



Uniform Law Commission

The National Conference of Commissioners on Uniform State Laws

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Entity Transactions Act Summary

The Uniform Law Commissioners have provided unincorporated organization law to the states since the first Uniform Partnership Act in 1914. The current portfolio of uniform acts on unincorporated organizations includes the Uniform Partnership Act (1997), the Uniform Limited Partnership Act (2001), the Uniform Limited Liability Company Act (1996) and the Uniform Unincorporated Nonprofit Organization Act (1996). Corporate law has been the focus of the American Bar Association for at least 50 years. It is responsible for the Model Business Corporation Act and the Model Not-for-Profit Corporation Act. It also prepared a Prototype Limited Liability Company Act. Partnerships, limited partnerships, limited liability partnerships, limited liability limited partnerships, limited liability companies and corporations are the basic entities under American law (business trusts and cooperatives are also growing in importance) that provide the means to aggregate capital, and limit liability where applicable, along with the structure to organize an enterprise, whether it is for profit or nonprofit.

All of this uniform and model act work has made American law particularly efficient for entrepreneurs. Anyone who establishes and develops a business has choices available for the entity that may be chosen to do business. As a business grows, these options also allow for some changes in form and location of the entity chosen. For example, a small enterprise that chooses to be a partnership initially has the opportunity to reorganize as a corporation when the business is big enough to want the advantage of the corporate form. Not-for-profit activities also have a greater array of organizational forms, now including the limited liability company and the limited partnership along with the not-for-profit corporation. American law is particularly flexible and responsive to the needs of both the for-profit and the not-for-profit sectors. American business organization law is the envy of the rest of the world for this reason.

However, more can be done. There is no comprehensive statutory framework for changing entity form, whether for merger of entities, conversion of one entity to another, exchanging interests to merge businesses without merging the entities (called an interest exchange), or for changing the location of the entity (called a domestication). The newest uniform acts on limited liability companies and limited partnerships have limited provisions. The Model Business Corporation Act has been modified to do some of these kinds of transactions. The comprehensive effort had not been done until the Model Entity Transactions Act (META), promulgated by the Uniform Law Commissioners and the American Bar Association in 2004.

The Uniform Law Commissioners and the American Bar Association have a long relationship going back to the founding of the Commissioners. Every drafting committee the Commissioners authorize to work on an act has advisors from the American Bar Association. However, in this instance the need to draw together corporate law with the law of unincorporated organizations, meant a more formal joint relationship was necessary. META is a product of this joint relationship.

The problem with mergers, conversions, interest exchanges and changing the location of entities is that an entity involved may have to be dissolved to accomplish the desired end. This means technically winding down the business, satisfying creditors and interest holders in the winding down, and potentially incurring adverse tax consequences. This is a burden when the objective is not to dissolve the business but to continue it in another form or another location. The hazards of the process are many and very costly. A statute that allows these events to occur without dissolving at least one of the entities involved will increase efficiency and lower costs. A general statute, not limited in scope to less than all of the kinds of entities commonly involved in these transactions, is highly desirable. Cross-entity transactions should be available. That statute should also be one that can be fit with the existing entity law in a state so that it is not necessary to repeal all the existing entity law to accomplish the objective. META is the general statute that is designed to fit in with a state's existing entity law to

accomplish the objective.

META governs the course of four kinds of transactions: merger of one entity with another, conversion of an entity to another kind of entity, an interest exchange between two entities so that one of them is controlled by the other without actually merging the two entities and the domestication of an entity originally organized in one state in another state. A merger occurs when one entity acquires another entity and the result is a single entity composed of both the original entities. A conversion occurs when one kind of entity converts to another kind, i.e., a limited liability company converts into a business corporation. An interest exchange occurs when interest holders transfer their interests in one entity to another for interests in the second entity. For example, the holders of all interests in a limited partnership transfer their interests to a corporation in return for shares of stock in the corporation. A domestication occurs when an entity formed under the laws of one state becomes an entity formed in another state, extinguishing its entity status in the first state. The articles of META essentially provide the procedures to accomplish each of these transactions.

META authorizes each of these kinds of transactions. It authorizes different entities to merge, i.e., a corporation may merge with a limited partnership. It authorizes a partnership to convert to a limited liability company. An interest swap may occur between a limited partnership and a limited liability company. A corporation may change its place of organization from one state to another. These are examples of the kinds of transactions authorized. They can occur between an entity in one state and a foreign entity formed originally in another state, providing that the law of the foreign state permits such a transaction.

In each kind of transaction, there must be a plan that is approved by the interest holders in the entities. The plan generally describes the transaction and its effect in detail. Approval of the plan proceeds according to the organic statute and rules that govern the pre-existing entities, or if none, by unanimous consent of all interest holders. If, for example, a partnership agreement governing a limited partnership provides for consent of partners to one of the kinds of transactions subject to META, the agreement would be the organic rules that would determine the approval of the plan. Otherwise all the partners would have to consent.

Once a plan is approved, a statement relevant to the transaction must be filed in the office in a state in which entity statements or charters are normally filed. The filing puts the transaction and the identity of the entity that survives in public records. That entity becomes the entity with the capacity to do business and it has the applicable liability shield from that time onward.

The objective in these procedures is to make sure that no interest is extinguished in the process of any of the transactions under META, whether a merger, conversion, interest exchange or domestication. This is true for an interest holder such as a shareholder in a corporation or holder of a partnership interest. It is also true for creditor interests that pre-existed the given transaction. The point of the procedures is to end with an entity that continues the business of those entities it succeeds without extinguishing obligations incurred by these entities in a seamless, nondisruptive transfer.

There are a few exclusions from META. If mergers in a state are already governed by the merger provisions in a state's enactment of a uniform or model act, META will not apply or displace those provisions. The same is true for interest exchanges when a state has the Model Business Corporation Act. Not all entities will necessarily be governed by META. There are special corporations, for example, that should not be included, depending upon their status in a state. META allows for them to be specifically excluded.

META is a model act, not a uniform act, although several of the acts affected are uniform acts. Although there is some uniformity in entity law, i.e., partnership law, it is not true across the full spectrum of entity law. This means that using META from state to state is likely to mean much adaptation of META provisions. The effect of utilizing META may have the impact of introducing more uniformity of law relating to entities from state to state, but use of its language in a uniform way cannot be expected.

Business organization law and the law relating to not-for-profit organizations has been much refurbished, updated and improved in the 30 years preceding 2004, the year of META. Development has been dynamic and good for economic function in the entire United States. META adds another element to

this dynamic progression of law relating to these entities. It is good for business and not-for-profit ventures alike. It should be studied, adapted and enacted in every state as soon as practicable.

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