

RCW 23B.11A.041 Voting on plan of merger or share exchange—

Separate voting groups. (1) Subject to subsection (2) of this section, separate voting by voting groups is required:

(a) On a plan of merger, by each class or series of shares of a domestic corporation that is a party to the merger that:

(i) Is to be converted under the plan into shares, other securities, interests, obligations, rights to acquire shares, other securities or interests, cash, other property, or any combination of the foregoing, or is to be canceled under the plan; or

(ii) Is entitled to vote as a separate group on a provision in the plan that constitutes a proposed amendment to the articles of incorporation of such corporation that requires action by separate voting groups under RCW 23B.10.040 if such corporation is the surviving entity in the merger and the holders of such class or series will continue as shareholders of the surviving entity;

(b) On a plan of share exchange, by each class or series of shares of a domestic corporation included in the exchange, with each class or series constituting a separate voting group; and

(c) On a plan of merger or share exchange, if the voting group is entitled under the articles of incorporation to vote as a separate voting group on the plan of merger or share exchange, respectively.

(2) The articles of incorporation may expressly limit or eliminate the separate voting rights provided in subsection (1) (a) (i) and (b) of this section as to any class or series of shares. A provision in the articles of incorporation of a domestic corporation formed before August 1, 2024, limiting or eliminating the separate voting rights provided under RCW 23B.11.035 in effect prior to June 6, 2024, will be deemed to limit or eliminate the separate voting rights provided in subsection (1) (a) (i) and (b) of this section to the same extent.

(3) If a proposed plan of merger or share exchange that entitles the holders of two or more classes or series of shares to vote as separate voting groups under this section would affect those two or more classes or series in the same or a substantially similar way, then instead of voting as separate voting groups, the holders of shares of the classes or series so affected are to vote together as a single voting group on the proposed plan of merger or share exchange, unless otherwise provided in the articles of incorporation or by the board of directors in accordance with RCW 23B.11A.040(3).

(4) Holders of shares of two or more classes or series of shares of a domestic corporation that is a party to the merger or the acquired entity in a share exchange who would, under a proposed plan, receive the same type of consideration in the form of shares or other securities, interests, obligations, rights to acquire shares, other securities or interests of the surviving or acquiring entity or of any parent entity of the surviving entity, cash or other form of consideration, or the same combination thereof, but in differing amounts resulting solely from application of provisions in the corporation's articles of incorporation governing distribution of consideration received in a merger or share exchange, are deemed to be affected in the same or a substantially similar way and are not, by reason of receiving the same types or differing amounts of consideration, entitled to vote as separate voting groups on the proposed plan, unless the articles of incorporation of such corporation expressly require otherwise or the board of directors

conditions its submission of the proposed plan on a separate vote by one or more classes or series. [2024 c 22 s 5.]