

MODEL ENTITY TRANSACTIONS ACT *

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ON UNIFORM STATE LAWS

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AMERICAN BAR ASSOCIATION

MODEL ENTITY TRANSACTIONS ACT

CONTAINING ARTICLE 6

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MODEL ENTITY TRANSACTIONS ACT

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MODEL ENTITY TRANSACTIONS ACT

[ARTICLE] 1

GENERAL PROVISIONS

SECTION 102. DEFINITIONS. In this [act]:

(6.1) “Dividing entity” means a domestic entity that approves a plan of division pursuant to Section 603 or a foreign entity that approves a division pursuant to the law of its jurisdiction of organization.

(6.2) “Division” means a transaction authorized by [Article 6].

(32.1) “Resulting entity” means an entity that continues in existence after or is created by a division.

[ARTICLE] 6

DIVISION

SECTION 601. DIVISION AUTHORIZED.

(a) Except as otherwise provided in this section, by complying with this [article], a domestic entity may divide into:

(1) the dividing entity and one or more new entities, whether domestic or foreign; or

(2) two or more new entities, whether domestic or foreign.

(b) A foreign entity may be created by the division of a domestic entity only if the division is authorized by the law of the foreign entity's jurisdiction of organization.

(c) Except as otherwise provided in this section, if the division is authorized by the law of the foreign entity's jurisdiction of organization, one or more of the resulting entities created in a division of a foreign entity may be a domestic entity.

(d) If a protected agreement contains a provision that applies to a merger of a domestic entity but does not refer to a division, the provision applies to a division of the entity as if the division were a merger until the provision is amended after the effective date of this [act].

[(e) The following entities may not divide or be created in a division:

(1)

(2)]

Legislative Note: *Very few state entity laws currently authorize divisions. As pointed out in Appendix 2, in those few states that do have division provisions, it is recommended that they be amended to apply only to divisions where the dividing entity and the resulting entities are all of*

the same type, for example a transaction where a corporation is divided into two or more corporations. In addition, a new subsection should be added to this section analogous to Sections 201(c) and 301(c) stating:

(d) This [article] does not apply to a transaction under:

- (1)*
- (2)*

The statutes listed in that added subsection would be the existing division provisions as amended.

Alternatively, the existing division provisions could be repealed and then Article 6 would apply to all same-type and cross-type divisions. A third alternative is to add same-type division provisions to all of a state's existing entity statutes so that Article 6 would only apply to divisions where one or more of the resulting entities is of a different type from the dividing entity or the other resulting entities; but this alternative would be quite cumbersome to implement given the absence of division provisions in most existing entity statutes.

SECTION 602. PLAN OF DIVISION.

(a) A domestic entity may divide under this [article] by approving a plan of division. The plan of division must be in a record and contain:

- (1) the name and type of the dividing entity;
- (2) a statement whether the dividing entity will survive the division;
- (3) the name, jurisdiction of organization, and type of each new resulting entity;

(4) the manner of:

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

(B) allocating between or among the resulting entities those assets

of the dividing entity that are not to be owned by all of the resulting entities as tenants in common pursuant to Section 606(a)(4) and those liabilities of the dividing entity as to which not all of the resulting entities are to be liable jointly and severally pursuant to Section 607(a)(3); and

(C) distributing the interests of the resulting entities created in the division;

(5) the proposed public organic document, if any, of each new resulting entity and the full text of its private organic rules that are proposed to be in a record;

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

(7) the other terms and conditions of the division; and

(8) any other provision required by the law of this state or the organic rules of the dividing entity.

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

SECTION 603. APPROVAL OF DIVISION.

(a) A plan of division is not effective unless it has been approved:

(1) by a domestic dividing entity:

(A) in accordance with the requirements, if any, in its organic rules for approval of a division;

(B) if its organic rules do not provide for approval of a division, in accordance with the requirements, if any, in its organic law and organic rules for approval of a transaction that has the effect of a merger as if the division were that type of transaction; or

(C) if neither its organic law nor organic rules provide for approval of a division or a transaction that has the effect of a merger, by all of the interest holders of the entity entitled to vote on or consent to any matter; and

(2) in a record, by each interest holder of a domestic dividing entity that will have interest holder liability for liabilities that arise after the division becomes effective, unless:

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

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

(b) A division of a foreign entity in which one or more of the resulting entities is a domestic entity is not effective unless it is approved by the foreign entity in accordance with the law of the foreign entity's jurisdiction of organization.

SECTION 604. AMENDMENT OR ABANDONMENT OF PLAN OF DIVISION.

(a) A plan of division of a domestic dividing entity may be amended:

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

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

(A) the amount or kind of interests, securities, obligations, rights

to acquire interests or securities, cash, or other property, or any combination of the foregoing to be received by any of the interest holders of the dividing entity under the plan;

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

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

(b) After a plan of division has been approved by a domestic dividing entity and before a statement of division becomes effective, the plan may be abandoned:

(1) as provided in the plan; or

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

(c) If a plan of division is abandoned after a statement of division has been filed with the [Secretary of State] and before the filing becomes effective, a statement of abandonment, signed on behalf of the dividing entity, must be filed with the [Secretary of State] before the time the statement of division becomes effective. The statement of abandonment takes effect upon filing, and the division is abandoned and does not become effective. The statement of abandonment must contain:

(1) the name of the dividing entity;

(2) the date on which the statement of division was filed; and

(3) a statement that the division has been abandoned in accordance with

this section.

SECTION 605. STATEMENT OF DIVISION; EFFECTIVE DATE.

(a) A statement of division must be signed on behalf of the dividing entity and filed with the [Secretary of State].

(b) A statement of division must contain:

(1) the name, jurisdiction of organization, and type of the dividing entity;

(2) a statement as to whether the dividing entity will survive the division;

(3) the name, jurisdiction of organization, and type of each resulting entity created by the division;

(4) if the statement of division is not to be effective upon filing, the later date and time on which it will become effective, which may not be more than 90 days after the date of filing;

(5) if the dividing entity is a domestic entity, a statement that the plan of division was approved in accordance with this [article] or, if the dividing entity is a foreign entity, a statement that the division was approved by the foreign dividing entity in accordance with the law of its jurisdiction of organization;

(6) if the dividing entity is a domestic filing entity and survives the division, any amendment to its public organic document approved as part of the plan of division;

(7) for each domestic resulting entity created by the division, its public organic document, if any, as an attachment; and

(8) for each resulting entity created by the division that is a domestic limited liability partnership, its [statement of qualification], as an attachment.

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

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

(e) A plan of division that is signed on behalf of a domestic dividing entity and meets all of the requirements of subsection (b) may be filed with the [Secretary of State] instead of a statement of division and upon filing has the same effect. If a plan of division is filed as provided in this subsection, references in this [act] to a statement of division refer to the plan of division filed under this subsection.

(f) A statement of division becomes effective upon the date and time of filing or the later date and time specified in the statement of division.

SECTION 606. EFFECT OF DIVISION.

(a) When a division becomes effective:

(1) if the dividing entity is to survive the division, the dividing entity continues to exist;

(2) if the dividing entity is not to survive the division, the dividing entity ceases to exist;

(3) the resulting entities created in the division come into existence;

(4) property of the dividing entity:

(A) is allocated to and vests in the resulting entities created in the

division, or remains vested in the dividing entity, in each case without assignment, reversion or impairment, to the extent specified in the plan of division;

(B) not allocated by the plan of division remains vested in the dividing entity if the dividing entity survives the division; and

(C) not allocated by the plan of division is allocated to and vests equally in the resulting entities as tenants in common without assignment, reversion, or impairment if the dividing entity does not survive the division;

(5) a resulting entity to which a cause of action is allocated as provided in paragraph (4) may be substituted or added in any pending action or proceeding to which the dividing entity is a party at the effective time of the division;

(6) the liabilities of the dividing entity are allocated between or among the resulting entities as provided in Section 607;

(7) each resulting entity created in the division holds any property allocated to it as the successor to the dividing entity, and not by assignment, whether directly or indirectly, or by operation of law;

(8) if the dividing entity survives the division:

(A) its public organic document, if any, is amended as provided in the statement of division and remains binding on its interest holders; and

(B) its private organic rules that are to be in a record, if any, are amended to the extent provided in the plan of division and remain binding on its interest holders;

(9) the public organic document, if any, and the organic rules of each resulting entity created by the division become effective and are binding upon the interest holders

of the resulting entity; and

(10) the interests in the dividing entity that are to be converted in the division are converted, and the interest holders of those interests are entitled only to the rights provided to them under the plan of division [and to any appraisal rights they may have under Section 108].

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

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

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

(1) the division does not discharge any interest holder liability under the organic law of the domestic dividing entity to the extent the interest holder liability arose before the division became effective;

(2) the person does not have interest holder liability under the organic law of the domestic dividing entity for any liability that arises after the division becomes effective;

(3) the organic law of the domestic dividing entity continues to apply to the release, collection, or discharge of any interest holder liability preserved under paragraph (1) as if the division had not occurred; and

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

(e) When a division becomes effective, the certificate of authority or other foreign qualification of a foreign dividing entity that does not survive the division is canceled.

(f) A person does not have constructive notice of an allocation of an interest in real estate in a division until the allocation is recorded in compliance with the requirements for recording of interests in real estate in the state where the real estate is located.

SECTION 607. ALLOCATION OF LIABILITIES IN DIVISION.

(a) Subject to subsections (b) and (c), when a division becomes effective, each resulting entity is responsible:

(1) individually for the liabilities that the entity undertakes or incurs in its own name subsequent to the division;

(2) individually for the liabilities of the dividing entity that are allocated to or remain the liability of the resulting entity to the extent specified in the plan of division;

(3) jointly and severally with the other resulting entities for the liabilities of the dividing entity that are not allocated by the plan of division.

(b) Allocation of a liability in a plan of division is ineffective, and the liability becomes a liability of all of the resulting entities, jointly and severally, if:

(1) the division materially increases the risk of nonpayment to a creditor on the liability or the risk of nonperformance to a person owed performance of the liability; or

(2) the allocation of assets and liabilities in the division is ineffective or voidable under law other than this [act].

(c) If the division breaches a liability of the dividing entity, the dividing entity, if it survives the division, and each of the resulting entities allocated the liability or any assets associated with performance of the liability, is liable, jointly and severally, for the breach.

(d) In applying the law governing fraudulent transfers to the division:

(1) the dividing entity:

(A) is not subject to that law if it does not survive the division;

and

(B) is subject to that law only in its capacity as a resulting entity if

it survives the division;

(2) with regard to each resulting entity:

(A) the entity is treated as a debtor;

(B) the liabilities allocated to that entity are treated as an obligation incurred by the debtor;

(C) the entity is treated as not having received a reasonably equivalent value in exchange for incurring the obligation; and

(D) the assets allocated to the entity are treated as remaining assets.

(e) In applying the provisions of the organic law of the dividing entity on

dividends or other distributions to the division:

(1) distributions of interests are disregarded; and

(2) the solvency of the resulting entities is considered only as it appeared to the governors of the dividing entity in their good faith judgment as of the date:

(A) they approved the division if the statement of division takes effect within 120 days after the date of approval; or

(B) the statement of division takes effect if that occurs more than 120 days after the date of approval.

(f) Liens, security interests, and other charges upon the property of the dividing entity are not impaired by the division, notwithstanding any otherwise enforceable allocation of liabilities of the dividing entity.

(g) If the dividing entity is bound by a security agreement governed by Article 9 of the Uniform Commercial Code as enacted in any jurisdiction and the security agreement provides that the security interest attaches to after-acquired collateral, each resulting entity is bound by the security agreement.

APPENDIX

CONFORMING AMENDMENTS TO ACCOMPANY ARTICLE 6 OF THE MODEL ENTITY TRANSACTIONS ACT

SECTION 102. DEFINITIONS. In this [act]:

* * *

(4) “Conversion” means a transaction ~~of the kind~~ authorized by [Article] 4.

* * *

(10) “Domestication” means a transaction ~~of the kind~~ authorized by [Article] 5.

* * *

(17) “Interest exchange” means a transaction ~~of the kind~~ authorized by [Article]

3.

* * *

(22) “Merger” means a transaction ~~of the kind~~ authorized by [Article] 2.

* * *

SECTION 110. ALTERNATIVE APPROVAL OF TRANSACTIONS. Except as otherwise provided in the organic law or organic rules of a domestic entity, approval of a transaction under this [act] by the unanimous vote or consent of its interest holders satisfies the requirements of this [act] for approval of the transaction.

SECTION 201. MERGER AUTHORIZED.

(a) Except as otherwise provided in this section, by complying with this [article]:

* * *

(2) two or more foreign entities may ~~be parties to a merger in which the surviving entity is merge into~~ a domestic entity.

* * *

(c) This [article] does not apply to a ~~merger~~ transaction under:

* * *

SECTION 203. APPROVAL OF MERGER.

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

(1) by a domestic merging entity:

(A) in accordance with the requirements, if any, in its organic law and organic rules for approval of a transaction that has the effect of a merger; or

(B) if neither its organic law nor organic rules provide for approval of a transaction that has the effect of a merger, by all of the interest holders of the entity entitled to vote on or consent to any matter; and

* * *

SECTION 205. STATEMENT OF MERGER; EFFECTIVE DATE.

* * *

(b) A statement of merger must contain:

* * *

(6) if the surviving entity is created by the merger and is a domestic filing entity, ~~the text of~~ its public organic document, as an attachment; and

(7) if the surviving entity is created by the merger and is a domestic limited liability partnership, ~~a copy of~~ its [statement of qualification], as an attachment.

* * *

(d) If the surviving entity is a domestic entity, its ~~name~~ public organic document, if any, must satisfy the requirements of the law of this state. ~~If the surviving entity is to be a qualified foreign entity, its name must be available for use in this state or it must adopt an available name for that purpose., except that it does not need to be signed and may omit any provision that is not required to be included in a restatement of the public organic document.~~

* * *

SECTION 206. EFFECT OF MERGER.

(a) When a merger becomes effective:

* * *

(8) if the surviving entity exists before the merger; ;

(A) its public organic document, if any, ~~and~~ is amended as provided in the statement of merger and remains binding on its interest holders; and

(B) its private organic rules that are to be in a record, if any, are amended to the extent provided in the plan of merger and ~~are~~ remain binding ~~upon the~~ on its interest holders ~~of the surviving entity;~~

* * *

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

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

~~(c)~~ (d) When a merger becomes effective, the interest holder liability of a person that ceases to hold an interest in a domestic merging entity with respect to which the person had interest holder liability is as follows:

(1) the merger does not discharge any interest holder liability under the organic law of the domestic merging entity to the extent the interest holder liability arose before the merger became effective;

(2) the person does not have interest holder liability under the organic law of the domestic merging entity for any liability that arises after the merger becomes effective;

(3) the organic law of the domestic merging entity continues to apply to the release, collection, or discharge of any interest holder liability preserved under paragraph (1) as if the merger had not occurred and the surviving entity were the domestic merging entity; and

(4) the person has whatever rights of contribution from any other person as are provided by the organic law or organic rules of the domestic merging entity with respect to

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

~~(d)~~ (e) When a merger becomes effective, a foreign entity that is the surviving entity:

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

(2) appoints the [Secretary of State] as its agent for service of process for collecting or enforcing those liabilities.

~~(e)~~ (f) When a merger becomes effective, the certificate of authority or other foreign qualification of any foreign merging entity that is not the surviving entity is canceled.

SECTION 301. INTEREST EXCHANGE AUTHORIZED.

* * *

(c) This [article] does not apply to ~~an interest exchange~~ a transaction under:

* * *

SECTION 303. APPROVAL OF INTEREST EXCHANGE.

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

(1) by a domestic acquired entity:

(A) in accordance with the requirements, if any, in its organic law and organic rules for approval of an interest exchange;

(B) except as otherwise provided in subsection (d), if neither its organic law nor organic rules provide for approval of an interest exchange, in accordance with

the requirements, if any, ~~for approval of a merger~~ in its organic law and organic rules for approval of a transaction that has the effect of a merger, as if the interest exchange were ~~a merger~~ that type of transaction; or

(C) if neither its organic law nor organic rules provide for approval of an interest exchange or a transaction that has the effect of a merger, by all of the interest holders of the entity entitled to vote on or consent to any matter; and

* * *

SECTION 306. EFFECT OF INTEREST EXCHANGE.

(a) When an interest exchange becomes effective:

* * *

(3) the public organic document, if any, of the acquired entity is amended ~~to the extent~~ as provided in the plan of interest exchange and ~~is~~ remains binding ~~upon the~~ on its interest holders ~~of the acquired entity~~; and

(4) the private organic rules of the acquired entity that are to be in a record, if any, are amended to the extent provided in the plan of interest exchange and ~~are~~ remain binding ~~upon the~~ on its interest holders ~~of the acquired entity~~.

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

~~(b)~~ (c) When an interest exchange becomes effective, a person that did not have

interest holder liability with respect to the acquired entity and that becomes subject to interest holder liability with respect to a domestic entity as a result of ~~an~~ the interest exchange has interest holder liability only to the extent provided by the organic law of the entity and only for those liabilities that arise after the interest exchange becomes effective.

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

(1) the interest exchange does not discharge any interest holder liability under the organic law of the domestic acquired entity to the extent the interest holder liability arose before the interest exchange became effective;

(2) the person does not have interest holder liability under the organic law of the domestic acquired entity for any liability that arises after the interest exchange becomes effective;

(3) the organic law of the domestic acquired entity continues to apply to the release, collection, or discharge of any interest holder liability preserved under paragraph (1) as if the interest exchange had not occurred; and

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

SECTION 401. CONVERSION AUTHORIZED.

* * *

[(d) The following entities may not engage in a conversion ~~under this [article]~~:

(1)

(2)]

SECTION 403. APPROVAL OF CONVERSION.

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

(1) by a domestic converting entity:

(A) in accordance with the requirements, if any, in its organic rules for approval of a conversion;

(B) if its organic rules do not provide for approval of a conversion, in accordance with the requirements, if any, ~~for approval of a merger~~ in its organic law and organic rules for approval of a transaction that has the effect of a merger, as if the conversion were ~~a merger~~ that type of transaction; or

(C) if neither its organic law nor organic rules provide for approval of a conversion or a transaction that has the effect of a merger, by all of the interest holders of the entity entitled to vote on or consent to any matter; and

* * *

SECTION 405. STATEMENT OF CONVERSION; EFFECTIVE DATE.

* * *

(d) If the converted entity is a domestic entity, its ~~name~~ public organic document,

if any, must satisfy the requirements of the law of this state, except that it does not need to be signed and may omit any provision that is not required to be included in a restatement of the public organic document.

* * *

SECTION 406. EFFECT OF CONVERSION.

(a) When a conversion becomes effective:

* * *

(7) if a converted entity is a filing entity, its public organic document is effective and is binding ~~upon the~~ on its interest holders ~~of the converted entity;~~

* * *

(9) the private organic rules of the converted entity that are to be in a record, if any, approved as part of the plan of conversion are effective and are binding ~~upon the~~ on its interest holders ~~of the converted entity;~~ and

* * *

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

(b) (c) When a ~~merger~~ conversion becomes effective, a person that did not have interest holder liability with respect to the converting entity and that becomes subject to interest holder liability with respect to a domestic entity as a result of a conversion has interest holder

liability only to the extent provided by the organic law of the entity and only for those liabilities that arise after the conversion becomes effective.

~~(c)~~ (d) When a conversion becomes effective:

(1) the conversion does not discharge any interest holder liability under the organic law of a domestic converting entity to the extent the interest holder liability arose before the conversion became effective;

(2) a person does not have interest holder liability under the organic law of a domestic converting entity for any liability that arises after the conversion becomes effective;

(3) the organic law of a domestic converting entity continues to apply to the release, collection, or discharge of any interest holder liability preserved under paragraph (1) as if the conversion had not occurred; and

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

~~(d)~~ (e) When a ~~merger~~ conversion becomes effective, a foreign entity that is the converted entity:

(1) may be served with process in this state for the collection and enforcement of any of its liabilities; and

(2) appoints the [Secretary of State] as its agent for service of process for collecting or enforcing those liabilities.

~~(e)~~ (f) If the converting entity is a qualified foreign entity, the certificate of authority or other foreign qualification of the converting entity is canceled when the conversion

becomes effective.

SECTION 501. DOMESTICATION AUTHORIZED.

* * *

[(e) The following entities may not engage in a domestication ~~under this~~ ~~[article]~~:

(1)

(2)]

SECTION 502. PLAN OF DOMESTICATION.

(a) A domestic entity may become a foreign entity in a domestication ~~under this~~ ~~[article]~~ by approving a plan of domestication. The plan must be in a record and contain:

* * *

SECTION 503. APPROVAL OF DOMESTICATION.

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

(1) by a domestic domesticating entity:

(A) in accordance with the requirements, if any, in its organic rules for approval of a domestication;

(B) if its organic rules do not provide for approval of a domestication, in accordance with the requirements, if any, ~~for approval of a merger~~ in its organic law and organic rules for approval of a transaction that has the effect of a merger as if the domestication were ~~a merger~~ that type of transaction; or

(C) if neither its organic law nor organic rules provide for approval of a domestication or a transaction that has the effect of a merger, by all of the interest holders of the entity entitled to vote on or consent to any matter; and

* * *

SECTION 505. STATEMENT OF DOMESTICATION; EFFECTIVE DATE.

* * *

(b) A statement of domestication must contain:

* * *

(4) if the domesticating entity is a domestic entity, a statement that the plan of domestication was approved in accordance with this [article] or, if the domesticating entity is a foreign entity, a statement that the domestication was approved ~~by the foreign domesticating entity~~ in accordance with the law of its jurisdiction of organization;

(5) if the domesticated entity is a domestic filing entity, ~~the text of its~~ public organic document, as an attachment; and

(6) if the domesticated entity is a domestic limited liability partnership, ~~the text of its~~ [statement of qualification], as an attachment.

* * *

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

* * *

SECTION 506. EFFECT OF DOMESTICATION.

(a) When a domestication becomes effective:

* * *

(7) if the domesticated entity is a filing entity, its public organic document is effective and is binding ~~upon the~~ on its interest holders ~~of the domesticated entity~~;

* * *

(9) the private organic rules of the domesticated entity that are to be in a record, if any, approved as part of the plan of domestication are effective and are binding ~~upon the~~ on its interest holders ~~of the domesticated entity~~; and

* * *

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

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

~~(c)~~ (d) When a domestication becomes effective:

(1) the domestication does not discharge any interest holder liability under the organic law of a domesticating domestic entity to the extent the interest holder liability arose before the domestication became effective;

(2) a person does not have interest holder liability under the organic law of a domestic domesticating entity for any liability that arises after the domestication becomes effective;

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

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

~~(d)~~ (e) When a domestication becomes effective, a foreign entity that is the domesticated entity:

(1) may be served with process in this state for the collection and enforcement of any of its liabilities; and

(2) appoints the [Secretary of State] as its agent for service of process for collecting or enforcing those liabilities.

~~(e)~~ (f) 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.