

§1104. Action on plan of merger or share exchange

In the case of a domestic corporation that is a party to a merger or share exchange under this chapter: [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

1. Plan adopted by board of directors. The plan of merger or share exchange must be adopted by the corporation's board of directors;

[PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

2. Shareholders approve plan. Except as provided in subsection 7 and in section 1105, after adopting the plan of merger or share exchange, the corporation's board of directors shall submit the plan to the shareholders for their approval. The board of directors also shall transmit to the shareholders a recommendation that the shareholders approve the plan, unless:

A. The board of directors makes a determination that because of conflicts of interest or other special circumstances the board of directors should not make that recommendation; or [PL 2011, c. 274, §52 (NEW).]

B. Section 827 applies. [PL 2011, c. 274, §52 (NEW).]

If paragraph A or B applies, the board of directors shall transmit to the shareholders the basis for so proceeding;

[PL 2011, c. 274, §52 (RPR).]

3. Conditional submission of plan. The corporation's board of directors may condition its submission of the plan of merger or share exchange to the shareholders on any basis;

[PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

4. Notice of meeting. If the plan of merger or share exchange is required to be approved by the shareholders and if the approval is to be given at a meeting of shareholders, the corporation shall notify each shareholder, whether or not entitled to vote, of the meeting of shareholders at which the plan is to be submitted for approval. The notice must state that the purpose or one of the purposes of the meeting is to consider the plan and must contain or be accompanied by a copy or summary of the plan. If the corporation is to be merged into an existing corporation or eligible entity, the notice also must include or be accompanied by a copy or summary of the articles of incorporation or organizational documents of that corporation or eligible entity. If the corporation is to be merged into a corporation or eligible entity that is to be created pursuant to the merger, the notice also must include or be accompanied by a copy or a summary of the articles of incorporation or organizational documents of the new corporation or eligible entity;

[PL 2003, c. 631, §22 (AMD).]

5. Majority vote. Unless the corporation's articles of incorporation, or the corporation's board of directors acting pursuant to subsection 3, require a greater vote, approval of the plan of merger or share exchange requires the approval of the shareholders by a majority of all the votes entitled to be cast on the plan by that voting group and, if any class or series is entitled to vote as a separate voting group on the plan, the approval of each separate voting group by a majority of all the votes entitled to be cast on the plan by that voting group. The corporation's articles of incorporation may provide that a plan of merger or share exchange may be approved by a lesser vote of each voting group entitled to vote on the plan, but in no case less than a majority of the votes cast by that voting group at a meeting at which there exists for each such voting group a quorum consisting of at least a majority of the votes entitled to be cast on the plan by each voting group entitled to vote on the plan;

[PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

6. Voting groups. Subject to subsection 6-A, separate voting by voting group is required:

A. On a plan of merger by each class or series of shares that:

- (1) Are to be converted under the plan of merger into shares or other securities, eligible interests, obligations, rights to acquire shares, other securities or eligible interests, cash or other property or any combination thereof; or
 - (2) Is entitled to vote as a separate group on a provision in the plan that constitutes a proposed amendment to articles of incorporation of a surviving corporation that requires action by separate voting groups under section 1004; [PL 2011, c. 274, §53 (AMD).]
- B. On a plan of share exchange by each class or series of shares included in the exchange, with each class or series constituting a separate voting group; and [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]
- C. On a plan of merger or share exchange if a voting group is entitled under the articles of incorporation to vote as a voting group to approve a plan of merger or share exchange; [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]
[PL 2011, c. 274, §53 (AMD).]

6-A. Limitations on separate voting groups. The corporation's articles of incorporation may expressly limit or eliminate the separate voting rights provided in subsection 6, paragraph A, subparagraph (1) and subsection 6, paragraph B as to any class or series of shares, except for a transaction that:

- A. Includes what is or would be, if the corporation were the surviving corporation, an amendment subject to subsection 6, paragraph A, subparagraph (2); and [PL 2011, c. 274, §54 (NEW).]
- B. Will effect no significant change in the assets of the resulting entity, including all parents and subsidiaries on a consolidated basis. [PL 2011, c. 274, §54 (NEW).]
[PL 2011, c. 274, §54 (NEW).]

7. Approval not required. Unless the corporation's articles of incorporation otherwise provide, approval by the corporation's shareholders of a plan of merger or share exchange is not required if:

- A. The corporation will survive the merger or is the acquiring corporation in a share exchange; [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]
- B. The corporation's articles of incorporation will not be changed, except for amendments permitted by section 1005; [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]
- C. Each shareholder of the corporation whose shares are outstanding immediately before the effective date of the merger or share exchange will hold the same number of shares, with identical preferences, limitations and relative rights, immediately after the effective date of the change; [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]
- D. 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 20% the total number of voting shares of the surviving corporation outstanding immediately before the merger; and [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]
- E. 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 20% the total number of participating shares outstanding immediately before the merger. [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

For the purposes of this subsection, "participating shares" means shares that entitle their holders to participate without limitation in distributions, and "voting shares" means shares that entitle their holders to vote unconditionally in elections of directors;

[PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

8. Personal liability; written consent. If as a result of a merger or share exchange one or more shareholders of a domestic corporation would become subject to owner liability for the debts, obligations or liabilities of any other person or entity, approval of the plan of merger or share exchange must require the execution by each such shareholder of a separate written consent to become subject to that owner liability;

[PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

9. Participating corporation. A corporation organized under any special act of the Legislature of this State may be a participating corporation in a merger or share exchange unless the act authorizing the creation of the corporation provides to the contrary; and

[PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

10. Consent of shareholders. A plan of merger or share exchange may be approved for a participating corporation by written consent of shareholders entitled to vote as provided in section 704. If the plan of merger or share exchange is approved by written consent of all shareholders, whether or not entitled to vote, a resolution of the board of directors of the participating corporation approving, proposing, submitting, recommending or otherwise respecting the plan of merger or share exchange is not necessary and shareholders of the participating corporation are not entitled to receive notice of or to dissent from the plan of merger or share exchange.

[PL 2003, c. 344, Pt. B, §100 (AMD).]

SECTION HISTORY

PL 2001, c. 640, §A2 (NEW). PL 2001, c. 640, §B7 (AFF). PL 2003, c. 344, §§B98-100 (AMD). PL 2003, c. 631, §22 (AMD). PL 2011, c. 274, §§52-54 (AMD).

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