

18 GCA BUSINESS STRUCTURE & FUNCTION
CH. 9 MERGER AND SHARE EXCHANGE

CHAPTER 9
MERGER AND SHARE EXCHANGE

SOURCE: Added as Civil Code § 701 by P.L. 17-56:3. Amended by P.L. 28-169:3 (Jan. 29, 2007). This entire chapter was repealed and reenacted by P.L. 28-180:4 (Jan. 29, 2007).

- § 9101. Merger.
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§ 9101. Merger.

(a) One (1) or more corporations may merge into another corporation *if* the board of directors of each corporation adopts and its stockholders, if so required by § 9103 of this Chapter, approve a plan of merger.

(b) The Plan of Merger must set forth:

(1) The name of each corporation planning to merge and the name of the surviving corporation into which each other corporation plans to merge;

(2) The terms and conditions of the merger; and

(3) The manner and basis of converting the shares of each corporation into shares, obligations, or other securities of the surviving corporation or any other corporation or into cash or other property in whole or in part.

(c) The Plan of Merger may set forth:

(1) Restatements of or amendments to the Articles of Incorporation of the surviving corporation; and

(2) Other provisions relating to the merger.

§ 9102. Share Exchange.

(a) A corporation may acquire all of the outstanding shares of one (1)

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or more classes or series of another corporation *if* the board of directors of each corporation adopts and its stockholders, if required by § 9103 of this Chapter, approve the plan of share exchange.

(b) The plan of exchange must set forth:

(1) The name of the corporation whose shares will be acquired and the name of the acquiring corporation;

(2) The terms and conditions of the exchange; and

(3) The manner and basis of exchanging the shares to be acquired for shares, obligations, or other securities of the acquiring corporation, or any other corporation, or for cash or other property in whole or part.

(c) The plan of exchange may set forth other provisions relating to the exchange and, *if not* otherwise set forth in the Articles of Incorporation of the acquiring company as theretofore in effect, shall include an amendment to such Articles of Incorporation setting forth any rights, privileges, limitations and preferences of the class or series of securities to be issued in the exchange.

(d) This Section does *not* limit the power of a corporation to acquire all or part of the shares of one (1) or more classes or series of another corporation through a voluntary exchange or otherwise.

§ 9102.1. Articles of Merger Fee.

The fee for filing Articles of Merger of Share Exchange and a Certificate of Ownership *shall* be One Hundred Dollars (\$100.00).

SOURCE: Added by P.L. 29-002:V:I:60 (May 18, 2007).

§ 9103. Action on Plan.

(a) After adopting a Plan of Merger or Share Exchange, the board of directors of a corporation whose shares will be acquired in a share exchange shall submit the Plan of the Merger (except as provided in Subsection (g) of this Section) or Share Exchange for approval by its stockholders.

(b) For a Plan of Merger or Share Exchange to be approved:

(1) The board of directors must recommend the Plan of Merger or Share Exchange to the stockholders, unless the board of directors determines that because of a conflict of interest or other special circumstance it should make *no* recommendation and communicates

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the basis for said determination to the stockholders with the plan; and

(2) The stockholders entitled to vote must approve the plan.

(c) The board of directors may condition its submission of the proposed merger or share exchange on any basis.

(d) The corporation shall notify each stockholder, whether or not entitled to vote, of the proposed stockholders' meeting in accordance with 18 GCA § 3105. The notice must also state that the purpose, or one (1) of the purposes of the meeting is to consider the plan of merger or share exchange and contain or be accompanied by a copy or summary of the plan.

(e) Unless this Section, the Articles of Incorporation, or the board of directors acting pursuant to Subsection (c) of this Section, requires a greater vote or a vote by voting groups, the plan of merger or share exchange to be authorized requires the approval of the shareholders by a majority of all the votes entitled to be cast on the plan.

(f) Action by the stockholders of the surviving corporation on a plan of merger is *not* required if:

(1) The Articles of Incorporation of the surviving corporation will *not* differ except for amendments enumerated in 18 GCA § 9104(e) from its articles before the merger;

(2) Each stockholder of the surviving corporation whose shares were outstanding immediately before the effective date of the merger will hold the same number of shares, with identical designations, preferences, limitations, and relative rights immediately after;

(3) The number of voting shares outstanding immediately after the merger, plus the number of voting shares issuable as a result of the merger either by the conversion of securities issued pursuant to the merger or the exercise of rights and warrants issued pursuant to the merger, will *not* exceed by more than twenty percent (20%) the total number of voting shares of the surviving corporation outstanding immediately before the merger; and

(4) The number of participating shares outstanding immediately after the merger, plus the number of participating shares issuable as a result of the merger either by the conversion of securities issued pursuant to the merger or the exercise of rights and warrants issued pursuant to the merger, will *not* exceed by more than twenty percent

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(20%) the total number of participating shares outstanding immediately before the merger.

(g) As used in Subsection (f) of this Section:

(1) “Participating shares” means shares that entitle their holders to participate without limitation in distributions.

(2) “Voting shares” means shares that entitle their holders to vote unconditionally in elections of directors.

(A) After a merger or share exchange is authorized, and at any time before articles of merger or share exchange are filed, the planned merger or share exchange may be abandoned, subject to any contractual rights, without further stockholder action, in accordance with the procedure set forth in the plan of merger or share exchange or, if none is set forth, in the manner determined by the board of directors.

§ 9104. Merger of Subsidiary.

(a) A parent corporation owning at least ninety percent (90%) of the outstanding shares of each class of a subsidiary corporation may merge the subsidiary into itself, or itself into the subsidiary, without approval of the stockholders of either constituent corporation *if* the constituent corporation adopts a plan of merger that sets forth:

(1) The names of the parent and subsidiary; and

(2) The manner and basis of converting the shares of the disappearing corporation into shares, obligations, or other securities of the surviving corporation or any other corporation or into cash or other property in whole or in part.

(c) The surviving corporation shall mail a copy or summary of the plan of merger to each stockholder of the disappearing corporation who *does not* waive the mailing requirement in writing.

(d) The surviving corporation may *not* deliver Articles of Merger to the Director of Revenue and Taxation for filing until at least thirty (30) days after the date it mailed a copy of the plan of merger to each stockholder of the disappearing corporation who did *not* waive the mailing requirement.

(e) Articles of merger under this Section may *not* contain amendments to the Articles of Incorporation of the surviving corporation, *except* for the

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following:

(1) To extend the duration of the corporation *if* it was incorporated at a time when limited duration was required by law;

(2) To delete the names and addresses of the initial directors;

(3) To delete the name and address of the initial registered agent or registered office, *if* a statement of change is on file with the Director;

(4) To change each issued and unissued authorized share of an outstanding class into a greater number of whole shares *if* the corporation has only shares of that class outstanding;

(5) To change the corporate name by substituting the word “corporation,” “incorporated,” “company,” “limited,” or the abbreviation “corp.,” “inc.,” “co.,” or “ltd.” for a similar word or abbreviation in the name, or by adding, deleting, or changing a geographical attribution for the name; or

(6) To change the name of the surviving corporation, provided the name does *not* otherwise violate general corporation law, regardless of whether the name so adopted is the same as or similar to that of the parent corporation.

§ 9105. Articles of Merger or Share Exchange.

(a) After a plan of merger or share exchange is approved by the stockholders, or adopted by the board of directors *if* stockholder approval is *not* required, the surviving or acquiring corporation shall deliver to the Director for filing Articles of Merger or Share Exchange setting forth:

(1) The plan of merger or share exchange;

(2) If stockholder approval was *not* required, a statement to that effect;

(3) If approval of the stockholders of one (1) or more corporations party to the merger or share exchange was required:

(A) The designation, number of outstanding shares, and number of votes entitled to be cast by each voting group entitled to vote separately on the plan as to each corporation; and

(B) Either the total number of votes cast for and against the

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plan by each voting group entitled to vote separately on the plan or the total number of undisputed votes cast for the plan separately by each voting group and a statement that the number cast for the plan by each voting group was sufficient for approval by that voting group.

(b) A merger or share exchange takes effect upon the later to occur of the date the plan of merger or share exchange is accepted for filing by the Director *or* the effective date specified in such plan of merger or share exchange.

§ 9106. Effect of Merger or Share Exchange.

(a) When a merger takes effect:

(1) Every other corporation that is a party to the merger merges into the surviving corporation and the separate existence of every corporation *except* the surviving corporation ceases;

(2) The title to all real estate and other property owned by each corporate party to the merger is vested in the surviving corporation without reversion or impairment;

(3) The surviving corporation assumes all liabilities of each corporation party to the merger;

(4) A legal proceeding pending against any corporation party to the merger may be continued as if the merger *did not* occur or the surviving corporation may be substituted in the proceeding for the corporation whose existence ceased;

(5) The Articles of Incorporation of the surviving corporation are amended to the extent provided in the plan of merger; and

(6) The shares of each corporate party to the merger that are to be converted into shares, obligations, or other securities of the surviving or any other corporation into cash or other property are converted, and the former holders of the shares are entitled only to the rights provided in the articles of merger or to their rights under 18 GCA §§ 3301 through 3502.

(b) When a share exchange takes effect, the shares of each acquired corporation are exchanged as provided in the plan, and the former holders of the shares are entitled *only* to the exchange rights provided in the articles of share exchange or to their rights under 18 GCA §§ 3301 through 3502.

§ 9107. Merger or Share Exchange with Foreign Corporation.

(a) One (1) or more foreign corporations may merge or enter into a share exchange with one (1) or more domestic corporations if:

(1) In a merger, the merger is permitted by the law of the state or country under whose law each foreign corporation is incorporated and each foreign corporation complies with that law in effecting the merger;

(2) In a share exchange, the corporation whose shares will be acquired is a domestic corporation, whether or not a share exchange is permitted by the law of the state or country under whose law the acquiring corporation is incorporated;

(3) The foreign corporation complies with § 9105 of this Chapter *if* it is the surviving corporation of the merger or acquiring corporation of the share exchange; and

(4) Each domestic corporation complies with the applicable provisions of §§ 9101 through 9104 of this Chapter and, *if* it is the surviving corporation of the merger or acquiring corporation of the share exchange, with § 9105.

(b) Upon the effectiveness of a merger or share exchange in which the surviving corporation of a merger or the acquiring corporation in a share exchange is a foreign corporation, the surviving corporation or the acquiring corporation, as the case may be, is deemed:

(1) To appoint the Director as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting stockholders of each domestic corporation party to the merger or share exchange; and

(2) To agree that it will promptly pay to the dissenting stockholder of each domestic corporate party to the merger or share exchange the amount, if any, to which he is entitled under 18 GCA §§ 3301 through 3502.

(c) This Section does *not* limit the power of a foreign corporation to acquire all or part of the shares of one (1) or more classes or series of a domestic corporation through a voluntary exchange or otherwise.

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