws of the
11 foreign jurisdiction.

12 (c) Other procedures. – This [article] does not apply to a domestication described in
13 subsection (a) or (b) if the laws of this [state] provide procedures for the approval or effectuation
14 of such a transaction.

15 (d) Transitional provision. – If any debt security, note, or similar evidence of
16 indebtedness for money borrowed, whether secured or unsecured, or a contract of any kind,
17 issued, incurred, or executed by a domestic entity before the effective date of this [act] contains a
18 provision that applies to a merger of the entity but does not refer to a domestication, the
19 provision applies to a domestication of the entity until such time as the provision is amended
20 subsequent to that date.

21 [(e) Excluded entities. – Entities of the following types may not participate in a
22 domestication under this [article]:

23 (1)

24 (2)]

Comments

1. In General – Article 6 authorizes a foreign entity to become a domestic entity of the same type and also authorizes a domestic entity to become a foreign entity of the same type. Article 6 governs the legal effect of a foreign entity domesticating in a jurisdiction adopting this Act. Likewise, the organic laws of the foreign jurisdiction, and not Article 6, will govern the legal effect of a domestication of a domestic entity in another jurisdiction. In the latter scenario, Article 6 authorizes the domestication of the domestic entity in the foreign jurisdiction, but Article 6 does not create a right in the domestic entity to be received in the foreign jurisdiction. Similarly section 601 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.

The domestication authorized by Article 6 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 must change its type.

As with a conversion, all rights and privileges, debts and liabilities, 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.

2. Section 601(c) – It is expected that many adopting states will choose to place provisions on domestications in the organic law of each type of entity. See the discussion [in the prefatory note]. On the other hand, there will be some types of entities where it is unlikely that provisions on domestications will be added to the organic law, for example, unincorporated nonprofit associations. In cases where an organic law provides for domestications, there is no need for this Act; but in cases where an organic law does not provide for domestications, this Act will serve the important function of authorizing domestications for those types of entities. Subsection (c) has been drafted in general terms to accommodate both the existing law in an adopting state at the time this Act is enacted and also any changes in organic laws after the enactment of this Act. Subsection (c) could be adopted in the following more specific form identifying the organic laws to which it refers:

This [article] does not apply to a domestication under the following statutes:

- (1) Chapter 9 of the MBCA
- (2)
- (3)

SECTION 602. PLAN OF DOMESTICATION.

(a) Plan of domestication required. – A domestic entity may engage in a domestication

1 under this [article] by approving a plan of domestication.

2 (b) Required contents. – A plan of domestication must be in a record and contain:

3 (1) the name and type of entity of the domesticating entity;

4 (2) the name, jurisdiction of formation, and type of entity of the domesticated
5 entity;

6 (3) the terms and conditions of the domestication;

7 (4) the manner and basis of converting the interests of the domesticating entity
8 into interests, securities, obligations, rights to acquire interests or securities, cash, other property,
9 or any combination of the foregoing;

10 (5) the proposed public organic document, if any, of the domesticated entity and
11 the full text of its organic rules that are to be in a record;

12 (6) any other provision required by the organic law or organic rules of the
13 domesticating entity; and

14 (7) if the domesticating entity will cease to be a domestic entity in connection
15 with the domestication, a statement to that effect.

16 (c) Optional contents. – In addition to the provisions required by subsection (b), a plan of
17 domestication may contain any other provision not prohibited by applicable law.

18 (d) Reference to extrinsic facts. – Any provision of a plan of domestication may be made
19 dependent upon facts ascertainable outside of the plan, if the manner in which the facts will
20 operate upon the provision contained in the plan.

21 **Comments**

22 **1. Section 602(a)** - The requirements for the approval of the plan of domestication are

1 set forth in section 603.
2
3

4 **SECTION 603. APPROVAL OF DOMESTICATION.**

5 (a) Domestic domesticating entity. – Subject to subsections (c) and (d), a plan of
6 domestication must be approved by a domestic entity:

7 (1) in accordance with the procedures, if any, in its organic rules for approval of a
8 domestication;

9 (2) if its organic rules do not provide procedures for approval of a domestication,
10 then in accordance with the procedures, if any, for approval of a merger in its organic law; or

11 (3) if neither its organic law nor organic rules provide procedures for approval of a
12 domestication or a merger, then by all the interest holders of the entity.

13 (b) Foreign domesticating entity. – A domesticating entity that is a foreign entity must
14 approve the domestication in accordance with the laws of the foreign jurisdiction.

15 (c) Consent to owner liability. – If an interest holder of a domestic domesticating entity
16 does not have owner liability with respect to the domesticating entity but will have owner
17 liability with respect to the domesticated entity, that person must vote for or consent to the
18 domestication in a record, unless:

19 (1) the organic rules of the entity in a record provide expressly for the approval of
20 a domestication by the vote or consent of fewer than all of the interest holders; and

21 (2) the person has voted for or consented in a record to that provision of the
22 organic rules, or became an interest holder after the adoption of the provision.

23 (d) Transitional provision.—If any provision of the organic rules of a domestic

domesticating entity, or of an agreement to which any of its governors or interest holders are parties, adopted or entered into before the effective date of this [act] specifies procedures for approval of a merger of the entity but does not refer to approval of a domestication, the provision shall be deemed to apply to approval of a domestication until such time as the provision is amended subsequent to that date.

Comments

1.

SECTION 604. AMENDMENT OR ABANDONMENT OF PLAN OF DOMESTICATION.

(a) Amendment before filing. – A plan of domestication may provide that the plan may be amended by the domesticating entity or its governors or interest holders prior to the filing of a statement of domestication, except that the plan may not be amended without a vote of the interest holders of a domestic domesticating entity to change:

(1) the amount or kind of interests, securities, obligations, rights to acquire interests or securities, cash, or other property to be received by those interest holders under the plan;

(2) the public organic document or organic rules of the domesticated entity that will be in effect immediately following consummation of the domestication, except for changes that would not require the approval of the interest holders of the domesticated entity under its organic law; or

(3) any of the other terms or conditions of the plan if the change would adversely

1 affect any of those interest holders in any material respect.

2 (b) No amendment after filing. – A plan of domestication may not be amended after the
3 filing of a statement of domestication.

4 (c) Abandonment. – Unless otherwise provided in a plan of domestication, after the plan
5 has been approved as required by this [article], and at any time before a statement of
6 domestication has become effective, the plan may be abandoned by a domestic domesticating
7 entity without action by its interest holders in accordance with any procedures set forth in the
8 plan or, if no such procedures are set forth in the plan, in the manner determined by the
9 governors.

10 (d) Required abandonment filing. – If a domestication is abandoned after a statement of
11 domestication has been filed with the [Secretary of State] but before the statement of
12 domestication has become effective, a statement that the domestication has been abandoned in
13 accordance with this section, signed on behalf of the domesticating entity, shall be filed with the
14 [Secretary of State] before the effective date of the statement of domestication. The statement
15 filed under this subsection shall take effect upon filing and the domestication shall be deemed
16 abandoned and shall not become effective.

17 **Comments**

18 Section 604 permits abandonment or termination by a domestic entity of a plan of
19 domestication.
20
21

22 **SECTION 605. STATEMENT OF DOMESTICATION; EFFECTIVE DATE.**

23 (a) Required filing. – If the domesticating entity is a foreign entity, a statement of
24 domestication must be signed and filed with the [Secretary of State].

1 (b) Contents. – A statement of domestication must contain:

2 (1) The name, jurisdiction of formation, and type of entity of the domesticating
3 entity.

4 (2) The name of the domesticated entity, which must satisfy the requirements of
5 the organic law of the domesticated entity.

6 (3) If the statement of domestication is not to be effective upon filing, the later
7 date and time on which it will become effective.

8 (4) That the domestication was approved by the domesticating entity in
9 accordance with the laws of the foreign jurisdiction.

10 (5) If the domesticated entity is a filing entity, a copy of its public organic
11 document.

12 (6) If the domesticated entity is a nonfiling entity, the address of its chief
13 executive office or principal place of business.

14 [(7) Any other information the adopting state may require.]

15 (c) Optional contents. – In addition to the provisions required by subsection (b), a
16 statement of domestication may contain any other provision not prohibited by applicable law.

17 (d) Effective date. – A statement of domestication becomes effective upon the date and
18 time of filing, or such later date and time as specified in the statement of domestication.

19 **Comments**

20
21 1.
22
23
24
25

1 **SECTION 606. EFFECT OF DOMESTICATION.**

2 (a) Foreign domesticating entity. – When a domestication of a foreign domesticating
3 entity becomes effective:

4 (1) the domesticated entity is deemed to:

5 (i) be organized under and subject to the organic law of the domesticated
6 entity for all purposes;

7 (ii) be the same entity without interruption or dissolution as the
8 domesticating entity; and

9 (iii) have been organized on the date and time that the domesticating entity
10 was originally organized;

11 (2) all property, causes of action, and contract rights of the domesticating entity
12 vest in the domesticated entity without reversion or impairment;

13 (3) all liabilities of the domesticating entity continue as liabilities of the
14 domesticated entity;

15 (4) the name of the domesticated entity may be substituted in any pending action
16 or proceeding for the name of the domesticating entity;

17 (5) unless prohibited by law other than this [act], all of the rights, privileges,
18 immunities, powers, and purposes of the domesticating entity remain in the domesticated entity;

19 (6) unless otherwise provided by the organic law of the domesticating entity, the
20 domestication does not require the dissolution of the domesticating entity;

21 (7) if a domesticated entity is a filing entity, its public organic document becomes
22 effective and is binding upon the interest holders of the domesticated entity;

1 (8) the private organic rules approved in connection with the domestication
2 become effective and are binding upon the interest holders of the domesticated entity; and

3 (9) the interests in the domesticating entity are converted to the extent and as
4 approved in connection with the domestication.

5 (b) Domestic domesticating entity. – When a domestication of a domestic domesticating
6 entity becomes effective:

7 (1) the domestication does not require the dissolution of the domesticating entity;
8 and

9 (2) the interests in the domesticating entity are converted to the extent and as
10 provided in the plan of domestication and the interest holders in the domesticating entity are
11 entitled to the rights provided to them under the plan of domestication and to any appraisal rights
12 they may have under section 108.

13 (c) Future owner liability. – A person that becomes subject to owner liability with respect
14 to the domesticated entity as a result of the domestication has owner liability only to the extent
15 provided by the organic law of the domesticated entity and only for those liabilities that are
16 incurred after the domestication becomes effective.

17 (d) Past owner liability. – The effect of the domestication on the owner liability of a
18 person that is incurred before the domestication becomes effective is as follows:

19 (1) The domestication does not discharge any owner liability under the organic
20 law of the domesticating entity in which the person was an interest holder to the extent that
21 owner liability arose before the domestication becomes effective.

22 (2) The person does not have owner liability under the organic law of the

domesticating entity in which the person was an interest holder before the domestication for any liability that is incurred after the domestication becomes effective.

(3) The organic law of the domesticating entity continues to apply to the collection or discharge of any owner liability preserved by paragraph (1) as if the domestication had not occurred.

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

(e) Service of process on foreign domesticated entity. – A foreign entity that is the domesticated entity:

(1) may be served with process in this [state] for the collection and enforcement of any liabilities of the domesticating entity;

(2) appoints the [Secretary of State] as its agent for service of process for the purpose of collecting and enforcing those liabilities; and

(3) agrees to provide the [Secretary of State] the address to which service of process on the domesticated entity may be mailed.

(f) Cancellation of foreign qualification. – If the domesticating entity is a qualified foreign entity, the certificate of authority or other foreign qualification of the domesticating entity is canceled when the domestication becomes effective.

Comments

1. **Section 606(a)** - Subsection (a) governs the legal effect of a domestication where the domesticated entity is a domestic entity. If a domestic entity domesticates into a foreign jurisdiction, the legal effect of the domestication will be governed by the organic laws of the

1 foreign jurisdiction.

2
3 **2. Section 606(a)(1)** – Subsection (a)(1)(iii) states the general proposition that the
4 domesticated entity is deemed to have begun its existence at the time the domesticating entity
5 was first formed or otherwise created. As such, the domesticated entity is the same entity whose
6 existence relates back to the creation of the domesticating entity.

7
8 Sections 606(a)(4), (5), (6) and (7) preserve all actions or proceedings, rights and
9 privileges and creditor claims and liens pending against the domesticating entity unimpaired. A
10 domestication, therefore, is not a sale, conveyance, transfer or assignment and does not give rise
11 to claims of reverter or impairment of title that may be based on a prohibition on transfer,
12 assignment or conveyance.

13
14 Section 606(a)(9) states the rule that the ownership or transferee interests of the
15 domesticating entity are reclassified into whatever rights were negotiated in the domestication
16 and that the owners or transferees of the domesticating entity are entitled to those rights. Section
17 606(a)(9), on its face, allows certain owners in the domesticating entity to be entitled to a
18 continuing equity interest in the domesticated entity whereas other owners in the domesticating
19 entity may be cashed out as a result of the transaction.

20
21 **Section 606(b)** - Section 606(b) states the rule for *future owner's liability*. Section
22 606(b) provides that an owner in a domesticated entity shall be personally liable only for the
23 debts and obligations of the domesticated entity that arise after the effective date of the
24 domestication. This rule is not extraterritorial because it seeks to limit liability to actions that
25 occur after the domestication.

26
27 **Section 606(c)** - Section 606(c) addresses past owner liability. To the extent that these
28 rules address the *legal effect of owner liability after a domestication*, they are more properly the
29 subject of the organic law of the foreign jurisdiction. This section was bracketed in prior drafts.
30 **Query whether § 605(d) should be included since whatever owner's liability existed before**
31 **the domestication will continue after the transaction as well.**

32
33 **Section 606(d)** - Section 605(d) states a rule for domestic entities that domesticate into a
34 foreign jurisdiction. Section 606(d) parallels analogous provisions in Articles 2 (mergers), 3
35 (divisions), 4 (entity interest exchanges) and 5 (conversions).

36 37 38 **SECTION 607. STATEMENT OF CHARTER SURRENDER.**

39 (a) General rule. – A domestic domesticating entity may cease to be a domestic entity at
40 any time after the domestication becomes effective by signing and filing with the [Secretary of

1 State] a statement of charter surrender.

2 (b) Approval. – If the plan of domestication did not provide for the domesticating entity
3 to cease to be a domestic entity, filing of the statement of charter surrender shall be approved by
4 the domesticating entity in the same manner as a plan of domestication.

5 (c) Contents. – A statement of charter surrender must state:

6 (1) The name of the domesticating entity.

7 (2) The name, jurisdiction of formation, and type of entity of the domesticated
8 entity.

9 (3) That filing of the statement of charter surrender was approved by the
10 domesticating entity as required by subsection (b).

11 (4) If the domesticated entity:

12 (i) is a qualified foreign entity, the name of its registered agent and address
13 of its registered office in this [state]; or

14 (ii) is a nonqualified foreign entity, the address of its chief executive office
15 or principal place of business.

16 [(5) Any other information the adopting state may require.]

17 (d) Optional contents. – In addition to the provisions required by subsection (c), a
18 statement of charter surrender may contain any other provision not prohibited by applicable law.

19 (e) Effective date. – A statement of charter surrender takes effect upon filing.

20 (f) Effect. – When a statement of charter surrender takes effect:

21 (1) all property, causes of action, and contract rights of the domesticating entity
22 continue as property, causes of action, and contract rights of the domesticated entity;

(2) all liabilities of the domesticating entity continue as liabilities of the domesticated entity;

(3) the name of the domesticated entity may be substituted in any pending action or proceeding for the name of the domesticating entity;

(4) the public organic document, if any, of the domesticating entity is cancelled;

(5) the domesticated entity:

(i) continues to be the same entity as the domesticating entity; but

(ii) ceases to have the status of a domestic entity; and

(6) the interests in the domesticated entity continue without change.

Comments

1 [ARTICLE] 7

2 CONFORMING AMENDMENTS AND REPEALS

3 Introductory Comment to Article 7

4
5 This article sets forth a series of amendments and repeals to the existing model, prototype
6 and uniform organic laws for the following purposes:

- 7
8 1. The applicability of the merger provisions of each of those organic laws is limited
9 to transactions involving just domestic and foreign entities of the type created
10 under that law.
11
12 2. The conversion provisions found only in some of those organic laws are deleted
13 so that the procedures in this Act will be the exclusive means of converting one
14 type of entity to another type.
15
16 3. Provisions on domestication and interest exchanges are added to those organic
17 laws that do not currently contain provisions on those subjects.
18

19 The amendments in this article follow the style of each organic law. States should
20 consider instead using a consistent style across all of their organic laws.
21

22 Deletions are enclosed in **[brackets]** and additions are underlined. Full sections that are
23 being added have not been underlined.
24

25 **SECTION 701. MODEL BUSINESS CORPORATION ACT.**

26
27 (a) Section 1.40(6A), (9A), (10A), (10B), (14A), (14B) and (14C) of the [*Model Business*
28 *Corporation Act*] are repealed.

29 (b) The title of chapter 9 of the [*Model Business Corporation Act*] is amended as follows:

30 Chapter 9. Domestication **[and Conversion]**

31
32 (c) Subchapters 9A, 9C, 9D and 9E and section 11.01 of the [*Model Business*
33 *Corporation Act*] are repealed.

34 (d) Sections 11.02, 11.03, 11.04, 11.06, 11.07, 11.08 and 13.02 of the [*Model Business*
35 *Corporation Act*] are amended as follows:

1 § 11.02. Merger.
2

3 (a) One or more domestic corporations may merge with one or more domestic or foreign
4 corporations **[or other entities]** pursuant to a plan of merger. See [the Model Entity
5 Transactions Act] with respect to a merger in which a domestic or foreign unincorporated entity
6 or nonprofit corporation is a party.
7

8 (b) A foreign corporation[, **or a foreign other entity,**] may be a party to a merger with a
9 domestic corporation, or may be created by the terms of the plan of merger, only if the merger is
10 permitted by the laws under which the corporation **[or other entity]** is organized **[or by which it**
11 **is governed]**.
12

13 **[(b.1) If the organic law of a domestic other entity does not provide procedures for**
14 **the approval of a merger, a plan of merger may be adopted and approved, the merger**
15 **effectuated, and appraisal rights exercised in accordance with the procedures in this**
16 **chapter and chapter 13. For the purposes of applying this chapter and chapter 13:**
17

18 (1) **the other entity, its interest holders, interests and organic documents**
19 **taken together shall be deemed to be a domestic business corporation, shareholders,**
20 **shares and articles of incorporation, respectively and vice versa as the context may**
21 **require; and**
22

23 (2) **if the business and affairs of the other entity are managed by a group of**
24 **persons that is not identical to the interest holders, that group shall be deemed to be**
25 **the board of directors.]** (Repealed.)
26

27 (c) The plan of merger must include:
28

29 (1) the name of each corporation **[or other entity]** that will merge and the name
30 of the corporation **[or other entity]** that will be the survivor of the merger;
31

32 (2) the terms and conditions of the merger;
33

34 (3) the manner and basis of converting the shares of each merging corporation
35 **[and interests of each merging other entity]** into shares or other securities, **[interests,]**
36 obligations, rights to acquire shares[, or other securities **[or interests]**, cash, other
37 property, or any combination of the foregoing;
38

39 (4) the articles of incorporation of any corporation[, **or the organic documents of**
40 **any other entity,**] to be created by the merger, or if a new corporation **[or other entity]**
41 is not to be created by the merger, any amendments to the survivor's articles of
42 incorporation **[or organic documents]**.
43

1 * * *

2
3 (e) The plan of merger may also include a provision that the plan may be amended prior
4 to filing articles of merger, but if the shareholders of a domestic corporation that is a party to the
5 merger are required or permitted to vote on the plan, the plan must provide that subsequent to
6 approval of the plan by such shareholders the plan may not be amended to change:

7
8 (1) the amount or kind of shares or other securities, **[interests,]** obligations, rights
9 to acquire shares[, or other securities **[or interests]**, cash, or other property to be
10 received under the plan by the shareholders of **[or owners of interests in]** any party to
11 the merger;

12
13 (2) the articles of incorporation of any corporation[, **or the organic documents of**
14 **any other entity,**] that will survive or be created as a result of the merger, except for
15 changes permitted by section 10.05 **[or by comparable provisions of the organic laws**
16 **of any such foreign corporation or domestic or foreign other entity];** or

17
18 (3) any of the other terms or conditions of the plan if the change would adversely
19 affect such shareholders in any material respect.

20
21 § 11.03. Share exchange.

22
23 (a) Through a share exchange:

24
25 (1) a domestic corporation may acquire all of the shares of one or more classes or
26 series of shares of another domestic or foreign corporation[, **or all of the interests of one**
27 **or more classes or series of interests of a domestic or foreign other entity,**] in
28 exchange for shares or other securities, **[interests,]** obligations, rights to acquire shares or
29 other securities, cash, other property, or any combination of the foregoing, pursuant to a
30 plan of share exchange, or

31
32 (2) all of the shares of one or more classes or series of shares of a domestic
33 corporation may be acquired by another domestic or foreign corporation **[or other**
34 **entity,]** in exchange for shares or other securities, **[interests,]** obligations, rights to
35 acquire shares or other securities, cash, other property, or any combination of the
36 foregoing, pursuant to a plan of share exchange.

37
38 (b) A foreign corporation[, **or a foreign other entity,**] may be a party to a share exchange
39 only if the share exchange is permitted by the laws under which the corporation **[or other entity]**
40 is organized **[or by which it is governed]**.

41
42 **[(b.1) If the organic law of a domestic other entity does not provide procedures for**
43 **the approval of a share exchange, a plan of share exchange may be adopted and approved,**

1 and the share exchange effectuated, in accordance with the procedures, if any, for a
2 merger. If the organic law of a domestic other entity does not provide procedures for the
3 approval of either a share exchange or a merger, a plan of share exchange may be adopted
4 and approved, the share exchange effectuated, and appraisal rights exercised, in
5 accordance with the procedures in this chapter and chapter 13. For the purposes of
6 applying this chapter and chapter 13:

7
8 (1) the other entity, its interest holders, interests and public organic
9 document, if any, shall be deemed to be a domestic business corporation,
10 shareholders, shares and articles of incorporation, respectively and vice versa as the
11 context may require; and
12

13 (2) if the affairs of the other entity are managed by a group of persons that is
14 not identical to the interest holders, that group shall be deemed to be the board of
15 directors.] (Repealed.)
16

17 (c) The plan of share exchange must include:
18

19 (1) the name of each corporation [or other entity] whose shares [or interests]
20 will be acquired and the name of the corporation [or other entity] that will acquire those
21 shares [or interests];
22

23 (2) the terms and conditions of the share exchange;
24

25 (3) the manner and basis of exchanging shares of [a] the corporation [or interests
26 in an other entity] whose shares [or interests] will be acquired under the share exchange
27 into shares or other securities, [interests,] obligations, rights to acquire shares[,] or other
28 securities, [or interests,] cash, other property, or any combination of the foregoing.
29

30 * * *
31

32 (e) The plan of share exchange may also include a provision that the plan may be
33 amended prior to filing articles of share exchange, but if the shareholders of a domestic
34 corporation that is a party to the share exchange are required or permitted to vote on the plan, the
35 plan must provide that subsequent to approval of the plan by such shareholders the plan may not
36 be amended to change:
37

38 (1) the amount or kind of shares or other securities, [interests,] obligations, rights
39 to acquire shares[,] or other securities [or interests], cash, or other property to be issued
40 by the corporation or to be received under the plan by the shareholders of [or owners of
41 interests in] any party to the share exchange; or
42

43 (2) any of the other terms or conditions of the plan if the change would adversely

1 affect such shareholders in any material respect.

2
3 * * *

4
5 (g) See [the Model Entity Transactions Act] with respect to a share exchange in which the
6 shares are to be acquired by a domestic or foreign unincorporated entity or nonprofit corporation.

7
8 § 11.04. Action on a plan of merger or share exchange.

9
10 * * *

11
12 (f) Separate voting by voting groups is required:

13 (1) on a plan of merger, by each class or series of shares that:

14
15 (i) are to be converted under the plan of merger into other securities,
16 **[interests,]** obligations, rights to acquire shares[, or other securities **[or**
17 **interests]**, cash, other property, or any combination of the foregoing; or

18
19 (ii) would be entitled to vote as a separate group on a provision in the plan
20 that, if contained in a proposed amendment to articles of incorporation, would
21 require action by separate voting groups under section 10.04;

22
23 (2) on a plan of share exchange, by each class or series of shares included in the
24 exchange, with each class or series constituting a separate voting group; and

25
26 (3) on a plan of merger or share exchange, if the voting group is entitled under the
27 articles of incorporation to vote as a voting group to approve a plan of merger or share
28 exchange.

29
30 * * *

31
32
33 § 11.06. Articles of merger or share exchange.

34
35 (a) After a plan of merger or share exchange has been adopted and approved as required
36 by this Act, articles of merger or share exchange shall be executed on behalf of each party to the
37 merger or share exchange by any officer or other duly authorized representative. The articles
38 shall set forth:

39
40 * * *

41
42 (5) as to each foreign corporation **[and each other entity]** that was a party to the
43 merger or share exchange, a statement that the participation of the foreign corporation **[or**

1 **other entity]** was duly authorized as required by the **[organic law of the corporation or**
2 **other entity]** laws of the foreign jurisdiction.

3
4 * * *

5
6 § 11.07. Effect of merger or share exchange.

7
8 * * *

9
10 **[(c) A person who becomes subject to owner liability for some or all of the debts,**
11 **obligations or liabilities of any entity as a result of a merger or share exchange shall have**
12 **owner liability only to the extent provided in the organic law of the entity and only for**
13 **those debts, obligations and liabilities that arise after the effective time of the articles of**
14 **merger or share exchange.]** (Repealed.)

15
16 * * *

17
18 **[(e) The effect of a merger or share exchange on the owner liability of a person who**
19 **had owner liability for some or all of the debts, obligations or liabilities of a party to the**
20 **merger or share exchange shall be as follows:**

21
22 **(1) The merger or share exchange does not discharge any owner liability**
23 **under the organic law of the entity in which the person was a shareholder or interest**
24 **holder to the extent any such owner liability arose before the effective time of the**
25 **articles of merger or share exchange.**

26
27 **(2) The person shall not have owner liability under the organic law of the**
28 **entity in which the person was a shareholder or interest holder prior to the merger**
29 **or share exchange for any debt, obligation or liability that arises after the effective**
30 **time of the articles of merger or share exchange.**

31
32 **(3) The provisions of the organic law of any entity for which the person had**
33 **owner liability before the merger or share exchange shall continue to apply to the**
34 **collection or discharge of any owner liability preserved by paragraph (1), as if the**
35 **merger or share exchange had not occurred.**

36
37 **(4) The person shall have whatever rights of contribution from other persons**
38 **are provided by the organic law of the entity for which the person had owner**
39 **liability with respect to any owner liability preserved by paragraph (1), as if the**
40 **merger or share exchange had not occurred.]** (Repealed.)

41
42 § 11.08. Abandonment of a merger or share exchange.

1 (a) Unless otherwise provided in a plan of merger or share exchange or in the laws under
2 which a foreign corporation **[or a domestic or foreign other entity]** that is a party to a merger or
3 a share exchange is organized **[or by which it is governed]**, after the plan has been adopted and
4 approved as required by this chapter, and at any time before the merger or share exchange has
5 become effective, it may be abandoned by any party thereto without action by the party's
6 shareholders **[or owners of interests]**, in accordance with any procedures set forth in the plan of
7 merger or share exchange or, if no such procedures are set forth in the plan, in the manner
8 determined by the board of directors **[of a corporation, or the managers of an other entity]**,
9 subject to any contractual rights of other parties to the merger or share exchange.

10
11 * * *

12
13 § 13.02. Right to appraisal.

14
15 (a) A shareholder is entitled to appraisal rights, and to obtain payment of the fair value of
16 that shareholder's shares, in the event of any of the following corporate actions:

17
18 * * *

19
20 (5) any other amendment to the articles of incorporation, merger, share exchange
21 or disposition of assets to the extent provided by the articles of incorporation, bylaws or a
22 resolution of the board of directors; or _____

23
24 (6) consummation of a domestication if the shareholder does not receive shares in
25 the foreign corporation resulting from the domestication that have terms as favorable to
26 the shareholder in all material respects, and represent at least the same percentage interest
27 of the total voting rights of the outstanding shares of the corporation, as the shares held by
28 the shareholder before the domestication[;]. _____

29
30 **[(7) consummation of a conversion of the corporation to nonprofit status**
31 **pursuant to subchapter 9C; or**

32
33 **(8) consummation of a conversion of the corporation to a form of other entity**
34 **pursuant to subchapter 9E.]**

35
36 (b) Notwithstanding subsection (a), the availability of appraisal rights under subsection
37 (a)(1), (2), (3), (4), **(6) and (8)** and (6) shall be limited in accordance with the following
38 provisions:

39
40 * * *

41
42 (e) Subchapter 15B of the [*Model Business Corporation Act*] is repealed.

1 **SECTION 702. MODEL NONPROFIT CORPORATION ACT.**

2
3 (a) Sections 1.22 and 1.40 of the [*Model Nonprofit Corporation Act*] are amended as
4 follows:

5 § 1.22. Filing, service, and copying fees.

6
7 (a) The secretary of state shall collect the following fees when the documents described in
8 this subsection are delivered for filing:

9

Document	Fee
* * *	
(12) Articles of merger or <u>membership exchange</u>	\$ _____
(12A) Articles of domestication	\$ _____
(12B) Articles of charter surrender	\$ _____

15

16 * * *

17
18 § 1.40. Act definitions.

19
20 Unless the context otherwise requires in this Act:

21
22 * * *

23 (19A) “Interest” means either or both of the following rights under the organic
24 law of an entity:

25
26 (i) the right to receive distributions from an entity either in the ordinary
27 course or upon liquidation; or

28
29 (ii) the right to receive notice or vote on issues involving its internal
30 affairs, other than as an agent, assignee, proxy or person responsible for managing
31 its business and affairs.

32
33 (19B) “Interest holder” means a person who holds of record an interest.

34
35 * * *

36
37 (24A) “Organic law” means the statute governing the internal affairs of a domestic
38 or foreign nonprofit or business corporation or unincorporated entity.

39
40 (24B) “Organic document” means a public organic document or a private organic
41 document.

1 * * *

2
3 (24C) “Owner liability” means personal liability for a debt, obligation or liability
4 of a domestic or foreign nonprofit or business corporation or unincorporated entity that is
5 imposed on a person:

6
7 (i) solely by reason of the person’s status as a shareholder, member or
8 interest holder; or

9
10 (ii) by the articles of incorporation, bylaws or an organic document
11 pursuant to a provision of the organic law authorizing the articles of
12 incorporation, bylaws or an organic document to make one or more specified
13 shareholders, members or interest holders liable in their capacity as shareholders,
14 members or interest holders for all or specified debts, obligations or liabilities of
15 the entity.

16
17 * * *

18
19 (26A) “Private organic document” means any document (other than the public
20 organic document, if any) that determines the internal governance of an other entity.
21 Where a private organic document has been amended or restated, the term means the
22 private organic document as last amended or restated.

23
24 * * *

25
26 (28B) “Public organic document” means the document, if any, that is filed of
27 public record to create an other entity, including amendments and restatements thereof.
28 Where public organic document has been amended or restated, the term means the public
29 organic document as last amended or restated.

30
31 * * *

32
33 (33A) “Unincorporated entity” means an organization or artificial legal person
34 that either has a separate legal existence or has the power to acquire an estate in real
35 property in its own name and that is not any of the following: a domestic or foreign
36 nonprofit or business corporation, an estate, a trust, a state, the United States, or a foreign
37 government. The term includes a general partnership, limited liability company, limited
38 partnership, business trust, joint stock association and unincorporated nonprofit
39 association.

40
41 * * *

42
43 (b) The [*Model Nonprofit Corporation Act*] is amended by adding a chapter to read:

Chapter 9. Domestication

§ 9.20. Domestication.

(a) A foreign nonprofit corporation may become a domestic nonprofit corporation only if the domestication is permitted by the organic law of the foreign corporation.

(b) A domestic nonprofit corporation may become a foreign nonprofit corporation only if the domestication is permitted by the laws of the foreign jurisdiction. Regardless of whether the laws of the foreign jurisdiction require the adoption of a plan of domestication, the domestication shall be approved by the adoption by the corporation of a plan of domestication in the manner provided in this subchapter.

(c) The plan of domestication must include:

(1) a statement of the jurisdiction in which the corporation is to be domesticated;

(2) the terms and conditions of the domestication;

(3) the manner and basis of reclassifying the memberships in the corporation following its domestication into memberships, obligations, cash, other property, or any combination of the foregoing; and

(4) any desired amendments to the articles of incorporation of the corporation following its domestication.

(d) The plan of domestication may also include a provision that the plan may be amended prior to filing the document required by the laws of this state or the other jurisdiction to consummate the domestication, except that subsequent to approval of the plan by the members the plan may not be amended to change:

(1) the amount or kind of memberships, obligations, cash, or other property to be received by the members under the plan;

(2) the articles of incorporation as they will be in effect immediately following the domestication, except for changes permitted by section 10.02 or by comparable provisions of the laws of the other jurisdiction; or

(3) any of the other terms or conditions of the plan if the change would adversely affect any of the members in any material respect.

§ 9.21. Action on a plan of domestication.

1 In the case of a domestication of a domestic nonprofit corporation in a foreign
2 jurisdiction:

3
4 (1) The plan of domestication must be adopted by the board of directors.

5
6 (2) After adopting the plan of domestication the board of directors must submit
7 the plan to the members for their approval.
8

9 (3) If the approval of the members is to be given at a meeting, the corporation
10 must notify each member, whether or not entitled to vote, of the meeting of members at
11 which the plan of domestication is to be submitted for approval. The notice must state
12 that the purpose, or one of the purposes, of the meeting is to consider the plan and must
13 contain or be accompanied by a copy or summary of the plan. The notice shall include or
14 be accompanied by a copy of the articles of incorporation as they will be in effect
15 immediately after the domestication.
16

17 (4) Unless the articles of incorporation requires a greater vote or a greater number
18 of votes to be present, approval of the plan of domestication requires the approval of the
19 members at a meeting at which a quorum consisting of at least a majority of the votes
20 entitled to be cast on the plan exists.
21

22 § 9.22. Articles of domestication.
23

24 (a) After the domestication of a foreign nonprofit corporation has been authorized as
25 required by the laws of the foreign jurisdiction, articles of domestication shall be executed by any
26 officer or other duly authorized representative. The articles shall set forth:
27

28 (1) the name of the corporation immediately before the filing of the articles of
29 domestication and, if that name is unavailable for use in this state or the corporation
30 desires to change its name in connection with the domestication, a name that satisfies the
31 requirements of section 4.01;
32

33 (2) the jurisdiction of incorporation of the corporation immediately before the
34 filing of the articles of domestication and the date the corporation was incorporated in
35 that jurisdiction; and
36

37 (3) a statement that the domestication of the corporation in this state was duly
38 authorized as required by the laws of the jurisdiction in which the corporation was
39 incorporated immediately before its domestication in this state.
40

41 (b) The articles of domestication shall either contain all of the provisions that section
42 2.02(a) requires to be set forth in articles of incorporation and any other desired provisions that
43 section 2.02(b) permits to be included in articles of incorporation, or shall have attached articles

1 of incorporation. In either case, provisions that would not be required to be included in restated
2 articles of incorporation may be omitted.

3
4 (c) The articles of domestication shall be delivered to the secretary of state for filing, and
5 shall take effect at the effective time provided in section 1.23.

6
7 (d) If the foreign corporation is authorized to transact business in this state under chapter
8 15, its certificate of authority shall be cancelled automatically on the effective date of its
9 domestication.

10
11 § 9.23. Surrender of charter upon domestication.

12
13 (a) Whenever a domestic nonprofit corporation has adopted and approved, in the manner
14 required by this subchapter, a plan of domestication providing for the corporation to be
15 domesticated in a foreign jurisdiction, articles of charter surrender shall be executed on behalf of
16 the corporation by any officer or other duly authorized representative. The articles of charter
17 surrender shall set forth:

18
19 (1) the name of the corporation;

20
21 (2) a statement that the articles of charter surrender are being filed in connection
22 with the domestication of the corporation in a foreign jurisdiction;

23
24 (3) a statement that the domestication was duly approved by the members;

25
26 (4) the corporation's new jurisdiction of incorporation.

27
28 (b) The articles of charter surrender shall be delivered by the corporation to the secretary
29 of state for filing. The articles of charter surrender shall take effect on the effective time
30 provided in section 1.23.

31
32 § 9.24. Effect of domestication.

33
34 (a) When a domestication becomes effective:

35
36 (1) the title to all real and personal property, both tangible and intangible, of the
37 corporation remains in the corporation without reversion or impairment;

38
39 (2) the liabilities of the corporation remain the liabilities of the corporation;

40
41 (3) an action or proceeding pending against the corporation continues against the
42 corporation as if the domestication had not occurred;

1 (4) the articles of domestication, or the articles of incorporation attached to the
2 articles of domestication, constitute the articles of incorporation of the corporation;
3

4 (5) the memberships of the corporation are reclassified into memberships,
5 obligations, or into cash or other property in accordance with the terms of the
6 domestication, and the members are entitled only to the rights provided by those terms
7 and the organic law of the domesticating corporation; and
8

9 (6) the corporation is deemed to:

10
11 (i) be incorporated under and subject to the organic law of the
12 domesticated corporation for all purposes;
13

14 (ii) be the same corporation without interruption as the domesticating
15 corporation; and
16

17 (iii) have been incorporated on the date the domesticating corporation was
18 originally incorporated.
19

20 (b) The owner liability of a member in a foreign corporation that is domesticated in this
21 state shall be as follows:
22

23 (1) The domestication does not discharge any owner liability under the laws of the
24 foreign jurisdiction to the extent any such owner liability arose before the effective time
25 of the articles of domestication.
26

27 (2) The member shall not have owner liability under the laws of the foreign
28 jurisdiction for any debt, obligation or liability of the corporation that arises after the
29 effective time of the articles of domestication.
30

31 (3) The provisions of the laws of the foreign jurisdiction shall continue to apply to
32 the collection or discharge of any owner liability preserved by paragraph (1), as if the
33 domestication had not occurred and the corporation were still incorporated under the laws
34 of the foreign jurisdiction.
35

36 (4) The member shall have whatever rights of contribution from other members
37 are provided by the laws of the foreign jurisdiction with respect to any owner liability
38 preserved by paragraph (1), as if the domestication had not occurred and the corporation
39 were still incorporated under the laws of that jurisdiction.
40

41 § 9.25. Abandonment of a domestication.
42

43 (a) Unless otherwise provided in a plan of domestication of a domestic nonprofit

1 corporation, after the plan has been adopted and approved as required by this subchapter, and at
2 any time before the domestication has become effective, it may be abandoned by the board of
3 directors without action by the members.
4

5 (b) If a domestication is abandoned under subsection (a) after articles of charter surrender
6 have been filed with the secretary of state but before the domestication has become effective, a
7 statement that the domestication has been abandoned in accordance with this section, executed
8 by an officer or other duly authorized representative, shall be delivered to the secretary of state
9 for filing prior to the effective date of the domestication. The statement shall take effect upon
10 filing and the domestication shall be deemed abandoned and shall not become effective.
11

12 (c) If the domestication of a foreign nonprofit corporation in this state is abandoned in
13 accordance with the laws of the foreign jurisdiction after articles of domestication have been
14 filed with the secretary of state, a statement that the domestication has been abandoned, executed
15 by an officer or other duly authorized representative, shall be delivered to the secretary of state
16 for filing. The statement shall take effect upon filing and the domestication shall be deemed
17 abandoned and shall not become effective.
18

19 (c) Sections 11.01, 11.02, 11.04 and 11.06 of the [*Model Nonprofit Corporation Act*], are
20 amended as follows:

21 § 11.01. Approval of plan of merger.
22

23 (a) Subject to the limitations set forth in section 11.02, one or more nonprofit
24 corporations may merger **[into a business or]** with one or more nonprofit [corporation]
25 corporations, if the plan of merger is approved or provided in section 11.03. See [*the Model*
26 *Entity Transactions Act*] with respect to a merger in which an entity other than a domestic or
27 foreign nonprofit corporation is a party.
28

29 * * *

30
31 § 11.02. Limitations on mergers by public benefit or religious corporations.
32

33 (a) Without the prior approval of [*insert name of appropriate court*] in a proceeding in
34 which the attorney general has been given written notice, a public benefit or religious corporation
35 may merge only with:
36

37 * * *

38
39 (3) a wholly-owned foreign or domestic **[business or]** mutual benefit corporation,
40 provided the public benefit or religious corporation is the surviving corporation and
41 continues to be a public benefit or religious corporation after the merger; or

1
2
3 (4) a **[business or]** mutual benefit corporation, provided that:
4

5 (i) on or prior to the effective date of the merger, assets with a value equal
6 to the greater of the fair market value of the net tangible and intangible assets
7 (including goodwill) of the public benefit corporation or the fair market value of
8 the public benefit corporation if it were to be operated as a business concern are
9 transferred or conveyed to one or more persons who would have received its
10 assets under section 14.06(a)(5) and (6) had it dissolved;
11

12 (ii) it shall return, transfer or convey any assets held by it upon condition
13 requiring return, transfer or conveyance, which condition occurs by reason of the
14 merger, in accordance with such condition; and
15

16 (iii) the merger is approved by a majority of directors of the public benefit
17 or religious corporation who are not and will not become members **[or**
18 **shareholders]** in or officers, employees, agents or consultants of the surviving
19 corporation.
20

21 * * *
22

23 § 11.04. Articles of merger or membership exchange.
24

25 After a plan of merger or membership exchange is approved by the board of directors,
26 and if required by section 11.03, by the members and any other persons, the surviving or
27 acquiring corporation shall deliver to the secretary of state articles of merger or membership
28 exchange setting forth:
29

30 (1) the plan of merger or membership exchange;
31

32 (2) if approval of members was not required, a statement to that effect and a
33 statement that the plan was approved by a sufficient vote of the board of directors;
34

35 (3) if approval of members was required:
36

37 (i) the designation, number of memberships outstanding, number of votes
38 entitled to be cast by each class entitled to vote separately on the plan, and number
39 of votes of each class indisputably noting on the plan; and
40

41 (ii) either the total number of votes cast for and against the plan by each
42 class entitled to vote separately on the plan or the total number of undisputed
43 votes cast for the plan by each class and a statement that the number cast for the

1 plan by each class was sufficient for approval by that class;

2
3 (4) if approval of the plan by some person or persons other than the members of
4 the board is required pursuant to section 11.039a)(3), a statement that the approval was
5 obtained.
6

7 § 11.06. Merger with foreign corporation.
8

9 (a) Except as provided in section 11.02, one or more foreign **[business or]** nonprofit
10 corporations may merge with one or more domestic nonprofit corporations if:
11

12 * * *

13
14 (b) Upon the merger taking effect, the surviving foreign **[business or]** nonprofit
15 corporation is deemed to have irrevocably appointed the secretary of state as its agent for service
16 or process in any proceeding brought against it.
17

18 (d) The [*Model Nonprofit Corporation Act*] is amended by adding a section to read:
19

20 § 11.08. Membership exchange.
21

22 (a) Through a membership exchange:
23

24 (1) a domestic corporation may acquire all of the memberships of one or more
25 classes of another domestic or foreign corporation in exchange for memberships,
26 obligations, cash, other property or any combination of the foregoing pursuant to a plan of
27 membership exchange; or
28

29 (2) all of the memberships of one or more classes of a domestic corporation may
30 be acquired by another domestic or foreign corporation in exchange for memberships,
31 obligations, cash, other property or any combination of the foregoing pursuant to a plan of
32 membership exchange.
33

34 (b) A foreign corporation may be a party to a membership exchange only if the
35 membership exchange is permitted by the laws under which the corporation is incorporated.
36

37 (c) The plan of membership exchange must include:
38

39 (1) the name of each corporation whose memberships will be acquired and the
40 name of the corporation that will acquire those memberships;
41

42 (2) the terms and conditions of the membership exchange;
43

1 (3) the manner and basis of exchanging memberships of the corporation whose
2 memberships will be acquired under the membership exchange into memberships,
3 obligations, cash, other property or any combination of the foregoing.
4

5 (d) The terms described in subsections (c)(2) and (c)(3) may be made dependent on facts
6 ascertainable outside the plan of membership exchange, provided that those facts are objectively
7 ascertainable. The term “facts” includes, but is not limited to, the occurrence of any event,
8 including a determination or action by any person or body, including the corporation.
9

10 (e) After adopting the plan of membership exchange the board of directors must submit
11 the plan to the members for their approval. Approval of the plan of membership exchange
12 requires the approval of the members at a meeting at which a quorum consisting of at least a
13 majority of the votes entitled to be cast on the plan exists.
14

15 (f) Approval of a plan of share exchange by the acquiring corporation is not required.
16

17 (g) The plan of membership exchange may also include a provision that the plan may be
18 amended prior to filing articles of membership exchange, but the plan must provide that
19 subsequent to approval of the plan by the members the plan may not be amended to change:
20

21 (1) the amount or kind of memberships, obligations, cash, or other property to be
22 issued by the corporation or to be received under the plan by the members; or
23

24 (2) any of the other terms or conditions of the plan if the change would adversely
25 affect such members in any material respect.
26

27 (h) Section 11.08 does not limit the power of a domestic corporation to acquire
28 memberships of another corporation in a transaction other than a membership exchange.
29

30 (i) When a membership exchange becomes effective, the members of the corporation
31 whose memberships are being acquired are entitled only to the rights provided to them in the
32 plan of membership exchange.
33

34 **SECTION 703. UNIFORM PARTNERSHIP ACT.** 35

36 (a) Sections 101 and 106 of the [Uniform Partnership Act (1997)] are amended as
37 follows:

38 § 101. Definitions.
39

40 In this [Act]:
41

1 * * *

2
3 (3.1) “Domestic partnership” means a partnership whose internal affairs are
4 governed by the law of this State.

5
6 * * *

7
8 (4.1) “Foreign partnership” means a partnership whose internal affairs are
9 governed by a law other than the law of this State.

10
11 (5) “Limited liability partnership” or “domestic limited liability partnership”
12 means a partnership that has filed a statement of qualification under Section 1001 and
13 does not have a similar statement in effect in any other jurisdiction.

14
15 * * *

16
17 § 106. Governing law.

18
19 (a) Except as otherwise provided in **[subsection]** subsections (b) and (c), the law of the
20 jurisdiction in which a partnership has its chief executive office governs relations among the
21 partners and between the partners and the partnership.

22
23 (b) The law of this State governs relations among the partners and between the partners
24 and the partnership and the liability of partners for an obligation of a domestic limited liability
25 partnership.

26
27 (c) A written provision of a partnership agreement choosing the law of a particular
28 jurisdiction to govern the agreement shall be enforceable in accordance with its terms,
29 notwithstanding the fact, if it be the case, that the partners or the partnership have no other
30 substantial relationship to the chosen jurisdiction or that another jurisdiction has a materially
31 greater interest than the chosen state.

32
33 (b) The [Uniform Partnership Act (1997)] is amended by adding a section to read:

34
35 § 107. Domestication.

36
37 (a) A domestic partnership may become a foreign partnership by amending its partnership
38 agreement in writing to provide that the agreement shall be governed by the law of the foreign
39 jurisdiction.

40
41 (b) A foreign partnership may become a domestic partnership by amending its partnership
42 agreement in writing to provide that the agreement shall be governed by the law of this State.

1 (c) A foreign partnership that has been domesticated in this State is for all purposes the
2 same entity that existed before the domestication.

3
4 (d) When the domestication of a foreign partnership in this State takes effect:

5
6 (1) all property owned by the foreign partnership remains vested in the domestic
7 partnership;

8
9 (2) all obligations of the foreign partnership continue as obligations of the
10 domestic partnership;

11
12 (3) an action or proceeding pending by or against the foreign partnership may be
13 continued as if the domestication had not occurred;

14
15 (4) except as prohibited by other law, all of the rights, privileges, immunities,
16 powers, and purposes of the foreign partnership remain vested in the domestic
17 partnership;

18
19 (5) except as otherwise agreed, the domestication does not dissolve the foreign
20 partnership;

21
22 (6) the domestic partnership is not a limited liability partnership unless and until it
23 files a statement of qualification under Section 1001.

24
25 (c) Sections 502 and 901 of the [Uniform Partnership Act (1997)] are amended as

26 follows:

27 § 502. Partner's transferable interest in partnership.

28
29 The only transferable interest of a partner in the partnership is the partner's share of the
30 profits and losses of the partnership and the partner's right to receive distributions, except that
31 the entire interest of a partner may be transferred in a transaction under [Article] 9 or the [Model
32 Entity Transactions Act]. The interest of a partner, whether or not transferable, is personal
33 property.

34
35 § 901. Definitions.

36
37 In this [article]:

38
39 (1.1) "Acquiring partnership" means the domestic or foreign partnership that will
40 acquire one or more classes or series of partnership interests of the exchanging
41 partnership in an interest exchange.
42

1 (1.2) “Exchanging partnership” means the domestic or foreign partnership one or
2 more of the classes or series of partnership interests of which is to be acquired in an
3 interest exchange.
4

5 * * *

6
7 (4.1) “Surviving partnership” means a domestic or foreign partnership into which
8 one or more domestic or foreign partnerships are merged. A surviving partnership may
9 preexist the merger or be created by the merger.
10

11
12 (d) Section 903 of the [*Uniform Partnership Act (1997)*] is repealed.

13
14 (e) Sections 904, 905, 906 and 907 of the [*Uniform Partnership Act (1997)*] are amended

15 as follows:

16 § 904. Effect of conversion; entity unchanged.

17
18 (a) A partnership [**or limited partnership**] that has been converted pursuant to this
19 [*article*] is for all purposes the same entity that existed before the conversion.

20
21 (b) When a conversion takes effect:

22
23 (1) all property owned by the converting partnership [**or limited partnership**]
24 remains vested in the converted entity;

25
26 (2) all obligations of the converting partnership [**or limited partnership**] continue
27 as obligations of the converted entity; and

28
29 (3) an action or proceeding pending by or against the converting partnership [**or**
30 **limited partnership**] may be continued as if the conversion had not occurred.

31
32 § 905. Merger of partnerships.

33
34 (a) Pursuant to a plan of merger approved as provided in subsection (c), a partnership may
35 be merged with one or more partnerships [**or limited partnerships**]. See [*the Model Inter-Entity*
36 *Transactions Act*] with respect to a merger in which an entity other than a partnership is a party.
37

38
39 (b) The plan of merger must set forth:

40
41 (1) the name of each partnership [**or limited partnership**] that is a party to the

1 merger;

2
3 (2) the name of the surviving **[entity] partnership** into which the other
4 partnerships **[or limited partnerships]** will merge;

5
6 **(3) [whether the surviving entity is a partnership or a limited partnership**
7 **and the status of each partner;**

8
9 **(4)]** the terms and conditions of the merger;

10
11 **[(5)]** (4) the manner and basis of converting the interests of each party to the
12 merger into interests or obligations of the surviving **[entity] partnership**, or into money or
13 other property in whole or part; and

14
15 **[(6)]** (5) the street address of the surviving **[entity's] partnership's** chief
16 executive office.

17
18 (c) The plan of merger must be approved[:

19
20 **(1) in the case of a partnership that is a party to the merger,]** by all of the
21 partners, or a number or percentage specified for merger in the partnership agreement[;
22 **and**

23
24 **(2) in the case of a limited partnership that is a party to the merger, by the**
25 **vote required for approval of a merger by the law of the State or foreign jurisdiction**
26 **in which the limited partnership is organized and, in the absence of such a**
27 **specifically applicable law, by all of the partners, notwithstanding a provision to the**
28 **contrary in the partnership agreement].**

29
30 * * *

31
32 § 906. Effect of merger.

33
34 (a) When a merger takes effect:

35
36 (1) the separate existence of every partnership **[or limited partnership]** that is a
37 party to the merger, other than the surviving **[entity] partnership**, ceases;

38
39 (2) all property owned by each of the merged partnerships **[or limited**
40 **partnerships]** vests in the surviving **[entity] partnership**;

41
42 (3) all obligations of every partnership **[or limited partnership]** that is a party to
43 the merger become the obligations of the surviving **[entity] partnership**; and

1 (4) an action or proceeding pending against a partnership **[or limited**
2 **partnership]** that is a party to the merger may be continued as if the merger had not
3 occurred, or the surviving **[entity] partnership** may be substituted as a party to the action
4 or proceeding.

5
6 (b) The *[Secretary of State]* of this State is the agent for service of process in an action or
7 proceeding against a surviving foreign partnership **[or limited partnership]** to enforce an
8 obligation of a domestic partnership **[or limited partnership]** that is a party to a merger. The
9 surviving **[entity] partnership** shall promptly notify the *[Secretary of State]* of the mailing
10 address of its chief executive office and of any change of address. Upon receipt of process, the
11 *[Secretary of State]* shall mail a copy of the process to the surviving foreign partnership **[or**
12 **limited partnership]**.

13
14 (c) A partner of the surviving partnership **[or limited partnership]** is liable for:

15
16 (1) all obligations of a party to the merger for which the partner was personally
17 liable before the merger;

18
19 (2) all other obligations of the surviving **[entity] partnership** incurred before the
20 merger by a party to the merger, but those obligations may be satisfied only out of
21 property of the **[entity] partnership**; and

22
23 (3) except as otherwise provided in Section 306, all obligations of the surviving
24 **[entity] partnership** incurred after the merger takes effect[, **but those obligations may be**
25 **satisfied only out of property of the entity if the partner is a limited partner]**.

26
27 (d) If the obligations incurred before the merger by a party to the merger are not satisfied
28 out of the property of the surviving partnership **[or limited partnership]**, the general partners of
29 that party immediately before the effective date of the merger shall contribute the amount
30 necessary to satisfy that party's obligations to the surviving **[entity] partnership**, in the manner
31 provided in Section 807 **[or in the [Limited Partnership Act] of the jurisdiction in which the**
32 **party was formed, as the case may be,]** as if the merged party were dissolved.

33
34 (e) A partner of a party to a merger who does not become a partner of the surviving
35 partnership **[or limited partnership]** is dissociated from the entity, of which that partner was a
36 partner, as of the date the merger takes effect. The surviving **[entity] partnership** shall cause the
37 partner's interest in the entity to be purchased under Section 701 **[or another statute specifically**
38 **applicable to that partner's interest with respect to a merger]**. The surviving **[entity]**
39 **partnership** is bound under Section 702 by an act of a general partner dissociated under this
40 subsection, and the partner is liable under Section 703 for transactions entered into by the
41 surviving **[entity] partnership** after the merger takes effect.

42
43 § 907. Statement of merger.

1 (a) After a merger, the surviving partnership **[or limited partnership]** may file a
2 statement that one or more partnerships **[or limited partnerships]** have merged into the
3 surviving entity.

4
5 (b) A statement of merger must contain:

6
7 (1) the name of each partnership **[or limited partnership]** that is a party to the
8 merger;

9
10 (2) the name of the surviving entity into which the other partnerships **[or limited**
11 **partnership]** were merged; and

12
13 (3) the street address of the surviving entity's chief executive office and of an
14 office in this State, if any; **and**

15
16 **(4) whether the surviving entity is a partnership or a limited partnership].**

17
18 (c) Except as otherwise provided in subsection (d), for the purposes of Section 302,
19 property of the surviving partnership **[or limited partnership]** which before the merger was held
20 in the name of another party to the merger is property held in the name of the surviving entity
21 upon filing a statement of merger.

22
23 (d) For the purposes of Section 302, real property of the surviving partnership **[or limited**
24 **partnership]** which before the merger was held in the name of another party to the merger is
25 property held in the name of the surviving entity upon recording a certified copy of the statement
26 of merger in the office for recording transfers of that real property.

27
28 (e) A filed and, if appropriate, recorded statement of merger, executed and declared to be
29 accurate pursuant to Section 105(c), stating the name of a partnership **[or limited partnership]**
30 that is a party to the merger in whose name property was held before the merger and the name of
31 the surviving entity, but not containing all of the other information required by subsection (b),
32 operates with respect to the partnerships **[or limited partnerships]** named to the extent provided
33 in subsections (c) and (d).

34
35 (f) Section 908 of the [*Uniform Partnership Act (1997)*] is amended as follows:

36
37 § 908. Nonexclusive.

38
39 This [article] is not exclusive. Partnerships **[or limited partnerships]** may be converted
40 or merged or participate in an interest exchange in any other manner provided or permitted by
41 law.

42
43 (g) The [*Uniform Partnership Act (1997)*] is amended by adding sections to read:

1
2 § 909. Interest exchange.
3

4 (a) Through an interest exchange:
5

6 (1) a domestic partnership may acquire all of the partnership interests of one or
7 more classes or series of partners of another domestic or foreign partnership in exchange
8 for partnership interests, securities, obligations, rights to acquire partnership interests or
9 securities, cash, other property, or any combination of the foregoing; or
10

11 (2) all of the partnership interests of one or more classes or series of partners of a
12 domestic partnership may be acquired by another domestic or foreign partnership in
13 exchange for partnership interests, securities, obligations, rights to acquire partnership
14 interests or securities, cash, other property, or any combination of the foregoing.
15

16 (b) A foreign partnership may be a party to an interest exchange under this [Article] only
17 if the exchange is permitted by the law of the foreign jurisdiction.
18

19 (c) If the exchanging partnership is a domestic partnership, the effect of the interest
20 exchange shall be as provided in Section 910. If the exchanging partnership is a foreign
21 partnership, the effect of the exchange shall be as provided in the laws of the foreign jurisdiction.
22

23 (d) A domestic exchanging partnership may participate in an interest exchange by
24 approving a plan of exchange which shall include:
25

26 (1) the terms and conditions of the exchange;
27

28 (2) the manner and basis of exchanging or converting one or more classes or
29 series of partnership interests of the exchanging partnership into partnership interests,
30 securities, obligations, rights to acquire partnership interests or securities, cash or other
31 property, or any combination of the foregoing;
32

33 (3) any changes desired to be made in the partnership agreement of the
34 exchanging partnership.
35

36 (e) A plan of exchange must be approved by all the partners of the exchanging
37 partnership.
38

39 (f) Approval of a plan of exchange by the acquiring partnership is not required.

40 § 910. Effect of interest exchange.
41

42 When an interest exchange takes effect, the interests of the partners of the exchanging
43 partnership that are, under the terms of the plan of exchange, to be converted or exchanged shall

1 cease to exist or shall be exchanged. The former holders of those partnership interests shall
2 thereafter be entitled only to the partnership interests, securities, obligations, rights to acquire
3 partnership interests or securities, cash or other property into which they have been converted or
4 for which they have been exchanged in accordance with the plan; and the acquiring partnership
5 shall be the holder of the partnership interests in the exchanging partnership stated in the plan to
6 be acquired by the acquiring partnership. The partnership agreement of the exchanging
7 partnership shall be amended to the extent, if any, that changes in it are stated in the plan.
8

9 **SECTION 704. UNIFORM LIMITED PARTNERSHIP ACT.**

10
11 (a) Sections 102, 103, 108, 110, 111, 201, 202, 203, 204, 601, 603, 606 and 701 of the
12 [*Uniform Limited Partnership Act (2001)*] are amended as follows:

13 § 102. Definitions.

14
15 In this [*Act*]:

16
17 * * *

18
19 (11) “Limited partnership[,]” (except in the phrases “foreign limited partnership”
20 and “foreign limited liability limited partnership[,]”) or “domestic limited partnership”
21 means an entity, having one or more general partners and one or more limited partners,
22 which is formed under this [*Act*] by two or more persons or becomes subject to this [*Act*]
23 under [Article] 11 or Section 1206(a) or (b). The [**term includes**] terms include a limited
24 liability limited partnership.
25

26
27 * * *

28 § 103. Knowledge and notice.

29
30 * * *

31
32 (d) A person has notice of:

33
34 * * *

35
36 (4) a foreign limited partnership’s [**conversion**] domestication under [Article] 11,
37 90 days after the effective date of the articles of [**conversion**] domestication; [**and**]

38
39 (5) a merger under [Article] 11, 90 days after the effective date of the articles of
40 merger[.]; and
41

1 (6) an interest exchange under [Article] 11, 90 days after the effective date of the
2 articles of exchange.

3
4 * * *

5
6 § 108. Name.

7
8 * * *

9
10 (e) A limited partnership may apply to the *[Secretary of State]* for authorization to use a
11 name that does not comply with subsection (d). The *[Secretary of State]* shall authorize use of
12 the name applied for if, as to each conflicting name:

13
14 * * *

15
16 (3) the applicant delivers to the *[Secretary of State]* proof satisfactory to the
17 *[Secretary of State]* that the present user, registrant, or owner of the conflicting name:

18
19 (A) has merged into the applicant;

20
21 (B) **[has been converted into]** is the same as the applicant as the result of
22 a domestication; or

23
24 (C) has transferred substantially all of its assets, including the conflicting
25 name, to the applicant.

26
27 * * *

28
29 § 110. Effect of partnership agreement; nonwaivable provisions.

30
31 * * *

32
33 (b) The partnership agreement may not:

34
35 * * *

36
37 (12) restrict the right of a partner under Section 1110(a) to approve a
38 domestication, merger or **[conversion]** interest exchange or the right of a general partner
39 under Section 1110(b) to consent to an amendment to the certificate of limited
40 partnership which deletes a statement that the limited partnership is a limited liability
41 limited partnership; or

42
43 * * *

1 § 111. Required information.

2
3 A limited partnership shall maintain at its designated office the following information:

4
5 * * *

6
7 (3) a copy of any filed articles of **[conversion or]** domestication, merger or
8 exchange;

9
10 * * *

11
12 § 201. Formation of limited partnership; certificate of limited partnership.

13
14 * * *

15
16 (d) Subject to subsection (b), if any provision of a partnership agreement is inconsistent
17 with the filed certificate of limited partnership or with a filed document of dissociation,
18 termination or change, or filed articles of **[conversion or]** domestication, merger or exchange:

19
20 (1) the partnership agreement prevails as to partners and transferees; and

21
22 (2) the filed certificate of limited partnership, statement of dissociation,
23 termination, or change, or articles of **[conversion or]** domestication, merger or exchange
24 prevail as to persons, other than partners and transferees, that reasonably rely on the filed
25 record to their detriment.

26
27 § 202. Amendment or restatement of certificate.

28
29 (a) In order to amend its certificate of limited partnership, a limited partnership shall
30 deliver to the *[Secretary of State]* for filing an amendment or, pursuant to *[Article]* 11, articles of
31 merger or exchange stating:

32
33 * * *

34
35 § 203. Statement of termination.

36
37 A dissolved limited partnership that has completed winding up **[may]** or a domesticating
38 limited partnership that has been domesticated in another jurisdiction shall deliver to the
39 *[Secretary of State]* for filing a statement of termination that states:

40
41 * * *

42
43 § 204. Signing of records.

1 (a) Each record delivered to the [*Secretary of State*] for filing pursuant to this [*Act*] must
2 be signed in the following manner:

3
4 * * *

5
6 (8) Articles of **[conversion]** domestication must be signed by each general partner
7 listed in the certificate of limited partnership.

8
9 (9) Articles of merger or exchange must be signed as provided in **[Section**
10 **1108(a)]** [Article] 11.

11
12 * * *

13
14 § 601. Dissociation as limited partner.

15
16 * * *

17
18 (b) A person is dissociated from a limited partnership as a limited partner upon the
19 occurrence of any of the following events:

20
21 * * *

22
23 (10) the limited partnership's participation in a domestication, merger or
24 **[conversion]** interest exchange under [Article] 11, if the limited partnership;

25
26 (A) **[is not the converted or surviving entity]** does not survive the
27 transaction; or

28
29 (B) **[is the converted or surviving entity]** does survive the transaction
30 but, as a result of the [conversion or] domestication, merger or interest exchange,
31 the person ceases to be a limited partner[.];

32
33 (11) the limited partnership's participation in a transaction under the [Model
34 Entity Transactions Act], if the limited partnership:

35
36 (A) does not survive the transaction; or

37
38 (B) does survive the transaction, but as a result of the transaction, the
39 person ceases to be a limited partner.

40
41 § 603. Dissociation as general partner.

42
43 A person is dissociated from a limited partnership as a general partner upon the

1 occurrence of any of the following events:

2
3 * * *

4
5 (11) the limited partnership's participation in a domestication, merger or
6 **[conversion]** interest exchange under *[Article]* 11, if the limited partnership;

7
8 (A) **[is not the converted or surviving entity]** does not survive the
9 transaction; or

10
11 (B) **[is the converted or surviving entity]** does survive the transaction
12 but, as a result of the [conversion or] domestication, merger or interest exchange,
13 the person ceases to be a general partner[.];

14
15 (12) the limited partnership's participation in a transaction under the *[Model*
16 *Entity Transactions Act]*, if the limited partnership:

17
18 (A) does not survive the transaction; or

19
20 (B) does survive the transaction, but as a result of the transaction, the
21 person ceases to be a general partner.

22
23 § 606. Power to bind and liability to partnership before dissolution of person dissociated as
24 general partner.

25
26 (a) After a person is dissociated as a general partner and before the limited partnership is
27 dissolved, converted under **[[Article] 11]** the [Model Inter-Entity Transactions Act] or merged
28 out of existence under *[Article 11]*, the limited partnership is bound by an act of the person only
29 if:

30
31 * * *

32
33 § 701. Partner's transferable interest.

34
35 The only transferable interest of a partner is the partner's right to receive distributions,
36 except that the entire interest of a partner may be transferred in a transaction under [Article] 11 or
37 the [Model Entity Transactions Act]. The interest of a partner, whether or not transferable, is
38 personal property.

39
40 (b) The title of Article 11 of the *[Uniform Limited Partnership Act (2001)]* is amended as
41 follows:

1 [Article] 11. **[Conversion and] Domestication,**
2 **Merger and Interest Exchange**

3
4 (c) Section 1101 of the [*Uniform Limited Partnership Act (2001)*] is amended as follows:

5 § 1101. Definitions.
6

7 In this [article]:
8

9 (1) "Acquiring limited partnership" means the domestic or foreign limited
10 partnership that will acquire all of one or more classes or series of the interests of the
11 partners of the exchanging limited partnership in an interest exchange.
12

13 **[(1)] (2) "Constituent limited partnership" means a [constituent organization**
14 **that is a] limited partnership that is a party to a merger.**
15

16 **[(2) "Constituent organization" means an organization that is party to a**
17 **merger.**
18

19 **(3) "Converted organization" means the organization into which a**
20 **converting organization converts pursuant to Sections 1102 through 1105.**
21

22 **(4) "Converting limited partnership" means a converting organization that is**
23 **a limited partnership.**
24

25 **(5) "Converting organization" means an organization that converts into**
26 **another organization pursuant to Section 1102.]**
27

28 (3) "Domesticating limited partnership" means a limited partnership that is
29 domesticating in another jurisdiction pursuant to Section 1102.
30

31 (4) "Exchanging limited partnership" means the domestic or foreign limited
32 partnership one or more of the classes or series of interests of the partners of which is to
33 be acquired in an interest exchange.
34

35 **[(6) "General partner" means a general partner of a limited partnership.**
36

37 **(7)] (5) "Governing statute" of an organization means the statute that governs the**
38 **organization's internal affairs.**
39

40 **[(8)] (6) "Organization" means a general partnership, including a limited liability**
41 **partnership; limited partnership, including a limited liability limited partnership; limited**
42 **liability company; business trust; corporation; or any other entity having a governing**
43 **statute. The term includes domestic and foreign entities regardless of whether organized**
44 **for profit.**

1
2 **[(9)]** (7) “Organizational documents” means:

3
4 (A) for a domestic or foreign general partnership, its partnership
5 agreement;

6
7 (B) for a limited partnership or foreign limited partnership, its certificate
8 of limited partnership and partnership agreement;

9
10 (C) for a domestic or foreign limited liability company, its articles of
11 organization and operating agreement, or comparable records as provided in its
12 governing statute;

13
14 (D) for a business trust, its agreement of trust and declaration of trust;

15
16 (E) for a domestic or foreign for profit corporation, its articles of
17 incorporation, bylaws, and other agreements among its shareholders which are
18 authorized by its governing statute, or comparable records as provided in its
19 governing statute; and

20
21 (F) for any other organization, the basic records that create the
22 organization and determine its internal governance and the relations among the
23 persons that own it, have an interest in it, or are members of it.

24
25 **[(10) "Person dissociated as a general partner" means a person dissociated as**
26 **a general partner of a limited partnership.**

27
28 **[(11)]** (8) “Personal liability” means personal liability for a debt, liability, or other
29 obligation of an organization which is imposed on a person that co-owns, has an interest
30 in, or is a member of the organization:

31
32 (A) by the organization’s governing statute solely by reason of the person
33 co-owning, having an interest in, or being a member of the organization; or

34
35 (B) by the organization’s organizational documents under a provision of
36 the organization’s governing statute authorizing those documents to make one or
37 more specified persons liable for all or specified debts, liabilities, and obligations
38 of the organization solely by reason of the person or persons co-owning, having an
39 interest in, or being a member of the organization.

40
41 **[(12)]** (9) "Surviving **[organization]** limited partnership" means **[an**
42 **organization]** a domestic or foreign limited partnership into which one or more other
43 **[organizations]** domestic or foreign limited partnerships are merged. A surviving
44 **[organization]** limited partnership may preexist the merger or be created by the merger.
45

1 (d) Sections 1102, 1103 and 1104 of the [*Uniform Limited Partnership Act (2001)*] are
2 repealed.

3 (e) The [*Uniform Limited Partnership Act (2001)*] is amended by adding sections to read:
4 § 1102. Domestication.
5

6 (a) A foreign limited partnership may become a domestic limited partnership only if the
7 domestication is permitted by the governing statute of the foreign limited partnership. The
8 domestication shall be approved by the foreign limited partnership in the manner required by its
9 governing statute. The laws of this state govern the effect of domesticating in this state pursuant
10 to this [*article*].
11

12 (b) A domestic limited partnership may become a foreign limited partnership only if the
13 domestication is permitted by the laws of the foreign jurisdiction. Regardless of whether the
14 laws of the foreign jurisdiction require the adoption of a plan of domestication, the domestication
15 shall be approved by the adoption by the domesticating limited partnership of a plan of
16 domestication in the manner provided in this [*article*]. Except as provided in Section 1105(c),
17 the laws of the foreign jurisdiction govern the effect of the domestication of a limited partnership
18 in that state.
19

20 (c) A plan of domestication adopted by a domesticating limited partnership must include:
21

22 (1) a statement of the jurisdiction in which the domesticating limited partnership
23 is to be domesticated;
24

25 (2) the terms and conditions of the domestication;
26

27 (3) the manner and basis of reclassifying the interests in the domesticating limited
28 partnership following its domestication into interests, securities, obligations, rights to
29 acquire interests or securities, cash, other property, or any combination of the foregoing;
30 and
31

32 (4) any desired amendments to the certificate of limited partnership or partnership
33 agreement of the domesticating limited partnership following its domestication.
34

35 § 1103. Action on plan of domestication.
36

37 (a) Subject to Section 1110, a plan of domestication must be approved by all the partners
38 of a domesticating limited partnership.
39

1 (b) Subject to Section 1110 and any contractual rights, after a domestication is approved,
2 and at any time before a filing is made under Section 1104, the domesticating limited partnership
3 may amend the plan or abandon the planned domestication:
4

5 (1) as provided in the plan; and
6

7 (2) except as prohibited by the plan, by the same consent as was required to
8 approve the plan.
9

10 § 1104. Domestication filings.
11

12 (a) After the domestication of a foreign limited partnership has been authorized as
13 required by its governing statute, the foreign limited partnership shall deliver to the [*Secretary of*
14 *State*] for filing articles of domestication which must include:
15

16 (1) the name of the foreign limited partnership and the jurisdiction of its
17 governing statute;
18

19 (2) the date the domestication is effective under the governing statute of the
20 foreign limited partnership;
21

22 (3) a statement that the domestication was approved as required by the governing
23 statute of the foreign limited partnership; and
24

25 (4) the certificate of limited partnership as it will be in effect upon the
26 effectiveness of the articles of domestication.
27

28 (b) The articles of domestication become effective as provided in Section 206(c).
29

30 (c) A domesticating limited partnership shall file a statement of termination under Section
31 203.
32

33 (f) Sections 1105, 1106, 1108, 1109, 1110, 1111 and 1112 of the [*Uniform Limited*
34 *Partnership Act (2001)*] are amended as follows:

35 § 1105. Effect of [**conversion**] domestication.
36

37 (a) [**An organization**] A foreign limited partnership that has been [**converted**]
38 domesticated pursuant to this [*article*] is for all purposes the same entity that existed before the
39 [**conversion**] domestication.
40

41 (b) When a [**conversion**] domestication takes effect:
42

1 (1) all property owned by the **[converting organization]** foreign limited
2 partnership remains vested in the **[converted organization]** domestic limited partnership;
3

4 (2) all debts, liabilities, and other obligations of the **[converting organization]**
5 foreign limited partnership continue as obligations of the **[converted organization]**
6 domestic limited partnership;
7

8 (3) an action or proceeding pending by or against the **[converting organization]**
9 foreign limited partnership may be continued as if the **[conversion]** domestication had
10 not occurred;
11

12 (4) except as prohibited by other law, all of the rights, privileges, immunities,
13 powers, and purposes of the **[converting organization]** foreign limited partnership
14 remain vested in the **[converted organization]** domestic limited partnership;
15

16 (5) except as otherwise provided in the plan of **[conversion]** domestication, the
17 terms and conditions of the plan of **[conversion]** domestication take effect; and
18

19 (6) except as otherwise agreed, the **[conversion]** domestication does not dissolve
20 **[a converting]** the foreign limited partnership for the purposes of *[Article]* 8.
21

22 (c) A **[converted organization that is a foreign entity]** domesticating limited
23 partnership consents to the jurisdiction of the courts of this State to enforce any obligation owed
24 by the **[converting]** domesticating limited partnership, if before the **[conversion]** domestication
25 the **[converting]** domesticating limited partnership was subject to suit in this State on that
26 obligation. A **[converted organization that is a foreign entity and]** domesticating limited
27 partnership that is not authorized to transact business in this State after the domestication
28 appoints the *[Secretary of State]* as its agent for service of process for purposes of enforcing an
29 obligation under this subsection. Service on the *[Secretary of State]* under this subsection is
30 made in the manner and with the same consequences as in Section 117(c) and (d).
31 § 1106. Merger.
32

33 (a) A limited partnership may merge with one or more other **[constituent organizations]**
34 domestic or foreign limited partnerships pursuant to this section and Sections 1107 through 1109
35 and a plan of merger, if:
36

37 (1) the governing statute of each of the other **[organizations]** limited partnerships
38 authorizes the merger; and
39

40 **[(2) the merger is not prohibited by the law of a jurisdiction that enacted any**
41 **of those governing statutes; and**
42

43 **(3)](2)** each of the other **[organizations]** limited partnerships complies with its
44 governing statute in effecting the merger.

(b) A plan of merger must be in a record and must include:

(1) the name **[and form]** of each constituent **[organization]** limited partnership;

(2) the name **[and form]** of the surviving **[organization]** limited partnership and, if the surviving **[organization]** limited partnership is to be created by the merger, a statement to that effect;

(3) the terms and conditions of the merger, including the manner and basis for converting the interests in each constituent **[organization]** limited partnership into any combination of money, interests in the surviving **[organization]** limited partnership, interests in any other organization, and other consideration;

(4) if the surviving **[organization]** limited partnership is to be created by the merger, the **[surviving organization's organizational documents]** certificate of organization and partnership agreement of the surviving limited partnership; and

(5) if the surviving **[organization]** limited partnership is not to be created by the merger, any amendments to be made by the merger to the **[surviving organization's organizational documents]** certificate of limited partnership and partnership agreement of the surviving limited partnership.

(c) See [the Model Entity Transactions Act] with respect to a merger in which an organization other than a limited partnership is a party.

§ 1108. Filings required for merger; effective date.

(a) After each constituent **[organization]** limited partnership has approved a merger, articles of merger must be signed on behalf of: **(1)** each preexisting constituent limited partnership, by each general partner listed in the certificate of limited partnership; **and (2) each preexisting constituent organization, by a duly authorized representative**.

(b) The articles of merger must include:

(1) the name **[and form]** of each constituent **[organization]** limited partnership and the jurisdiction of its governing statute;

(2) the name **[and form]** of the surviving **[organization]** limited partnership, the jurisdiction of its governing statute, and, if the surviving **[organization]** limited partnership is created by the merger, a statement to that effect;

(3) the date the merger is effective under the governing statute of the surviving **[organization]** limited partnership;

1 (4) if the surviving **[organization]** limited partnership is to be created by the
2 merger[: **(A) if it will be a limited partnership**], the limited partnership's certificate of
3 limited partnership[: **or (B) if it will be an organization other than a limited**
4 **partnership, the organizational document that creates the organization**];

5
6 (5) if the surviving **[organization]** limited partnership preexists the merger, any
7 amendments provided for in the plan of merger for **[the organizational document that**
8 **created the organization]** its certificate of limited partnership;

9
10 (6) a statement as to each constituent **[organization]** limited partnership that the
11 merger was approved as required by the **[organization's]** limited partnership's governing
12 statute;

13
14 (7) if the surviving **[organization]** limited partnership is a foreign **[entity]** limited
15 partnership not authorized to transact business in this State, the street and mailing address
16 of an office which the *[Secretary of State]* may use for the purposes of Section 1109(b);
17 and

18
19 (8) any additional information required by the governing statute of any constituent
20 **[organization]** limited partnership.

21
22 (c) Each constituent limited partnership shall deliver the articles of merger for filing in
23 the *[office of the Secretary of State]*.

24
25 (d) A merger becomes effective under this *[article]*[: **(1) if the surviving organization**
26 **is a limited partnership,**] upon the later of:

27
28 **[(i)]** **(1)** compliance with subsection (c); or

29
30 **[(ii)]** **(2)** subject to Section 206(c), as specified in the articles of merger[: **and (2)**
31 **if the surviving organization is not a limited partnership, as provided by the**
32 **governing statute of the surviving organization]**.

33
34 § 1109. Effect of merger.

35
36 (a) When a merger becomes effective:

37
38 (1) the surviving **[organization]** limited partnership continues or comes into
39 existence;

40
41 (2) each constituent **[organization]** limited partnership that merges into the
42 surviving **[organization]** limited partnership ceases to exist as a separate entity;

43
44 (3) all property owned by each constituent **[organization]** limited partnership that
45 ceases to exist vests in the surviving **[organization]** limited partnership;

(4) all debts, liabilities, and other obligations of each constituent **[organization]** limited partnership that ceases to exist continue as obligations of the surviving **[organization]** limited partnership;

(5) an action or proceeding pending by or against any constituent **[organization]** limited partnership that ceases to exist may be continued as if the merger had not occurred;

(6) except as prohibited by other law, all of the rights, privileges, immunities, powers, and purposes of each constituent **[organization]** limited partnership that ceases to exist vest in the surviving **[organization]** limited partnership;

(7) except as otherwise provided in the plan of merger, the terms and conditions of the plan of merger take effect; **[and]**

(8) except as otherwise agreed, if a constituent limited partnership ceases to exist, the merger does not dissolve the limited partnership for the purposes of *[Article]* 8;

(9) if the surviving **[organization]** limited partnership is created by the merger:
(A) if it is a limited partnership, the certificate of limited partnership becomes effective; **[or (B) if it is an organization other than a limited partnership, the organizational document that creates the organization becomes effective;]** and

(10) if the surviving **[organization]** limited partnership preexists the merger, any amendments provided for in the articles of merger for **[the organizational document that created the organization]** its certificate of limited partnership and partnership agreement become effective.

(b) A surviving **[organization]** limited partnership that is a foreign **[entity]** limited partnership consents to the jurisdiction of the courts of this State to enforce any obligation owed by a constituent **[organization]** limited partnership, if before the conversion the constituent **[organization]** limited partnership was subject to suit in this State on that obligation. A surviving **[organization]** limited partnership that is a foreign **[entity]** limited partnership and not authorized to transact business in this State appoints the *[Secretary of State]* as its agent for service of process for the purposes of enforcing an obligation under this subsection. Service on the *[Secretary of State]* under this subsection is made in the same manner and with the same consequences as in Section 117(c) and (d).

§ 1110. Restrictions on approval of **[conversions and]** domestications, mergers, interest exchanges and on relinquishing LLLP status.

(a) If a partner of a **[converting or]** domesticating, constituent or exchanging limited partnership will have personal liability with respect to **[a converted or surviving]** any

1 organization as a result of a domestication, merger or interest exchange, approval and
2 amendment of a plan of **[conversion or]** domestication, merger or interest exchange are
3 ineffective without the consent of that partner, unless:
4

5 (1) the limited partnership's partnership agreement provides for the approval of
6 the **[conversion or]** domestication, merger or interest exchange with the consent of less
7 than all the partners; and
8

9 (2) that partner has consented to that provision of the partnership agreement.
10

11 * * *
12

13 § 1111. Liability of general partner after **[conversion or]** merger.
14

15 (a) A **[conversion or]** merger under this article does not discharge any liability under
16 Sections 404 and 607 of a person that was a general partner in or dissociated as a general partner
17 from a **[converting or]** constituent limited partnership, but:
18

19 (1) the provisions of this *[Act]* pertaining to the collection or discharge of that
20 liability continue to apply to that liability;
21

22 (2) for the purposes of applying those provisions, the **[converted or]** surviving
23 **[organization]** limited partnership is deemed to be the **[converting or]** constituent
24 limited partnership; and
25

26 * * *
27

28 (b) In addition to any other liability provided by law:
29

30 (1) a person that immediately before a **[conversion or]** merger became effective
31 was a general partner in a **[converting or]** constituent limited partnership that was not a
32 limited liability limited partnership is personally liable for each obligation of the
33 **[converted or]** surviving **[organization]** limited partnership arising from a transaction
34 with a third party after the **[conversion or]** merger becomes effective, if at the time the
35 third party enters into the transaction, the third party:
36

37 (A) does not have notice of the **[conversion or]** merger; and
38

39 (B) reasonably believes that:
40

41 (i) the **[converted or]** surviving business is the **[converting or]**
42 constituent limited partnership;
43

44 (ii) the **[converting or]** constituent limited partnership is not a
45 limited liability limited partnership; and

(iii) the person is a general partner in the **[converting or]** constituent limited partnership;

(2) a person that was dissociated as a general partner from a **[converting or]** constituent limited partnership before the **[conversion or]** merger became effective is personally liable for each obligation of the **[converted or]** surviving **[organization] limited partnership** arising from a transaction with a third party after the **[conversion or]** merger becomes effective, if:

(A) immediately before the **[conversion or]** merger became effective the **[converting or]** surviving limited partnership was **[a]** not a limited liability limited partnership; and

(B) at the time the third party enters into the transaction less than two years have passed since the person dissociated as a general partner and the third party:

(i) does not have notice of the dissociation;

(ii) does not have notice of the **[conversion or]** merger; and

(iii) reasonably believes that the **[converted or]** surviving **[organization] limited partnership** is the **[converting or]** constituent limited partnership, the **[converting or]** constituent limited partnership is not a limited liability limited partnership, and the person is a general partner in the **[converting or]** constituent limited partnership.

§ 1112. Power of general partners and persons dissociated as general partners to bind **[organization] limited partnership** after **[conversion or]** merger.

(a) An act of a person that immediately before a **[conversion or]** merger became effective was a general partner in a **[converting or]** constituent limited partnership binds the **[converted or]** surviving **[organization] limited partnership** after the **[conversion or]** merger becomes effective, if:

(1) before the **[conversion or]** merger became effective, the act would have bound the **[converting or]** constituent limited partnership under Section 402; and

(2) at the time the third party enters into the transaction, the third party:

(A) does not have notice of the **[conversion or]** merger; and

(B) reasonably believes that the **[converted or]** surviving business is the **[converting or]** constituent limited partnership and that the person is a general partner in the **[converting or]** constituent limited partnership.

1
2 (b) An act of a person that before a **[conversion or]** merger became effective was
3 dissociated as a general partner from a **[converting or]** constituent limited partnership binds the
4 **[converted or]** surviving **[organization]** limited partnership after the **[conversion or]** merger
5 becomes effective, if:

6
7 (1) before the **[conversion or]** merger became effective, the act would have bound
8 the **[converting or]** constituent limited partnership under Section 402 if the person had
9 been a general partner; and

10
11 (2) at the time the third party enters into the transaction, less than two years have
12 passed since the person dissociated as a general partner and the third party:

13
14 (A) does not have notice of the dissociation;

15
16 (B) does not have notice of the **[conversion or]** merger; and

17 (C) reasonably believes that the **[converted or]** surviving **[organization]**
18 limited partnership is the **[converting or]** constituent limited partnership and that
19 the person is a general partner in the **[converting or]** constituent limited
20 partnership.
21

22 (c) If a person having knowledge of the **[conversion or]** merger causes a **[converted or]**
23 surviving **[organization]** limited partnership to incur an obligation under subsection (a) or (b),
24 the person is liable:
25

26 (1) to the **[converted or]** surviving **[organization]** limited partnership for any
27 damage caused to the **[organization]** surviving limited partnership arising from the
28 obligation; and
29

30 (2) if another person is liable for the obligation, to that other person for any
31 damage caused to that other person arising from that liability.
32

33 (g) Section 1113 of the *[Uniform Limited Partnership Act (2001)]* is repealed.
34

35 (h) The *[Uniform Limited Partnership Act (2001)]* is amended by adding sections to read:

36 § 1113. Interest exchange.
37

38 (a) Through an interest exchange:
39

40 (1) a domestic limited partnership may acquire all of the partnership interests of
41 one or more classes or series of partners of another domestic or foreign limited
42 partnership in exchange for partnership interests, securities, obligations, rights to acquire
43 partnership interests or securities, cash, other property, or any combination of the

1 foregoing; or
2

3 (2) all of the partnership interests of one or more classes or series of partners of a
4 domestic limited partnership may be acquired by another domestic or foreign limited
5 partnership in exchange for partnership interests, securities, obligations, rights to acquire
6 partnership interests or securities, cash, other property, or any combination of the
7 foregoing.
8

9 (b) A foreign limited partnership may be a party to an interest exchange under this
10 [Article] only if the exchange is permitted by the governing statute of the foreign limited
11 partnership.
12

13 (c) If the exchanging limited partnership is a domestic limited partnership, the effect of
14 the interest exchange shall be as provided in Section 1116. If the exchanging limited partnership
15 is a foreign limited partnership, the effect of the exchange shall be as provided in the governing
16 statute of the foreign limited partnership.
17

18 (d) A domestic exchanging limited partnership may participate in an interest exchange by
19 approving a plan of exchange which shall include:
20

21 (1) the terms and conditions of the exchange;
22

23 (2) the manner and basis of exchanging or converting one or more classes or
24 series of interests of the partners of the exchanging limited partnership into partnership
25 interests, securities, obligations, rights to acquire partnership interests or securities, cash
26 or other property, or any combination of the foregoing;
27

28 (3) any changes desired to be made in the certificate of limited partnership or
29 partnership agreement of the exchanging limited partnership.
30

31 (e) Approval of a plan of exchange by the acquiring limited partnership is not required.
32

33 § 1114. Action on plan of exchange by exchanging limited partnership.
34

35 (a) Subject to Section 1110, a plan of exchange must be approved by all the partners of
36 the exchanging limited partnership.
37

38 (b) Subject to Section 1110 and any contractual rights, after a merger is approved, and at
39 any time before a filing is made under Section 1115, the exchanging limited partnership may
40 amend the plan or abandon the planned interest exchange:
41

42 (1) as provided in the plan; and
43

1 (2) except as prohibited by the plan, by the same consent as was required to
2 approve the plan.

3
4 § 1115. Articles of exchange.

5
6 (a) After a domestic exchanging limited partnership has approved an interest exchange,
7 articles of exchange must be signed on behalf of the exchanging limited partnership.

8
9 (b) The articles of exchange must include:

10
11 (1) the names of the acquiring limited partnership and exchanging limited
12 partnership;

13
14 (2) the manner in which the plan of exchange was approved by the exchanging
15 limited partnership; and

16
17 (3) any amendments to the certificate of limited partnership of the exchanging
18 limited partnership that are provided for in the plan of exchange.

19
20 (c) The statement of exchange shall be delivered to the [*office of the Secretary of State*]
21 for filing and shall take effect as provided in Section 206(c).

22
23 § 1116. Effect of interest exchange.

24
25 When articles of exchange take effect, the interests of the partners of the exchanging
26 limited partnership that are, under the terms of the plan of exchange, to be converted or
27 exchanged shall cease to exist or shall be exchanged. The former holders of those partnership
28 interests shall thereafter be entitled only to the partnership interests, securities, obligations, rights
29 to acquire partnership interests or securities, cash or other property into which they have been
30 converted or for which they have been exchanged in accordance with the plan; and the acquiring
31 limited partnership shall be the holder of the partnership interests in the exchanging limited
32 partnership stated in the plan to be acquired by the acquiring limited partnership. The certificate
33 of limited partnership and partnership agreement of the exchanging limited partnership shall be
34 amended to the extent, if any, that changes in those documents are stated in the plan.

35
36 **Comment**

37
38 In addition to making the amendments described in the introductory comment to Article
39 7, the foregoing amendments to the Uniform Limited Partnership Act (2001) also make clear that
40 limited partnerships may be parties to triangular mergers in which an entity that is not a limited
41 partnership and is not a party to the merger provides the merger consideration.

42
43 **SECTION 705. PROTOTYPE LIMITED LIABILITY COMPANY ACT.**

(a) Section 102 of the [*Prototype Limited Liability Company Act*] is amended as follows:

§ 102. Definitions.

As used in this act, unless the context otherwise requires:

(A.1) “Acquiring limited liability company” means the domestic or foreign limited liability company that will acquire one or more classes or series of the interests of the members of the exchanging limited liability company in an interest exchange.

* * *

(C.1) "Domesticating limited liability company" means a limited liability company that is domesticating in another jurisdiction pursuant to Article 12.

* * *

(D.1) “Exchanging limited liability company” means the domestic or foreign limited liability company one or more of the classes or series of interests of the members of which is to be acquired in an interest exchange.

* * *

(E.1) "Governing statute" of a limited liability company means the statute that governs the limited liability company's internal affairs.

* * *

(b) The title to Article 12 of the [*Prototype Limited Liability Company Act*] is amended as follows:

Article 12. Merger **[and]**, Consolidation, Domestication
and Interest Exchange

(c) Sections 1201, 1202, 1203 and 1204 of the [*Prototype Limited Liability Company Act*] are amended as follows:

§ 1201. Merger or consolidation.

(A) Unless otherwise provided in writing in an operating agreement, **[and subject to any law applicable to business entities other than limited liability companies,]** one or more limited liability companies may merge or consolidate with or into one or more other **[business**

1 **entities]** limited liability companies, with the limited liability company **[or other business**
2 **entity]** as the merger or consolidation agreement shall provide being the surviving or resulting
3 limited liability company **[or other business entity]**. See [the Model Inter-Entity Transactions
4 Act] with respect to a merger in which an entity other than a limited liability company is a party.
5

6 (B) Rights or securities of or interests in a **[business entity]** limited liability company that
7 is a party to the merger or consolidation may be exchanged for or converted into cash, property,
8 obligations, rights or securities of or interests in the surviving or resulting **[business entity]**
9 limited liability company or of any other **[business entity]** person.
10

11 **[(C) As used in this article 12, “business entity” OR “business entities” shall mean**
12 **domestic and foreign limited liability companies and corporations.]**
13

14 § 1202. Approval of merger or consolidation.
15

16 (A) Unless otherwise provided in writing in an operating agreement, a limited liability
17 company that is a party to a proposed merger or consolidation shall approve the merger or
18 consolidation agreement by the consent of more than one half by number of the members.
19

20 (B) Each **[corporation and]** foreign limited liability company that is a party to a
21 proposed merger or consolidation shall approve the merger or consolidation in the manner and by
22 the vote required by the laws applicable to **[such business entity]** it.
23

24 (C) Each **[business entity]** domestic limited liability company that is a party to the
25 merger or consolidation shall have such rights to abandon the merger or consolidation as are
26 provided for in the merger or consolidation agreement **[or in the laws applicable to the**
27 **business entity]**.
28

29 § 1203. Articles of merger or consolidation.
30

31 (A) The **[business entity]** limited liability company surviving or resulting from the
32 merger or consolidation shall deliver to the Secretary of State articles of merger or consolidation
33 executed by each constituent **[entity]** limited liability company setting forth:
34

35 (1) The name and jurisdiction of **[formation or]** organization of each **[business**
36 **entity which]** limited liability company that is to **[merger]** merge or consolidate;
37

38 (2) That an agreement of merger or consolidation has been approved and executed
39 by each **[business entity which]** limited liability company that is a party to the merger or
40 consolidation;
41

42 (3) The name of the surviving or resulting **[business entity]** limited liability
43 company;

1 (4) The future effective date of the merger or consolidation (which shall be a date
2 or time certain) if it is not to be effective upon the filing of the articles of merger or
3 consolidation;
4

5 (5) That the agreement of merger or consolidation is on file at a place of business
6 of the surviving or resulting **[business entity] limited liability company**, and the address
7 of that place of business;
8

9 (6) That a copy of the agreement of merger or consolidation will be furnished by
10 the surviving or resulting **[business entity] limited liability company**, on request and
11 without cost, to any person holding an interest in any **[business entity which] limited**
12 **liability company that is to merge or consolidate**; and
13

14 (7) If the surviving or resulting **[entity] limited liability company** is not a
15 **[business entity organized under the laws of this state] domestic limited liability**
16 **company**, a statement that such surviving or resulting **[business entity] limited liability**
17 **company**;
18

19 (i) Agrees that it may be served with process in this state in any proceeding
20 for enforcement of any obligation of any **[business entity] domestic limited**
21 **liability company** party to the merger or consolidation **[that was organized under**
22 **the laws of this state, as well as for enforcement of any obligation of the**
23 **surviving business entity or the new business entity arising from the merger**
24 **or consolidation]**; and
25

26 (ii) Appoints the Secretary of State as its agent for service of process in
27 any such proceeding, and the surviving **[business entity or the new business**
28 **entity] or resulting limited liability company** shall specify the address to which a
29 copy of the process shall be mailed to it by the Secretary of State.
30

31 * * *
32

33 (D) **[Articles of merger or consolidation shall constitute articles of dissolution for a**
34 **limited liability company which is not the surviving or resulting business entity in the**
35 **merger or consolidation.] (Repealed.)**
36

37 (E) An agreement of merger or consolidation approved in accordance with § 1202 may
38 effect any amendment to an operating agreement or effect the adoption of a new operating
39 agreement for a limited liability company if it is the surviving or resulting limited liability
40 company in the merger or consolidation. An approved agreement of merger or consolidation
41 may also provide that the operating agreement of any constituent limited liability company to the
42 merger or consolidation (including a limited liability company formed for the purpose of
43 consummating a merger or consolidation) shall be the operating agreement of the surviving or

1 resulting limited liability company. Any amendment to an operating agreement or adoption of a
2 new operating agreement made pursuant to this subsection (E) shall be effective at the effective
3 time or date of the merger or consolidation. **[The provisions of this subsection shall not be**
4 **construed to limit the accomplishment of a merger or of any of the matters referred to**
5 **herein by any other means provided for in an operating agreement or other agreement or**
6 **as otherwise permitted by law.]**

7
8 § 1204. Effect of merger or consolidation.
9

10 A merger or consolidation has the following effects:
11

12 (A) The **[business entities]** limited liability companies that are parties to the merger or
13 consolidation agreement shall be a single **[entity]** limited liability company, which, in the case of
14 a merger shall be the **[entity]** limited liability company designated in the plan of merger as the
15 surviving **[entity]** limited liability company, and, in the case of a consolidation, shall be the **[new**
16 **entity]** resulting limited liability company provided for in the plan of consolidation;
17

18 (B) Each party to the merger or consolidation agreement, except the surviving **[entity or**
19 **the new entity]** or resulting limited liability company, shall cease to exist;
20

21 (C) The surviving **[entity or the new entity]** or resulting limited liability company shall
22 thereupon and thereafter possess all the rights, privileges, immunities, and powers of each
23 constituent **[entity]** limited liability company and shall be subject to all the restrictions,
24 disabilities, and duties of each of such constituent **[entities to the extent such rights, privileges,**
25 **immunities, powers, franchises, restrictions, disabilities, and duties are applicable to the**
26 **type of business entity that is the surviving entity or the new entity]** limited liability
27 companies;
28

29 (D) All property, real, personal and mixed, and all debts due on whatever account,
30 including promises to make capital contributions and subscriptions for **[shares]** interests, and all
31 other choses in action, and all and every other interest of or belonging to or due to each of the
32 constituent **[entities]** limited liability companies shall be vested in the surviving **[entity or the**
33 **new entity]** or resulting limited liability company without further act or deed;
34

35 (E) The title to all real estate and any interest therein, vested in any **[such constituent**
36 **entity]** constituent limited liability company shall not revert or be in any way impaired by reason
37 of such merger or consolidation;
38

39 (F) The surviving **[entity or the new entity]** or resulting limited liability company shall
40 thenceforth be liable for all liabilities and obligations of each of the constituent **[entities]** limited
41 liability companies so merged or consolidated, and any claim existing or action or proceeding
42 pending by or against any such constituent **[entity]** limited liability company may be prosecuted
43 as if such merger or consolidation had not taken place, or the surviving **[entity or the new**

1 **entity]** or resulting limited liability company may be substituted in the action;
2

3 (G) Neither the rights of creditors nor any liens on the property of any constituent **[entity]**
4 limited liability company shall be impaired by the merger or consolidation;
5

6 (H) The interests in a limited liability company **[or shares or other interests in a**
7 **corporation]** that are to be converted or exchanged into interests, **[shares or]** other securities,
8 cash, obligations or other property under the terms of the merger or consolidation agreement are
9 so converted, and the former holders thereof are entitled only to the rights provided in the merger
10 or consolidation agreement or the rights otherwise provided by law.
11

12 (d) The [*Prototype Limited Liability Company Act*] is amended by adding sections to
13 read:

14 § 1205. Domestication.
15

16 (A) A foreign limited liability company may become a domestic limited liability company
17 only if the domestication is permitted by the governing statute of the foreign limited liability
18 company. The domestication shall be approved by the foreign limited liability company in the
19 manner required by its governing statute. The laws of this state govern the effect of
20 domesticating in this state pursuant to this article.
21

22 (B) A domestic limited liability company may become a foreign limited liability company
23 only if the domestication is permitted by the laws of the foreign jurisdiction. Regardless of
24 whether the laws of the foreign jurisdiction require the adoption of a plan of domestication, the
25 domestication shall be approved by the adoption by the domesticating limited liability company
26 of a plan of domestication in the manner provided in this article. The laws of the foreign
27 jurisdiction govern the effect of the domestication of a limited partnership in that state.
28

29 (C) A plan of domestication adopted by a domesticating limited liability company must
30 include:
31

32 (1) a statement of the jurisdiction in which the domesticating limited liability
33 company is to be domesticated;
34

35 (2) the terms and conditions of the domestication;
36

37 (3) the manner and basis of reclassifying the interests in the domesticating limited
38 liability company following its domestication into interests, securities, obligations, rights
39 to acquire interests or securities, cash, other property, or any combination of the
40 foregoing; and
41

1 (4) any desired amendments to the articles of organization or operating agreement
2 of the domesticating limited liability company following its domestication.
3 § 1206. Action on plan of domestication.
4

5 (A) Unless otherwise provided in writing in an operating agreement, a domesticating
6 limited liability company shall approve the plan of domestication by the consent of more than
7 one half by number of the members.
8

9 (B) The domesticating limited liability company may amend the plan or abandon the
10 planned domestication:
11

12 (1) as provided in the plan; and
13

14 (2) except as prohibited by the plan, by the same consent as was required to
15 approve the plan.
16

17 § 1207. Articles of domestication.
18

19 (A) After the domestication of a foreign limited liability company has been authorized as
20 required by its governing statute, the foreign limited liability company shall deliver to the
21 Secretary of State for filing articles of domestication which must include:
22

23 (1) the name of the foreign limited liability company and the jurisdiction of its
24 governing statute;
25

26 (2) the date the domestication is effective under the governing statute of the
27 foreign limited liability company;
28

29 (3) a statement that the domestication was approved as required by the governing
30 statute of the foreign limited liability company; and
31

32 (4) the articles of organization as they will be in effect upon the effectiveness of
33 the articles of domestication.
34

35 (B) The articles of domestication take effect upon the later of the date they are filed or the
36 date set forth in the articles of domestication.
37

38 § 1208. Surrender of charter upon domestication
39

40 (A) Whenever a domestic limited liability company has approved a plan of domestication,
41 the limited liability company shall deliver to the Secretary of State for filing articles of charter
42 surrender which must include:
43

44 (1) the name of the limited liability company;
45

1 (2) a statement that the articles of charter surrender are being filed in connection
2 with the domestication of the limited liability company in a foreign jurisdiction;
3

4 (3) a statement that the domestication was approved as required by this article;
5 and
6

7 (4) the new jurisdiction of organization of the limited liability company.
8

9 (B) The articles of domestication take effect upon the later of the date they are filed or the
10 date set forth in the articles of domestication.
11

12 § 1209. Effect of domestication.
13

14 (A) A foreign limited liability company that has been domesticated pursuant to this article
15 is for all purposes the same entity that existed before the domestication.
16

17 (B) When a domestication takes effect:
18

19 (1) all property owned by the foreign limited liability company remains vested in
20 the domestic limited liability company;
21

22 (2) all debts, liabilities, and other obligations of the foreign limited liability
23 company continue as obligations of the domestic limited liability company;
24

25 (3) an action or proceeding pending by or against the foreign limited liability
26 company may be continued as if the domestication had not occurred;
27

28 (4) except as prohibited by other law, all of the rights, privileges, immunities,
29 powers, and purposes of the foreign limited liability company remain vested in the
30 domestic limited liability company;
31

32 (5) except as otherwise provided in the plan of domestication, the terms and
33 conditions of the plan of domestication take effect.
34

35 § 1210. Interest exchange.
36

37 (A) Through an interest exchange:
38

39 (1) a domestic limited liability company may acquire all of the interests of one or
40 more classes or series of members of another domestic or foreign limited liability
41 company in exchange for membership interests, securities, obligations, rights to acquire
42 membership interests or securities, cash, other property, or any combination of the
43 foregoing; or
44

45 (2) all of the interests of one or more classes or series of members of a domestic

1 limited liability company may be acquired by another domestic or foreign limited liability
2 company in exchange for membership interests, securities, obligations, rights to acquire
3 membership interests or securities, cash, other property, or any combination of the
4 foregoing.

5
6 (B) A foreign limited liability company may be a party to an interest exchange under this
7 Article only if the exchange is permitted by the governing statute of the foreign limited liability
8 company.

9
10 (C) If the exchanging limited liability company is a domestic limited liability company,
11 the effect of the interest exchange shall be as provided in Section 1213. If the exchanging
12 limited liability company is a foreign limited liability company, the effect of the exchange shall
13 be as provided in the governing statute of the foreign limited liability company.

14
15 (D) A domestic exchanging limited liability company may participate in an interest
16 exchange by approving a plan of exchange which shall include:

17
18 (1) the terms and conditions of the exchange;

19
20 (2) the manner and basis of exchanging or converting one or more classes or
21 series of interests of the members of the exchanging limited liability company into
22 membership interests, securities, obligations, rights to acquire membership interests or
23 securities, cash or other property, or any combination of the foregoing;

24
25 (3) any changes desired to be made in the articles of organization or operating
26 agreement of the exchanging limited liability company.

27
28 (E) Approval of a plan of exchange by the acquiring limited liability company is not
29 required.

30
31 § 1211. Action on plan of exchange by exchanging limited liability company.

32
33 (A) Unless otherwise provided in writing in an operating agreement, a domestic
34 exchanging limited liability company shall approve the plan of exchange by the consent or more
35 than one half by number of the members.

36
37 (B) The domestic exchanging limited liability company may amend the plan or abandon
38 the planned interest exchange:

39
40 (1) as provided in the plan; and

41
42 (2) except as prohibited by the plan, by the same consent as was required to
43 approve the plan.
44

1 § 1212. Articles of exchange.
2

3 (A) After a plan of exchange has been approved by a domestic exchanging limited
4 liability company, the exchanging limited liability company shall deliver to the Secretary of State
5 for filing articles of exchange which must include:
6

7 (1) the names of the acquiring limited liability company and exchanging limited
8 liability company;
9

10 (2) the manner in which the plan of exchange was approved by the exchanging
11 limited liability company; and
12

13 (3) any amendments to the articles of organization of the exchanging limited
14 liability company that are provided for in the plan of exchange.
15

16 (B) The articles of exchange take effect upon the later of the date they are filed or the date
17 set forth in the articles of exchange.
18

19 § 1213. Effect of interest exchange.
20

21 When articles of exchange take effect, the interests of the members of the exchanging
22 limited liability company that are, under the terms of the plan of exchange, to be converted or
23 exchanged shall cease to exist or shall be exchanged. The former holders of those membership
24 interests shall thereafter be entitled only to the membership interests, securities, obligations,
25 rights to acquire membership interests or securities, cash or other property into which they have
26 been converted or for which they have been exchanged in accordance with the plan; and the
27 acquiring limited liability company shall be the holder of the membership interests in the
28 exchanging limited liability company stated in the plan to be acquired by the acquiring limited
29 liability company. The articles of organization and operating agreement of the exchanging
30 limited liability company shall be amended to the extent, if any, that changes in those documents
31 are stated in the plan.
32

33 (e) Section 1301 of the [*Prototype Limited Liability Company Act*] is amended as
34 follows:

35 § 1301. Filing, service, and copying fees.
36

37 The Secretary of State shall charge and collect:
38

39 * * *
40

41 (C) For filing articles of merger [or], consolidation, domestication, charter surrender or
42 exchange and issuing a certificate of merger [or], consolidation, domestication, charter surrender

1 or exchange, a fee of \$ ____;

2
3 * * *

4
5 **SECTION 706. UNIFORM LIMITED LIABILITY COMPANY ACT.**

6
7 (a) Sections 101, 404 and 901 of the [*Uniform Limited Liability Company Act*] are
8 amended as follows:

9 § 101. Definitions.

10
11 In this [*Act*]:

12
13 (1) “Articles of organization” means initial, amended, and restated articles of
14 organization and articles of merger, domestication and exchange. In the case of a foreign
15 limited liability company, the term includes all records serving a similar function required
16 to be filed in the office of the [Secretary of State] or other official having custody of
17 company records in the State or country under whose law it is organized.

18
19 * * *

20
21 (9) “Limited liability company” or “domestic limited liability company” means a
22 limited liability company organized under this [Act].

23
24 * * *

25
26 § 404. Management of limited liability company.

27
28 * * *

29
30 (c) The only matters of a member or manager-managed company’s business requiring the
31 consent of all of the members are:

32
33 * * *

34
35 (10.1) the domestication of the company under Section 902(d);

36
37 (11) **[the consent of members to merge]** a merger of the company with another
38 **[entity]** domestic or foreign limited liability company under Section 904(c)(1); **[and]**

39
40
41 (11.1) an interest exchange in which the company is the exchanging limited

1 liability company under Section 907(e); and

2
3 (12) the sale, lease, exchange, or other disposal of all, or substantially all, of the
4 company's property with or without goodwill.

5
6 * * *

7
8 § 901. Definitions.

9
10 In this [*article*]:

11
12 (1) "Acquiring limited liability company" means the domestic or foreign limited
13 liability company that will acquire one or more classes or series of the interests of the
14 members of the exchanging limited liability company in an interest exchange.
15 **["Corporation" means a corporation under [*the State Corporation Act*], a**
16 **predecessor law, or comparable law of another jurisdiction.]**
17

18 (2) "Domesticating limited liability company" means a limited liability company
19 that is domesticating in another jurisdiction pursuant to Sections 902 and 903. **["General**
20 **partner" means a partner in a partnership and a general partner in a limited**
21 **partnership.]**
22

23 (3) "Exchanging limited liability company" means the domestic or foreign limited
24 liability company one or more of the classes or series of interests of the members of
25 which is to be acquired in an interest exchange. **["Limited partner" means a limited**
26 **partner in a limited partnership.**
27

28 (4) **"Limited partnership" means a limited partnership created under [*the***
29 ***State Limited Partnership Act*], a predecessor law, or comparable law of another**
30 **jurisdiction.**
31

32 (5) **"Partner" includes a general partner and a limited partner.**
33

34 (6) **"Partnership" means a general partnership under [*the State Partnership***
35 ***Act*], a predecessor law, or comparable law of another jurisdiction.**
36

37 (7) **"Partnership agreement" means an agreement among the partners**
38 **concerning the partnership or limited partnership.**
39

40 (8) **"Shareholder" means a shareholder in a corporation.]**
41

42 (4) "Surviving limited liability company" means a limited liability company into

1 which one or more other limited liability companies are merged. A surviving limited
2 liability company may preexist the merger or be created by the merger.
3
4

5 (b) Sections 902 and 903 of the [*Uniform Limited Liability Company Act*] are repealed.

6 (c) The [*Uniform Limited Liability Company Act*] is amended by adding sections to read:

7 § 902. Domestication.
8

9 (a) A foreign limited liability company may become a domestic limited liability company
10 only if the domestication is permitted by the laws of the foreign jurisdiction. The domestication
11 shall be approved by the foreign limited liability company in the manner required by those laws.
12 The laws of this state govern the effect of domesticating in this state pursuant to this [*article*].
13

14 (b) A domestic limited liability company may become a foreign limited liability company
15 only if the domestication is permitted by the laws of the foreign jurisdiction. Regardless of
16 whether the laws of the foreign jurisdiction require the adoption of a plan of domestication, the
17 domestication shall be approved by the adoption by the domesticating limited liability company
18 of a plan of domestication in the manner provided in this section. The laws of the foreign
19 jurisdiction govern the effect of the domestication of a limited liability company in that state.
20

21
22 (c) A plan of domestication adopted by a domesticating limited liability company must
23 include:
24

25 (1) a statement of the jurisdiction in which the domesticating limited liability
26 company is to be domesticated;
27

28 (2) the terms and conditions of the domestication;
29

30 (3) the manner and basis of reclassifying the interests of the members in the
31 domesticating limited liability company following its domestication into interests,
32 securities, obligations, rights to acquire interests or securities, cash, other property, or any
33 combination of the foregoing; and
34

35 (4) any desired amendments to the articles of organization or operating
36 agreement of the domesticating limited liability company following its domestication.
37

38 (d) A plan of domestication must be approved by all of the members or by a number or
39 percentage of members specified in the operating agreement.
40

41 (e) After a plan of domestication is approved and before the domestication takes effect,
42 the plan may be amended or abandoned as provided in the plan.
43

1 § 903. Domestication filings; effect of domestication.
2

3 (a) After the domestication of a foreign limited liability company has been authorized as
4 required by the laws of the foreign jurisdiction, the foreign limited liability company shall deliver
5 to the [*Secretary of State*] for filing articles of domestication which must set forth:
6

7 (1) the name of the foreign limited liability company and the foreign jurisdiction;
8

9 (2) the date the domestication is effective under the laws of the foreign
10 jurisdiction;
11

12 (3) a statement that the domestication was approved as required by the laws of the
13 foreign jurisdiction; and
14

15 (4) the articles of organization as they will be in effect upon the effectiveness of
16 the articles of domestication.
17

18 (b) Whenever a domestic limited liability company has approved a plan of domestication,
19 the limited liability company shall deliver to the [*Secretary of State*] for filing articles of charter
20 surrender which must set forth:
21

22 (1) the name of the limited liability company;
23

24 (2) a statement that the articles of charter surrender are being filed in connection
25 with the domestication of the limited liability company in a foreign jurisdiction;
26

27 (3) a statement that the domestication was approved as required by this [*article*];
28 and
29

30 (4) the new jurisdiction of organization of the limited liability company.
31

32 (c) Articles of domestication or articles of charter surrender take effect upon the later of
33 the date they are filed or the effective date set forth therein.
34

35 (d) A foreign limited liability company that has been domesticated pursuant to this
36 [*article*] is for all purposes the same entity that existed before the domestication.
37

38 (e) When a domestication takes effect:
39

40 (1) all property owned by the foreign limited liability company remains vested in
41 the domestic limited liability company;
42

43 (2) all debts, liabilities, and other obligations of the foreign limited liability
44 company continue as obligations of the domestic limited liability company;
45

1 (3) an action or proceeding pending by or against the foreign limited liability
2 company may be continued as if the domestication had not occurred;
3

4 (4) except as prohibited by other law, all of the rights, privileges, immunities,
5 powers, and purposes of the foreign limited liability company remain vested in the
6 domestic limited liability company;
7

8 (5) except as otherwise provided in the plan of domestication, the terms and
9 conditions of the plan of domestication take effect.
10

11 (d) Sections 904, 905 and 906 of the [*Uniform Limited Liability Company Act*] are
12 amended as follows:

13 § 904. Merger of [entities] limited liability companies.
14

15 (a) Pursuant to a plan of merger approved under subsection (c), a domestic limited
16 liability company may be merged with or into one or more domestic limited liability
17 companies[,] or foreign limited liability companies[, corporations, foreign corporations,
18 **partnerships, foreign partnerships, limited partnerships, foreign limited partnerships, or**
19 **other domestic or foreign entities]**. See [the Model Entity Transactions Act] with respect to a
20 merger in which an entity other than a limited liability company is a party.
21

22 (b) A plan of merger must set forth:
23

24 (1) the name of each [entity] domestic or foreign limited liability company that is
25 a party to the merger;
26

27 (2) the name of the surviving [entity] domestic or foreign limited liability
28 company into which the other [entities] parties will merge;
29

30 (3) **[the type of organization of the surviving entity;]** (Repealed.)
31

32 (4) the terms and conditions of the merger;
33

34 (5) the manner and basis for converting the interests of each limited liability
35 company that is a party to the merger into interests or obligations of the surviving [entity]
36 limited liability company, interests or obligations of any other entity, or into money or
37 other property in whole or in part; and
38

39 (6) the street address of the surviving [entity's] limited liability company's
40 principal place of business.
41

1 (c) A plan of merger must be approved:

2
3 (1) in the case of a limited liability company that is a party to the merger, by all of
4 the members or by a number or percentage of members specified in the operating
5 agreement; and

6
7 (2) in the case of a foreign limited liability company that is a party to the merger,
8 by the vote required for approval of a merger by the law of the State or foreign
9 jurisdiction in which the foreign limited liability company is organized[;

10
11 **(3) in the case of a partnership or domestic limited partnership that is a**
12 **party to the merger, by the vote required for approval of a conversion under Section**
13 **902(b); and**

14
15 **(4) in the case of any other entities that are parties to the merger, by the vote**
16 **required for approval of a merger by the law of this State or of the State or foreign**
17 **jurisdiction in which the entity is organized and, in the absence of such a**
18 **requirement, by all the owners of interests in the entity].**

19
20 * * *

21
22 § 905. Articles of merger.

23
24 (a) After approval of the plan of merger under Section 904(c), unless the merger is
25 abandoned under Section 904(d), articles of merger must be signed on behalf of each limited
26 liability company **[and other entity]** that is a party to the merger and delivered to the [*Secretary*
27 *of State*] for filing. The articles must set forth:

28
29 (1) the name and jurisdiction of **[formation or]** organization of each of the
30 limited liability companies **[and other entities that are parties]** that is a party to the
31 merger;

32
33 (2) for each limited liability company that is to merge, the date its articles or
34 organization were filed with the [*Secretary of State*];

35
36 (3) that a plan of merger has been approved **[and signed]** by each limited liability
37 company **[and other entity]** that is to merge;

38
39 (4) the name and address of the surviving limited liability company **[or other**
40 **surviving entity]**;

41
42 (5) the effective date of the merger;

1 (6) **[if a limited liability company is the surviving entity,]** such changes in **[its]**
2 the articles of organization of the surviving limited liability company as are necessary by
3 reason of the merger;
4

5 (7) if a party to a merger is a foreign limited liability company, the jurisdiction
6 and date of filing of its initial articles of organization and the date when its application for
7 authority was filed by the *[Secretary of State]* or, if an application has not been filed, a
8 statement to that effect[; and
9

10 **(8) if the surviving entity is not a limited liability company, an agreement**
11 **that the surviving entity may be served with process in this State and is subject to**
12 **liability in any action or proceeding for the enforcement of any liability or**
13 **obligation of any limited liability company previously subject to suit in this State**
14 **which is to merge, and for the enforcement, as provided in this *[Act]*, of the right of**
15 **members of any limited liability company to receive payment for their interest**
16 **against the surviving entity].**
17

18 (b) If a foreign limited liability company is the surviving **[entity of a merger]** limited
19 liability company, it may not do business in this State until an application for that authority is
20 filed with the *[Secretary of State]*.
21

22 (c) The surviving limited liability company **[or other entity]** shall furnish a copy of the
23 plan of merger, on request and without cost, to any member of any limited liability company **[or**
24 **any person holding an interest in any other entity]** that is to merge.
25

26 (d) Articles of merger operate as an amendment to the limited liability company's articles
27 of organization.
28

29 § 906. Effect of merger.
30

31 (a) When a merger takes effect:
32

33 (1) the separate existence of each limited liability company **[and other entity]**
34 that is a party to the merger, other than the surviving **[entity]** limited liability company,
35 terminates;
36

37 (2) all property owned by each of the limited liability companies **[and other**
38 **entities that are]** that is party to the merger vests in the surviving **[entity]** limited
39 liability company;
40

41 (3) all debts, liabilities, and other obligations of each limited liability company
42 **[and other entity]** that is party to the merger become the obligations of the surviving
43 **[entity]** limited liability company;

1 (4) an action or proceeding pending by or against a limited liability company **[or**
2 **other]** party to a merger may be continued as if the merger had not occurred or the
3 surviving **[entity]** limited liability company may be substituted as a party to the action or
4 proceeding; and

5
6 (5) except as prohibited by other law, all the rights, privileges, immunities,
7 powers, and purposes of every limited liability company **[and other entity]** that is a party
8 to a merger vest in the surviving **[entity]** limited liability company.
9

10 (b) The *[Secretary of State]* is an agent for service of process in an action or proceeding
11 against **[the]** a surviving foreign **[entity]** limited liability company to enforce an obligation of
12 any party to a merger if the surviving foreign **[entity]** limited liability company fails to appoint or
13 maintain an agent designated for service of process in this State or the agent for service of
14 process cannot with reasonable diligence be found at the designated office. Upon receipt of
15 process, the *[Secretary of State]* shall send a copy of the process by registered or certified mail,
16 return receipt requested, to the surviving **[entity]** foreign limited liability company at the address
17 set forth in the articles of merger. Service is effected under this subsection at the earliest of:
18

19 (1) the date the company receives the process, notice, or demand;

20
21 (2) the date shown on the return receipt, if signed on behalf of the company; or
22

23 (3) five days after its deposit in the mail, if mailed postpaid **[and correctly**
24 **addressed]**.
25

26 **[(c) A member of the surviving limited liability company is liable for all obligations**
27 **of a party to the merger for which the member was personally liable before the merger.**
28

29 **(d) Unless otherwise agreed, a merger of a limited liability company that is not the**
30 **surviving entity in the merger does not require the limited liability company to wind up its**
31 **business under this [Act] or pay its liabilities and distribute its assets pursuant to this [Act].**
32

33 **(e) Articles of merger serve as articles of dissolution for a limited liability company**
34 **that is not the surviving entity in the merger.]**
35

36 (e) Section 907 of the *[Uniform Limited Liability Company Act]* is repealed.

37 (f) The *[Uniform Limited Liability Company Act]* is amended by adding to sections to
38 read:

39 § 907. Interest exchange.
40

1 (a) Through an interest exchange:
2

3 (1) a domestic limited liability company may acquire all of the interests of one or
4 more classes or series of members of another domestic or foreign limited liability
5 company in exchange for membership interests, securities, obligations, rights to acquire
6 membership interests or securities, cash, other property, or any combination of the
7 foregoing; or
8

9 (2) all of the interests of one or more classes or series of members of a domestic
10 limited liability company may be acquired by another domestic or foreign limited liability
11 company in exchange for membership interests, securities, obligations, rights to acquire
12 membership interests or securities, cash, other property, or any combination of the
13 foregoing.
14

15 (b) A foreign limited liability company may be a party to an interest exchange under this
16 Article only if the exchange is permitted by the governing statute of the foreign limited liability
17 company.
18

19 (c) If the exchanging limited liability company is a domestic limited liability company,
20 the effect of the interest exchange shall be as provided in Section 1213. If the exchanging
21 limited liability company is a foreign limited liability company, the effect of the exchange shall
22 be as provided in the governing statute of the foreign limited liability company.
23

24 (d) A domestic exchanging limited liability company may participate in an interest
25 exchange by approving a plan of exchange which shall include:
26

27 (1) the terms and conditions of the exchange;
28

29 (2) the manner and basis of exchanging or converting one or more classes or
30 series of interests of the members of the exchanging limited liability company into
31 membership interests, securities, obligations, rights to acquire membership interests or
32 securities, cash or other property, or any combination of the foregoing;
33

34 (3) any changes desired to be made in the articles of organization or operating
35 agreement of the exchanging limited liability company.
36

37 (e) The plan of exchange must be approved by the domestic exchanging limited liability
38 company by all of the members or by a number or percentage of members specified in the
39 operating agreement.
40

41 (f) Approval of a plan of exchange by the acquiring limited liability company is not
42 required.
43

1 (g) After a plan of exchange is approved and before the interest exchange takes effect, the
2 plan may be amended or abandoned as provided in the plan.

3
4 § 908. Articles of exchange; effect of interest exchange.

5
6 (a) After a plan of exchange has been approved by a domestic exchanging limited liability
7 company, the exchanging limited liability company shall deliver to the [*Secretary of State*] for
8 filing articles of exchange which must set forth:

9
10 (1) the names of the acquiring limited liability company and exchanging limited
11 liability company;

12
13 (2) the manner in which the plan of exchange was approved by the exchanging
14 limited liability company; and

15
16 (3) any amendments to the articles of organization of the exchanging limited
17 liability company that are provided for in the plan of exchange.

18
19 (b) The articles of exchange take effect upon the later of the date they are filed or the date
20 set forth in the articles of exchange.

21
22 (c) When articles of exchange take effect, the interests of the members of the exchanging
23 limited liability company that are, under the terms of the plan of exchange, to be converted or
24 exchanged shall cease to exist or shall be exchanged. The former holders of those membership
25 interests shall thereafter be entitled only to the membership interests, securities, obligations,
26 rights to acquire membership interests or securities, cash or other property into which they have
27 been converted or for which they have been exchanged in accordance with the plan; and the
28 acquiring limited liability company shall be the holder of the membership interests in the
29 exchanging limited liability company stated in the plan to be acquired by the acquiring limited
30 liability company. The articles of organization and operating agreement of the exchanging
31 limited liability company shall be amended to the extent, if any, that changes in those documents
32 are stated in the plan.

33 34 35 **Comment**

36
37 In addition to making the amendments described in the introductory comment to Article
38 6, the foregoing amendments to the Uniform Limited Liability Company Act also make clear that
39 limited liability companies may be parties to (i) triangular mergers in which an entity that is not a
40 limited partnership and is not a party to the merger provides the merger consideration and (ii)
41 consolidations in which the surviving limited liability company is created in the transaction.
42

1 **[ARTICLE] 8**

2 **MISCELLANEOUS PROVISIONS**

3 **SECTION 801. UNIFORMITY OF APPLICATION AND CONSTRUCTION.**

4 In applying and construing this Uniform Act, consideration must be given to the need to
5 promote uniformity of the law with respect to its subject matter among states that enact it.

6 **Comments**
7
8
9

10 **SECTION 802. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND**
11 **NATIONAL COMMERCE ACT.**

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

16 **Comments**
17
18
19

20 **SECTION 803. SEVERABILITY.**

21 If any provision of this [act] or its application to any person or circumstance is held
22 invalid, the invalidity does not affect other provisions or applications of this [act] which can be
23 given effect without the invalid provision or application, and to this end the provisions of this
24 [act] are severable.

25 **Comments**
26
27

1 **SECTION 804. EFFECTIVE DATE.**

2 This [act] takes effect [January 1, 200__.]

3 **Comments**
4
5

6 **SECTION 805. APPLICABILITY.**

7 (a) Before January 1, 20__ [drag-in-date], this [act] governs only:

8 (1)

9 (2)

10 (b) Except as otherwise provided in subsection (c), beginning January 1, 20__, [drag-in-
11 date], this [act] governs all [domestic unincorporated and {electing} foreign entities].

12 (c) [Sections 901 through 908 of the Revised Uniform Partnership Act]; [Sections 1101
13 through 1113 of the Revised Uniform Limited Partnership Act (2001)]; and [Sections 1001
14 through 1009 of the Uniform Limited Liability Company Act] continue to apply after [January 1,
15 20__] [drag-in-date], except as otherwise provided as follows:

16 (1)

17 (2)

18 **Comments**
19
20
21

22 **SECTION 806. SAVINGS CLAUSE.**

23 This [act] does not affect an action or proceeding commenced or right accrued before the
24 effective date of this [act].

25 **Comments**