Chapter 23B.11 RCW
MERGER AND SHARE EXCHANGE

Sections

RCW 23B.11.010 Merger. (1) One or more corporations may merge into another corporation if the board of directors of each corporation adopts and its shareholders, if required by RCW 23B.11.030, approve a plan of merger.

(2) The plan of merger must include:

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

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

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

(3) The plan of merger may include:

(a) Amendments to the articles of incorporation of the surviving corporation, or a restatement that includes one or more amendments to the surviving corporation's articles of incorporation; and

(b) Other provisions relating to the merger.

(4) The terms of a plan of merger may be made dependent on facts objectively ascertainable outside the plan in accordance with RCW 23B.01.200(3). [2022 c 42 § 107; 2020 c 194 § 11; 1989 c 165 § 131.]

RCW 23B.11.020 Share exchange. (1) A corporation may acquire all of the outstanding shares of one or more classes or series of another corporation if the board of directors of each corporation adopts and its shareholders, if required by RCW 23B.11.030, approve the exchange.

(2) The plan of exchange must include:

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

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

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

(3) The plan of exchange may include other provisions relating to the exchange.

(4) Terms of a plan of share exchange may be made dependent on facts objectively ascertainable outside the plan in accordance with RCW 23B.01.200(3).

(5) This section does not limit the power of a corporation to acquire all or part of the shares of one or more classes or series of another corporation through a voluntary exchange or otherwise. [2020 c 194 § 12; 1989 c 165 § 132.]

RCW 23B.11.030 Approval of plan of merger or share exchange. (1) After a plan of merger or share exchange has been adopted in accordance with RCW 23B.11.020 or 23B.11.040, the board of directors of each corporation party to the merger, or the board of directors of the corporation whose shares will be acquired in the share exchange, shall submit the plan for approval by the shareholders, except as provided in subsection (7) or (9) of this section or as provided in RCW 23B.11.040 or 23B.11.045.

(2) For a plan of merger or share exchange to be approved by shareholders:

(a) The board of directors must recommend that the shareholders approve the plan of merger or share exchange, unless (i) the board of directors determines that because of conflict of interest or other special circumstances it should not make such a recommendation or (ii) RCW 23B.08.245 applies, and in either case the board of directors communicates the basis for so proceeding to the shareholders; and

(b) The shareholders entitled to vote must approve the plan.

(3) The board of directors may condition its submission of the proposed plan of merger or share exchange on any basis, including the affirmative vote of holders of a specified percentage of shares held by any group of shareholders not otherwise entitled under this title or the articles of incorporation to vote as a separate voting group on the proposed plan of merger or share exchange.

(4) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with RCW 23B.07.050. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the plan of merger or share exchange and must contain or be accompanied by a copy of the plan or a summary of the material terms and conditions of the proposed merger or share exchange and the consideration to be received by shareholders.

(5) If the plan of merger is required to be approved by the shareholders, in addition to any other voting conditions imposed by the board of directors under subsection (3) of this section, the plan of merger must be approved by two-thirds of the voting group comprising all the votes entitled to be cast on the plan, and of each other voting group entitled under RCW 23B.11.035 or the articles of incorporation to vote separately on the plan. The articles of incorporation may require a greater or lesser vote 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 merger and of each other voting group entitled to vote separately on the plan. Separate voting by additional voting groups is required on a plan of merger under the circumstances described in RCW 23B.11.035.

(6) In addition to any other voting conditions imposed by the board of directors under subsection (3) of this section, the plan of share exchange must be approved by two-thirds of the voting group

comprising all the votes entitled to be cast on the plan, and of each other voting group entitled under RCW 23B.11.035 or the articles of incorporation to vote separately on the plan. The articles of incorporation may require a greater or lesser vote 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 share exchange and of each other voting group entitled to vote separately on the plan. Separate voting by additional voting groups is required on a plan of share exchange under the circumstances described in RCW 23B.11.035.

(7) Approval by the shareholders of the surviving corporation on a plan of merger is not required if:

(a) The articles of incorporation of the surviving corporation will not differ, except for amendments enumerated in RCW 23B.10.020, from its articles of incorporation before the merger;

(b) Each shareholder 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 the merger;

(c) 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 the total number of voting shares of the surviving corporation authorized by its articles of incorporation immediately before the merger; and

(d) 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 the total number of participating shares authorized by its articles of incorporation immediately before the merger.

(8) As used in subsection (7) of this section:

(a) "Participating shares" means shares that entitle their holders to participate without limitation in distributions.

(b) "Voting shares" means shares that entitle their holders to vote unconditionally in elections of directors.

(9) Unless the articles of incorporation provide otherwise, approval by the shareholders of a public company is not required for a plan of merger if:

(a) The plan of merger expressly: (i) Permits or requires the merger to be effected under this subsection; and (ii) provides that, if the merger is to be effected under this subsection, the merger will be effected as soon as practicable following the satisfaction of the requirements of (f) of this subsection;

(b) Another party to the merger or a parent of another party to the merger makes an offer to purchase, on the terms stated in the plan of merger, any and all of the outstanding shares of the corporation that, absent this subsection, would be entitled to vote on the plan of merger, except that the offer may exclude shares of the corporation that are owned at the commencement of the offer by the corporation, the offeror, or any parent of the offeror, or by any wholly owned subsidiary of any of the foregoing;

(c) The offer discloses that the plan of merger states that the merger will be effected as soon as practicable following the

satisfaction of the requirements of (f) of this subsection and that the shares of the corporation that are not tendered in response to the offer will be treated as provided in (h) of this subsection;

(d) The offer remains open for at least 10 days;

(e) The offeror purchases all shares properly tendered in response to the offer and not properly withdrawn;

(f) The: (i) Shares purchased by the offeror in accordance with the offer; (ii) shares otherwise owned by the offeror or by any parent of the offeror or any wholly owned subsidiary of any of the foregoing; and (iii) shares subject to an agreement that they are to be transferred, contributed, or delivered to the offeror, any parent of the offeror, or any wholly owned subsidiary of any of the foregoing in exchange for shares or other interests in that offeror, parent, or subsidiary, are collectively entitled to cast at least the minimum number of votes on the merger that, absent this subsection, would be required by this chapter for the approval of the merger by the shareholders entitled to vote on the merger at a meeting at which all shares entitled to vote on the approval were present and voted;

(g) The offeror or a wholly owned subsidiary of the offeror merges with or into the corporation; and

(h) Each outstanding share of each class or series of shares of the corporation that the offeror is offering to purchase in accordance with the offer, and which is not purchased in accordance with the offer, is to be converted in the merger into, or into the right to receive, the same amount and kind of securities, eligible interests, obligations, rights, cash, or other property to be paid or exchanged in accordance with the offer for each share of that class or series of shares that is tendered in response to the offer, except that shares of the corporation that are owned by the corporation or that are described in (f)(ii) or (iii) of this subsection need not be converted into or exchanged for the consideration described in this subsection (9)(h).

(10) As used in subsection (9) of this section:

(a) "Offer" means the offer referred to in subsection (9)(b) of this section.

(b) "Offeror" means the person making the offer.

(c) "Parent" of an entity means a person that owns, directly or indirectly, through one or more wholly owned subsidiaries, all of the outstanding shares of or other interests in that entity.

(d) Shares tendered in response to the offer will be deemed to have been "purchased" in accordance with the offer at the earlier time as of which:

(i) The offeror has irrevocably accepted those shares for payment; and

(ii) Either: (A) In the case of shares represented by certificates, the offeror, or the offeror's designated depository or other agent, has physically received the certificates representing those shares; or (B) in the case of shares without certificates, those shares have been transferred into the account of the offeror or its designated depository or other agent, or an agent's message relating to those shares has been received by the offeror or its designated depository or other agent.

(e) "Wholly owned subsidiary" of a person means an entity of or in which that person owns, directly or indirectly, through one or more wholly owned subsidiaries, all of the outstanding shares or other interests.

(11) After a merger or share exchange is approved, 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 shareholder approval, 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. [2023 c 432 § 5; 2022 c 42 § 108; 2011 c 328 § 6; 2009 c 189 § 38; 2003 c 35 § 6; 1989 c 165 § 133.]

RCW 23B.11.035 Plan of merger or share exchange—Separate voting group. (1) Except as otherwise required by subsection (3) of this section or otherwise permitted by subsection (4) of this section, the holders of the outstanding shares of a class or series are entitled to vote as a separate voting group on a proposed plan of merger or plan of share exchange if shareholder voting is otherwise required by this title and if, as a result of the proposed plan, holders of part or all of the class or series would hold or receive:

(a) Shares of any class or series of the surviving or acquiring corporation, or of any parent corporation of the surviving corporation, and either (i) that class or series has a greater number of authorized shares than the class or series held by the holders prior to the merger or share exchange, or (ii) the proposed plan effects a change in the number of shares held by the holders, or in the rights, preferences, or limitations of the shares they hold, or in the class or series of shares they hold, and such change adversely affects the holders;

(b) Shares of any class or series of the surviving or acquiring corporation, or of any parent corporation of the surviving corporation, and the holders who hold or receive shares of that class or series are adversely affected under the proposed plan, as compared to their circumstances prior to the proposed merger or share exchange, by the creation, existence, number of authorized shares, or rights or preferences with respect to distributions or to dissolution, of another class or series of shares of the surviving, acquiring, or parent corporation having rights or preferences with respect to distributions or to dissolution that are, or upon designation by the surviving, acquiring, or parent corporation's board of directors may be, prior, superior, or substantially equal to the shares of the class or series held or to be received by the holders in the proposed merger or share exchange; or

(c) Cash or any other form of consideration other than shares of the surviving or acquiring corporation or of any parent corporation of the surviving corporation, received upon redemption or cancellation of all or part of their shares pursuant to the proposed plan of merger or share exchange.

(2) If a proposed plan of merger or share exchange would affect only a series of a class of shares in one or more of the ways described in subsection (1) of this section, only the shares of that series are entitled to vote as a separate voting group on the proposed plan. A voting group entitled to vote separately under this section may never comprise a group of holders smaller than the holders of a single class or series authorized and designated as a class or series in the articles of incorporation, unless otherwise provided in the articles of incorporation or unless the board of directors conditions

its submission of the proposed plan on a separate vote by one or more smaller voting groups.

(3) If a proposed plan of merger or share exchange, that would otherwise entitle 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 shares of all similarly affected classes or series shall 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 unless the board of directors conditions its submission of the proposed plan on a separate vote by one or more classes or series. Holders of shares of two or more classes or series of shares who will, under a proposed plan, receive the same type of consideration in the form of shares of the surviving or acquiring corporation or of any parent corporation of the surviving corporation, 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 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 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.

(4) A class or series of shares is entitled to the voting group rights granted by this section although the articles of incorporation generally describe the shares of the class or series as nonvoting shares. The articles of incorporation may, however, limit or deny the voting group rights granted by this section as to any class or series of issued or unissued shares, by means of a provision that makes explicit reference to the limitation or denial of voting group rights that would otherwise apply under this section. [2003 c 35 § 7.]

RCW 23B.11.040 Merger of or into subsidiary. (1) A parent corporation owning at least ninety percent of the outstanding shares of each class of a subsidiary corporation may (a) merge the subsidiary into itself without approval of the shareholders of the parent or subsidiary, or (b) merge itself into the subsidiary without approval of the shareholders of the subsidiary. A merger of a parent corporation into its subsidiary otherwise will be governed by the provisions of chapter 23B.11 RCW applicable to mergers generally.

(2) The board of directors of the parent shall approve a plan of merger that sets forth:

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

(b) The manner and basis of converting the shares of the subsidiary or parent corporation, as applicable, into shares, obligations, or other securities of the surviving corporation or any other corporation or into cash or other property in whole or part.

(3) Within ten days after the corporate action becomes effective, the surviving corporation shall deliver a notice to each other shareholder of the subsidiary, which notice must include a copy of the plan of merger.

(4) Articles of merger under this section may not contain amendments to the articles of incorporation of the parent corporation,

except for amendments enumerated in RCW 23B.10.020. [2017 c 28 § 17; 2009 c 189 § 39; 2002 c 297 § 34; 1989 c 165 § 134.]

RCW 23B.11.045 Merger without approval of plan of merger—Definitions. (1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Holding company" means the corporation that is or becomes the direct parent of the surviving corporation of a merger accomplished under this section and whose capital stock is issued in that merger.

(b) "Parent constituent corporation" means the parent corporation that merges with or into the subsidiary constituent corporation in the merger.

(c) "Subsidiary constituent corporation" means the subsidiary corporation with or into which the parent constituent corporation merges in the merger.

(2) Unless the articles of incorporation provide otherwise, a parent constituent corporation may merge with or into a single indirect wholly owned subsidiary of the parent constituent corporation without the approval of the plan of merger by the shareholders of the parent constituent corporation if:

(a) The plan expressly permits or requires the merger to be effected under this subsection;

(b) The holding company and the constituent corporations to the merger are each organized under this title;

(c) At all times from its incorporation until consummation of a merger under this section, the holding company was a direct wholly owned subsidiary of the parent constituent corporation;

(d) Immediately before consummation of a merger under this section, the subsidiary constituent corporation is a direct wholly owned subsidiary of the holding company and an indirect wholly owned subsidiary of the parent constituent corporation;

(e) The parent constituent corporation and the subsidiary constituent corporation are the only constituent entities to the merger;

(f) Immediately after the merger becomes effective, the surviving corporation of the merger becomes or remains a direct wholly owned subsidiary of the holding company;

(g) Each share or fraction of a share of the parent constituent corporation outstanding immediately before the merger becomes effective is converted in the merger into a share or equal fraction of a share of the holding company having the same designations and relative preferences, rights, and limitations as the share or fraction of a share of the parent constituent corporation being converted in the merger;

(h) The articles of incorporation and bylaws of the holding company immediately after the merger becomes effective contain provisions identical to the articles of incorporation and bylaws of the parent constituent corporation immediately before the merger becomes effective, other than any provisions regarding the incorporator or incorporators, the corporate name, the registered office and agent, the initial board of directors and the initial subscribers for shares, and the provisions contained in any amendment to the articles of incorporation of the parent constituent corporation that were necessary to effect an exchange, reclassification, or

cancellation of shares if the exchange, reclassification, or cancellation has become effective;

(i) The articles of incorporation and bylaws of the surviving corporation immediately after the merger becomes effective contain provisions by specific reference to this subsection requiring that any corporate action by or involving the surviving corporation, other than the election or removal of directors of the surviving corporation, must be approved by the shareholders of the holding company, or any successor by merger, by the same vote as is required by this title or under the articles of incorporation or bylaws of the parent constituent corporation immediately before the merger becomes effective, if that corporate action would have required the approval of the shareholders of the parent constituent corporation under this title or under the articles of incorporation or bylaws of the parent constituent corporation immediately before the merger becomes effective;

(j) The directors of the parent constituent corporation immediately before the merger becomes effective become or remain the directors of the holding company immediately after the merger becomes effective; and

(k) The shareholders of the parent constituent corporation will not recognize gain or loss for United States federal income tax purposes as a result of the merger, as determined by the board of directors of the parent constituent corporation.

(3) The holding company must, promptly after the effective date of a merger effected under subsection (2) of this section, notify each person who was a shareholder of the parent constituent corporation as of the date the board of directors approves the merger that the merger has become effective. The notice must contain or be accompanied by a copy of the plan of merger or a summary of the material terms and conditions of the merger and the consideration to be received by those shareholders.

(4) To the extent restrictions under chapter 23B.19 RCW applied to the parent constituent corporation or any of its shareholders at the effective time of the merger, those restrictions apply to the holding company and its shareholders immediately after the merger becomes effective as though the holding company were the parent constituent corporation, and all shares of stock of the holding company acquired in the merger will, for the purposes of chapter 23B.19 RCW, be deemed to have been acquired at the time that the corresponding shares of stock of the parent constituent corporation were acquired. No shareholder who, immediately before the merger becomes effective, was not an acquiring person of the parent constituent corporation under chapter 23B.19 RCW will, solely by reason of the merger, become an acquiring person of the holding company under chapter 23B.19 RCW.

(5) To the extent a shareholder of the parent constituent corporation immediately before the merger was eligible to commence a proceeding in the right of the parent constituent corporation in accordance with RCW 23B.07.400, nothing in this section is deemed to limit or extinguish that eligibility.

(6) Except as provided in subsections (2), (3), (4), and (5) of this section, a merger between a parent constituent corporation and a subsidiary constituent corporation is governed by the provisions of this chapter applicable to mergers generally. [2023 c 432 § 6.]

RCW 23B.11.050 Articles of merger or share exchange. (1) After a plan of merger is approved by the shareholders, or adopted by the board of directors if shareholder approval is not required, the surviving entity shall deliver to the secretary of state for filing articles of merger stating:

(a) The name and jurisdiction of organization of each party to the merger;

(b) The name and jurisdiction of organization of the surviving entity;

(c) If the surviving entity of the merger is a domestic corporation and its articles of incorporation are amended or amended and restated, the amendments to the surviving entity's articles of incorporation or the amended and restated articles of incorporation of the surviving entity;

(d) If shareholder approval of any domestic corporation party to the merger was not required, a statement to that effect;

(e) If approval of the shareholders of one or more domestic corporations party to the merger was required, a statement that the merger was duly approved by the shareholders of such domestic corporation pursuant to RCW 23B.11.030; and

(f) If approval of the shareholders of one or more other entities party to the merger was required, a statement that the merger was duly approved by the interest holders of such other entity in accordance with the organic law of such other entity.

(2) After a plan of share exchange has been approved by the shareholders of the corporation whose shares will be acquired in the share exchange, the acquiring corporation shall deliver to the secretary of state for filing articles of share exchange, executed by the acquiring corporation and the corporation whose shares will be acquired in the share exchange, stating:

(a) The name of the corporation whose shares will be acquired in the share exchange;

(b) The name of the acquiring corporation; and

(c) A statement that the plan of share exchange was duly approved by the shareholders of the corporation whose shares will be acquired in the share exchange pursuant to RCW 23B.11.030.

(3) The definitions in RCW 23B.09.005 apply to this section unless the context clearly requires otherwise. [2022 c 42 § 109; 1989 c 165 § 135.]

RCW 23B.11.060 Effect of merger or share exchange. (1) When a merger takes effect:

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

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

(c) The surviving corporation has all liabilities of each corporation party to the merger;

(d) A 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;

(e) The articles of incorporation of the surviving corporation are amended, or amended and restated, to the extent provided in the articles of merger; and

(f) The former holders of the shares of every corporation party to the merger are entitled only to the rights provided in the articles of merger or to their rights under chapter 23B.13 RCW.

(2) 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 chapter 23B.13 RCW. [2022 c 42 § 110; 1989 c 165 § 136.]

RCW 23B.11.070 Merger or share exchange with foreign corporation. (1) One or more foreign corporations may merge or enter into a share exchange with one or more domestic corporations if:

(a) 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;

(b) 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;

(c) The foreign corporation complies with RCW 23B.11.050 if it is the surviving corporation of the merger or acquiring corporation of the share exchange; and

(d) Each domestic corporation complies with the applicable provisions of RCW 23B.11.010 through 23B.11.040 and, if it is the surviving corporation of the merger or acquiring corporation of the share exchange, with RCW 23B.11.050.

(2) Upon the merger or share exchange taking effect, the surviving foreign corporation of a merger and the acquiring foreign corporation of a share exchange is deemed:

(a) 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 each domestic corporation party to the merger or share exchange; and

(b) To agree that it will promptly pay to the dissenting shareholders of each domestic corporation party to the merger or share exchange the amount, if any, to which they are entitled under chapter 23B.13 RCW.

(3) This section does not limit the power of a foreign corporation to acquire all or part of the shares of one or more classes or series of a domestic corporation through a voluntary exchange or otherwise. [2015 c 176 § 2124; 1989 c 165 § 137.]

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

RCW 23B.11.080 Merger. (1) One or more domestic corporations may merge with one or more limited liability companies, partnerships, or limited partnerships if:

(a) The board of directors of each corporation adopts and the shareholders of each corporation approve, if approval would be necessary, the plan of merger as required by RCW 23B.11.030;

(b) The partners of each limited partnership approve the plan of merger as required by RCW 25.10.781;

(c) The partners of each partnership approve the plan of merger as required by RCW 25.05.375; and

(d) The members of each limited liability company approve, if approval is necessary, the plan of merger as required by RCW 25.15.421.

(2) The plan of merger must set forth:

(a) The name of each limited liability company, partnership, corporation, and limited partnership planning to merge and the name of the surviving limited liability company, partnership, corporation, or limited partnership into which each other limited liability company, partnership, corporation, or limited partnership plans to merge;

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

(c) The manner and basis of converting the shares of each corporation, the member interests of each limited liability company, and the partnership interests in each partnership and each limited partnership into shares, limited liability company member interests, partnership interests, obligations, or other securities of the surviving limited liability company, partnership, corporation, or limited partnership, or into cash or other property, including shares, obligations, or securities of any other limited liability company, partnership, or corporation, and partnership interests, obligations, or securities of any other limited partnership, in whole or in part.

(3) The plan of merger may set forth:

(a) Amendments to the articles of incorporation of the surviving corporation;

(b) Amendments to the certificate of limited partnership of the surviving limited partnership; and

(c) Other provisions relating to the merger. [2015 c 188 § 110; 2009 c 188 § 1401; 1998 c 103 § 1310; 1991 c 269 § 38.]

Effective date—2015 c 188: See RCW 25.15.903.

Effective date—2009 c 188: "Sections 1401 through 1416 of this act take effect July 1, 2010." [2009 c 188 § 1417.]

RCW 23B.11.090 Articles of merger. After a plan of merger for one or more corporations and one or more limited partnerships, one or more partnerships, or one or more limited liability companies is approved by the shareholders of each corporation (or adopted by the board of directors of any corporation for which shareholder approval is not required), is approved by the partners for each limited partnership as required by RCW 25.10.781, is approved by the partners of each partnership as required by RCW 25.05.380, or is approved by the members of each limited liability company as required by RCW 25.15.421, the surviving entity must:

(1) If the surviving entity is a corporation, file with the secretary of state articles of merger setting forth:

(a) The name and jurisdiction of organization of each party to the merger;

(b) The name of the surviving corporation;

(c) If the surviving corporation's articles of incorporation are amended or amended and restated, the amendments to the surviving corporation's articles of incorporation or the amended and restated articles of incorporation of the surviving corporation;

(d) A statement that the merger was duly approved by the shareholders of each corporation that is a party to the merger pursuant to RCW 23B.11.030 (or a statement that shareholder approval was not required for a merging corporation); and

(e) A statement that the merger was duly approved as required by the organic law of each other party that is a party to the merger.

(2) If the surviving entity is a limited partnership, comply with the requirements in RCW 25.10.786.

(3) If the surviving entity is a partnership, comply with the requirements in RCW 25.05.380.

(4) If the surviving entity is a limited liability company, comply with the requirements in RCW 25.15.426.

(5) The definitions in RCW 23B.09.005 apply to this section unless the context clearly requires otherwise. [2022 c 42 § 111; 2015 c 188 § 111; 2009 c 188 § 1402; 1998 c 103 § 1311; 1991 c 269 § 39.]

Effective date—2015 c 188: See RCW 25.15.903.

Effective date—2009 c 188: See note following RCW 23B.11.080.

RCW 23B.11.100 Merger—Corporation is surviving entity. (1) When a merger of one or more corporations or one or more other entities takes effect, and a corporation is the surviving entity:

(a) Every other corporation and every other entity party to the merger merges into the surviving corporation and the separate existence of every corporation except the surviving corporation, and every other entity, ceases;

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

(c) The surviving corporation has all the liabilities of each entity party to the merger;

(d) A proceeding pending against any entity 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 entity whose existence ceased;

(e) The articles of incorporation of the surviving corporation are amended, or amended and restated, to the extent provided in the articles of merger;

(f) The former holders of the shares of every corporation party to the merger are entitled only to the rights provided in the plan of merger or to their rights under chapter 23B.13 RCW; and

(g) The former interest holders of every other entity party to the merger are entitled only to the rights provided in the plan of merger or to their rights under the organic law of that other entity.

(2) The definitions in RCW 23B.09.005 apply to this section unless the context clearly requires otherwise. [2022 c 42 § 112; 1998 c 103 § 1312; 1991 c 269 § 40.]

RCW 23B.11.110 Merger with foreign and domestic entities—Effect. (1) One or more foreign limited partnerships, foreign corporations, foreign partnerships, and foreign limited liability companies may merge with one or more domestic partnerships, domestic limited liability companies, domestic limited partnerships, or domestic corporations, provided that:

(a) The merger is permitted by the law of the jurisdiction under which each foreign limited partnership was organized and the law of the state or country under which each foreign corporation was incorporated and each foreign limited partnership or foreign corporation complies with that law in effecting the merger;

(b) If the surviving entity is a foreign or domestic corporation, that corporation complies with RCW 23B.11.090;

(c) If the surviving entity is a foreign or domestic limited partnership, that limited partnership complies with RCW 25.10.786;

(d) Each domestic corporation complies with RCW 23B.11.080;

(e) Each domestic limited partnership complies with RCW 25.10.781;

(f) Each domestic limited liability company complies with RCW 25.15.421; and

(g) Each domestic partnership complies with RCW 25.05.375.

(2) Upon the merger taking effect, a surviving foreign corporation, foreign limited partnership, foreign limited liability corporation, or foreign partnership is deemed:

(a) 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 or partners of each domestic corporation, domestic limited partnership, domestic limited liability company, or domestic partnership party to the merger; and

(b) To agree that it will promptly pay to the dissenting shareholders or partners of each domestic corporation, domestic limited partnership, domestic limited liability company, or domestic partnership party to the merger the amount, if any, to which they are entitled under chapter 23B.13 RCW, in the case of dissenting shareholders, or under chapter 25.10, 25.15, or 25.05 RCW, in the case of dissenting partners. [2015 c 188 § 112; 2015 c 176 § 2125; 2009 c 188 § 1403; 1998 c 103 § 1313; 1991 c 269 § 41.]

Reviser's note: This section was amended by 2015 c 176 § 2125 and by 2015 c 188 § 112, 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).

Effective date—2015 c 188: See RCW 25.15.903.

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

Effective date—2009 c 188: See note following RCW 23B.11.080.