

Chapter 23B.09 RCW
CORPORATE ENTITIES—CONVERSIONS

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RCW 23B.09.005 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Converting entity" means the domestic corporation that adopts a plan of entity conversion or the other entity converting to a domestic corporation.

(2) "Domestic other entity" means an other entity organized under the laws of this state.

(3) "Foreign other entity" means an other entity organized under a law other than the laws of this state.

(4) "Interest holder" means a person who holds of record:

(a) A right to receive distributions from an other entity either in the ordinary course of business or upon liquidation, other than as an assignee; or

(b) A right to vote on issues involving an other entity's internal affairs, other than as an agent, assignee, proxy, or person responsible for managing its business and affairs.

(5) "Interests" means the interests in an other entity held by its interest holders.

(6) "Organic document" means a public organic document or a private organic document.

(7) "Organic law" means the statute governing the internal affairs of a domestic corporation or other entity.

(8) "Other entity" means any association or entity other than a domestic corporation, a domestic or foreign nonprofit corporation, a domestic or foreign mutual corporation or miscellaneous corporation, or a governmental or quasi-governmental organization. The term includes, but is not limited to, foreign corporations, limited partnerships, general partnerships, limited liability partnerships, limited liability companies, joint ventures, joint stock companies, business trusts, and profit unincorporated associations.

(9) "Owner liability" means personal liability for a debt, obligation, or liability of an entity that is imposed on a person:

(a) Solely by reason of the person's status as a shareholder or interest holder; or

(b) By the articles of incorporation, bylaws, or an organic document under a provision of the organic law of an entity authorizing the articles of incorporation, bylaws, or an organic document to make one or more specified shareholders, members, or interest holders liable in their capacity as shareholders, members, or interest holders for all or specified debts, obligations, or liabilities of the entity.

(10) "Private organic document" means any document, other than the public organic document, if any, that determines the internal governance of an other entity.

(11) "Public organic document" means the document, if any, that is filed of public record to create an other entity, including amendments and restatements thereof.

(12) "Surviving entity" means the domestic corporation or other entity that is in existence immediately after consummation of an entity conversion pursuant to this chapter. [2014 c 83 § 8.]

RCW 23B.09.010 Entity conversion. (1) A domestic corporation may become an other entity pursuant to a plan of entity conversion if the entity conversion is permitted by the organic law of the other entity by:

(a) Complying with RCW 23B.09.030; and

(b) Filing articles of entity conversion with the secretary of state.

(2) An other entity may become a domestic corporation if the entity conversion is permitted by the organic law of the other entity by:

(a) Complying with the procedures for the approval of an entity conversion provided in the organic law of the other entity; and

(b) Filing articles of entity conversion with the secretary of state. [2014 c 83 § 9.]

RCW 23B.09.020 Plan of entity conversion. (1) A plan of entity conversion must include:

(a) The name of the domestic corporation before conversion;

(b) The name and form of the surviving entity after conversion;

(c) The terms and conditions of the conversion, including the manner and basis for converting interests in the domestic corporation into any combination of the interests, shares, obligations, or other securities of the surviving entity or any other entity or into cash or other property in whole or part; and

(d) The organic documents of the surviving entity as they will be in effect immediately after consummation of the conversion.

(2) The terms of a plan of [entity] conversion may be made dependent on facts objectively ascertainable outside the plan in accordance with RCW 23B.01.200(3). [2020 c 194 § 9; 2020 c 57 § 64; 2014 c 83 § 10.]

Reviser's note: This section was amended by 2020 c 57 § 64 and by 2020 c 194 § 9, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

RCW 23B.09.030 Approval of a plan of entity conversion. In the case of an entity conversion of a domestic corporation to an other entity:

(1) The plan of entity conversion must be adopted by the board of directors of the converting entity and the shareholders entitled to vote must approve the plan.

(2) After adopting a plan of entity conversion, the board of directors of the converting entity must submit the plan of entity conversion for approval by its shareholders.

(3) The board of directors must recommend the plan of entity conversion to the shareholders, unless (a) the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation; or (b) RCW 23B.08.245 applies, and in either case the board of directors communicates the basis for so proceeding to the shareholders.

(4) The board of directors may condition its submission of the plan of entity conversion on any basis, including the affirmative vote of holders of a specified percentage of shares held by any group of shareholders not otherwise entitled to vote as a separate voting group on the plan of entity conversion.

(5) In the case of an entity conversion of a domestic corporation to a foreign corporation, in addition to any other voting conditions imposed by the board of directors acting pursuant to subsection (4) of this section, approval of the plan of entity conversion requires the affirmative vote of shareholders that would be required to approve a plan of merger under RCW 23B.11.030, and of each other voting group entitled under RCW 23B.11.035 or the articles of incorporation to vote separately on a plan of merger. Separate voting by additional voting groups is required on a plan of entity conversion if such voting group or groups would be entitled to vote on a plan of merger under the circumstances described in RCW 23B.11.035. The articles of incorporation may require a greater or lesser vote to approve a plan of entity conversion than that provided in this subsection, or a greater or lesser vote by separate voting groups, so long as the required vote is not less than a majority of all the votes entitled to be cast on the plan of entity conversion and of each other voting group entitled to vote separately on the plan.

(6) In the case of an entity conversion of a domestic corporation to an other entity that is not a foreign corporation, approval of the plan of entity conversion requires the approval of all shareholders of the domestic corporation, whether or not entitled to vote under this title or the articles of incorporation.

(7) If as a result of the conversion one or more shareholders of the domestic corporation would become subject to owner liability for the debts, obligations, or liabilities of any other person or entity, in addition to the approval requirements under subsections (5) and (6) of this section, approval of the plan of entity conversion must also require each such shareholder to execute a separate written consent to become subject to such owner liability.

(8) If the approval of the shareholders is to be given at a meeting, the domestic corporation must notify each shareholder, whether or not entitled to vote, of the proposed meeting of shareholders at which the plan of entity conversion is to be submitted for approval in accordance with RCW 23B.07.050. The notice must state that the purpose, or one of the purposes, of the meeting is to consider the plan of entity conversion and must contain or be accompanied by a copy or summary of the plan of entity conversion. The notice must include or be accompanied by a copy of the organic documents of the surviving entity as they will be in effect immediately after the conversion.

(9) If any provision of the articles of incorporation, bylaws, or an agreement to which any of the directors or shareholders of the domestic corporation are parties, adopted, or entered into before June

12, 2014, applies to a merger of the domestic corporation, other than a provision that limits or eliminates voting or dissenters' rights, and the document does not refer to an entity conversion of the domestic corporation, the provision is deemed to apply to an entity conversion of the domestic corporation until the provision is subsequently amended. [2020 c 57 § 65; 2014 c 83 § 11.]

RCW 23B.09.040 Articles of entity conversion. (1) After a plan of entity conversion by a domestic corporation converting into an other entity has been adopted and approved as required by this chapter, articles of entity conversion must be executed on behalf of the domestic corporation by any officer or other duly authorized representative and must be delivered to the secretary of state for filing.

(2) After the conversion of an other entity into a domestic corporation has been adopted and approved as required by the organic law of the converting entity, articles of entity conversion must be executed on behalf of the converting entity by any officer or other duly authorized representative and must be delivered to the secretary of state for filing.

(3) The articles of entity conversion must set forth:

(a) A statement that the converting entity has been converted into the surviving entity;

(b) The name and form of the converting entity before conversion;

(c) The name and form of the surviving entity after conversion, which must be a name that satisfies the requirements of Article 3 of chapter 23.95 RCW if the surviving entity after conversion is a domestic corporation;

(d) Articles of incorporation that comply with RCW 23B.02.020 if the surviving entity after conversion is a domestic corporation;

(e) The date the conversion is effective under the organic law of the surviving entity;

(f) If the converting entity is a domestic corporation, a statement that the conversion was duly approved by the shareholders of the domestic corporation pursuant to RCW 23B.09.030;

(g) If the converting entity is an other entity, a statement that the conversion was duly approved as required by the organic law of the converting entity; and

(h) If the surviving entity is a foreign other entity not authorized to transact business in this state: (i) A statement that the surviving entity consents to service of process pursuant to RCW 23.95.450 in a proceeding to enforce any obligation or the rights of dissenting shareholders of the domestic corporation; and (ii) the street and mailing address of the entity's principal office that may be used for service of process under RCW 23.95.450.

(4) The articles of entity conversion take effect at the effective time provided in RCW 23.95.210. Articles of entity conversion under subsection (1) or (2) of this section may be combined with any required conversion filing under the organic law of the other entity if the combined filing satisfies the requirements of both this section and the organic law of the other entity. [2020 c 57 § 66; 2015 c 176 § 2121; 2014 c 83 § 12.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

RCW 23B.09.050 Effect of entity conversion. (1) An entity that has been converted pursuant to this chapter is, for all purposes of the laws of the state of Washington, deemed to be the same entity that existed before the conversion and, unless otherwise agreed or as required under applicable non-Washington law, the converting entity is not required to wind up its affairs or pay its liabilities and distribute its assets, and the conversion is not deemed to constitute a dissolution of the converting entity.

(2) When any conversion becomes effective under this chapter:

(a) The title to all real estate and other property, both tangible and intangible, owned by the converting entity remains vested in the surviving entity without reversion or impairment;

(b) All rights of creditors and all liens upon any property of the converting entity must be preserved unimpaired, and all debts, liabilities, and other obligations of the converting entity continue as obligations of the surviving entity, remain attached to the surviving entity, and may be enforced against it to the same extent as if the debts, liabilities, and other obligations had originally been incurred or contracted by it in its capacity as the surviving entity;

(c) An action or proceeding pending by or against the converting entity may be continued by or against the surviving entity as if the conversion had not occurred;

(d) Except as prohibited by other law, all of the rights, privileges, immunities, powers, and purposes of the converting entity remain vested in the surviving entity; and

(e) Except as otherwise provided in the plan of entity conversion, the terms and conditions of the plan of entity conversion take effect.

(3) When a conversion of a domestic corporation to a foreign other entity becomes effective, the surviving entity is deemed:

(a) To consent to the jurisdiction of the courts of this state to enforce any obligation owed by the converting entity, if before the conversion the converting entity was subject to suit in this state on the obligation;

(b) To consent to service of process pursuant to RCW 23.95.450 in a proceeding to enforce any obligation or the rights of dissenting shareholders of the domestic corporation in connection with the conversion; and

(c) To agree that it will promptly pay to the dissenting shareholders of the domestic corporation the amount, if any, to which they are entitled under chapter 23B.13 RCW. [2015 c 176 § 2122; 2014 c 83 § 13.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

RCW 23B.09.060 Abandonment of entity conversion. (1) Unless otherwise provided in a plan of entity conversion of a domestic corporation, after the plan of entity conversion has been adopted and approved as required by this chapter, and at any time before the articles of entity conversion have become effective, the planned conversion may be abandoned by the board of directors without action by the shareholders.

(2) If any entity conversion is abandoned after articles of entity conversion have been filed with the secretary of state but

before the entity conversion has become effective, a statement that the entity conversion has been abandoned in accordance with this section, executed by an officer or other duly authorized representative, must be delivered to the secretary of state for filing prior to the effective date of the entity conversion and in accordance with RCW 23.95.215. Upon filing, the statement takes effect and the entity conversion is deemed abandoned and may not become effective. [2020 c 57 § 67; 2015 c 176 § 2123; 2014 c 83 § 14.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.