

Model Entity Transactions Act

According to the Uniform Law Commissioners (ULC), anyone who establishes and develops a business in America 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.

However, until recently, there was 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 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. The ULC/American Bar Association Model Entity Transaction Act (META) is a general statute that is designed to fit with a state's existing entity law to accomplish the objective.

META governs 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.

META is a model Act, not a uniform Act. This means states generally will have to adapt some META provisions to their own statutes. To do this, states must first identify all of the existing statutory provisions that allow for same-type (all of the entities involved are the same, e.g., a merger between two corporations) and cross-type (more than one type of entity is involved in the transaction, e.g., a merger between a corporation and a partnership), mergers, interest exchanges, conversions, and domestications for any kind of entity. An entity is defined in Section 102 to include all types of partnerships (general partnerships, limited liability partnerships, limited partnerships, and limited liability limited partnerships), limited liability companies, all types of corporations (including non-profit corporations, close corporations in those states that have separate statutes for close corporations, and professional corporations), business trusts, cooperatives, and unincorporated nonprofit associations (at least in states that have the Uniform Unincorporated Nonprofit Associations Act or have statutes that allow an unincorporated nonprofit organization to hold property in its own name). Many states have statutes governing other types of business organizations. Texas, for example, has special statutory provisions for real estate investment trusts (in most other states, REITs would be considered a type of business trust). These special types of entities should also be included in the review process.

The next step is to analyze the overall existing statutory framework for same-type and cross-type transactions. This analysis will reveal that there are gaps in coverage for many of the types of transactions covered by the act, either directly or by default, even in those states that have adopted Chapter 9 and 11 of the Model Business Corporation Act and the uniform unincorporated organization acts.

Every state will have provisions for mergers of corporations into other corporations but not all states authorize interest exchanges between corporations (the corporate statutes generally refer to these as share exchanges) and only a few states specifically authorize corporations to enter into merger or interest exchange transactions with other types of organizations. Moreover, very few existing corporate statutes have provisions for conversions of corporations into other types of entities or authorize corporations to domesticate in another state.

The same-type and cross-type landscape with respect to unincorporated entities is even less complete. The Uniform Partnership Act (1997) (RUPA), which has been adopted in approximately 2/3 of the states (and in the District of Columbia, Puerto Rico and the Virgin

Islands) only authorizes mergers and conversions of general partnerships and limited partnerships. It does not allow conversions into any other type of entity or mergers with any other type of entity; nor does it authorize interest exchange or domestication transactions. Several states that have adopted RUPA have provisions allowing same-type and cross-type conversions and mergers of general partnerships with not only limited partnerships but also with corporations and limited liability companies; and a few RUPA states have expanded the list to include any business entity (it is unclear in many of these states, however, whether these statutes apply to non-profit entities). With the exception of Ohio, which authorizes mergers and consolidations of general partnerships with other partnerships and “other domestic or foreign entities,” there are apparently no same-type or cross-type provisions in the general partnership statutes of the approximately one-third of the states that still have the 1914 Uniform Partnership Act.

The statutory framework for limited partnership same-type and cross-type transactions is also quite varied. Most states have the Uniform Limited Partnership Act (1976 with 1985 Amendments). That act has no provisions dealing with merger, interest exchange, conversion, or domestication transactions. According to Volume 6A of Uniform Laws Annotated (Supp. 2004), 19 states have adopted provisions authorizing limited partnerships to merge with or convert into some other types of entities. Arizona, for example, only authorizes limited partnerships to convert into general partnerships, but also authorizes limited partnerships to merge with any other type of business entity. Some states allow conversions of limited partnerships into limited liability companies and a few states expand the conversion list to include corporations; most also allow mergers of limited partnerships into other limited partnerships and some other types of entities. Several states appear to exclude non-profit organizations, business trusts, and cooperatives from their cross-form list.

As of October 2007, the Uniform Limited Partnership Act (2001) had been adopted in 16 states. It authorizes a conversion of a limited partnership into any other type of organization, conversion of any other organization into a limited partnership, a merger of a limited partnership with any other type of organization and a domestication (which is a type of conversion under ULPA (2001)). It does not, however, have any specific provisions for interest exchanges.

Most limited liability company statutes have provisions authorizing mergers and conversions, although the scope of coverage is quite varied. The Uniform Limited Liability Company Act (1997) (ULLCA), which has been adopted in eight states and the Virgin Islands, authorizes the conversion of a limited liability company into a general or limited partnership (but not into a corporation or any other type of entity) and a merger of a limited liability company with other limited liability companies or any “other domestic or foreign entities.” ULLCA does not, however, have any provisions authorizing limited liability companies to enter into interest exchange or domestication transactions. In the other 42 states there are substantial differences from the ULLCA scheme with respect to same-type and cross-type transactions. The recently-adopted revised Uniform Limited Liability Company Act (2006) authorizes cross-type mergers, conversions, and domestications, but does not provide for interest exchanges; and the Uniform Limited Cooperative Association Act (2007) authorizes cross-type mergers and conversions.

There are no same-type or cross-type provisions in the Uniform Unincorporated Nonprofit Associations Act. Moreover, there are very few same-type or cross-type provisions in statutes governing all the other types of entities that exist under state law. There are some exceptions, however, such as the Delaware Statutory Trust Act which allows mergers and conversions of business trusts into other entities, and the Minnesota cooperative statute which allows farm cooperatives to convert into limited liability companies.

Once the analysis of the existing same-type and cross-type statutes has been made, decisions need to be made as to which ones should be amended or repealed and whether to add

additional provisions to these statutes. Under META, if the statute governing an entity has same-type provisions, those provisions govern the transaction in question. META provides default rules, however, if the other applicable entity statute has no same-type provisions for the transaction in question. META also applies to cross-type transactions (but defaults to applicable state entity law for approval requirements and the like).

In deciding how to amend, repeal or add to the existing entity statutes, states should avoid any potential inconsistency between META's provisions and similar provisions in the state's entity statutes and make the interplay between META and the state's various entity laws relatively easy to navigate. There are several ways to achieve these goals. First, states can limit existing laws to same-type transactions. One method, which it is anticipated will be the method chosen by most states, is as follows:

With respect to the state's corporation statutes:

(i) Repeal any cross-type provisions from the state's corporation merger statutes. The amendments necessary for this purpose in a state that has adopted the Model Business Corporation Act and the Model Nonprofit Corporation Act are found in Sections A2-1 and A2-2, respectively. In states whose corporate codes do not have any cross-type merger provisions no amendments to the state's corporate merger provisions will be necessary. Most state also may not have interest exchange provisions in their corporate codes. If that is the case, same-type provisions for interest exchanges do not need to be added to the corporate codes because under META the requirements for approval of a merger and other rights that a shareholder would have in a merger, for example, dissenters' rights, apply. See Sections 203(a) (mergers) and 303(a) (interest exchange).

(ii) Repeal any conversion provisions in the state's corporation statutes. Article 3 of META will, therefore, govern all conversions.

(iii) Retain any existing domestication provisions in the state's organic laws. As is pointed out in the Legislative Note to META Section 501, these entity specific domestication provisions will be listed in Section 501(e) with the result being that Article 5 of META will apply to those types of entities whose organic laws do not already have domestication provisions.

With respect to the state's other entity statutes:

(i) Amend all the merger, interest exchange, and conversion provisions in the state's other entity statutes by stripping out all of the cross-type provisions in the merger provisions, and by repealing any interest exchange or conversion provisions. Any existing domestication provisions would be retained and an appropriate reference to those provisions would be included in Section 501(e). The appropriate amendments for states that have adopted the Uniform Partnership Act (1997), the Uniform Limited Partnership Act (2001), the Uniform Limited Liability Company Act (1996) or the ABA Prototype Limited Liability Company Act are found in Sections A2-3, A2-4, A2-5, and A2-6, respectively.

(ii) The existing requirements for approval of mergers, interest exchanges, conversions, domestications, and amendment of the organic rules in the state's existing organic laws for unincorporated entities need to be carefully reviewed. If they require unanimity (or they are silent on what vote is required), then the suggested amendments in this appendix will make all the voting requirements for both same-type and cross-type transactions involving unincorporated entities consistent. The situation is more complicated, however, if there is not complete consistency among those organic laws; for example, as is sometimes the case, if the state's partnership statutes require unanimity but its LLC statute requires only a majority vote for some or all transactions. If there is not complete consistency, decisions will need to be made whether to retain the differences or to make all of the voting requirements either unanimous or majority. Other issues that will need to be resolved are what the appropriate vote should be for transactions other than mergers (i.e., interest exchanges, conversions, and domestications) where

there are no existing voting provisions other than for mergers; what is the appropriate voting requirement for a transaction under META where an unincorporated entity organic law does not have any same-type or cross-type provisions for that type of transaction; and how the voting requirements under META relate to the vote required to amend an unincorporated entity's organic rules. Once this analysis is completed, it will be possible to construct the appropriate amendments to the state's existing unincorporated entity organic laws.

Another method of integrating META with a state's organic laws is to delete from the existing organic laws any provisions that deal with cross-type transactions and add same-type merger and interest exchange, and domestication provisions to every organic law that does not currently have these provisions. Thus all same-type entity transactions would be governed by the state's organic laws and all cross-type transactions would be governed by META. This approach will require a large number of changes to existing organic laws in most states because same-type merger and interest exchange, and domestication provisions would have to be added to many of the state's organic laws, including its unincorporated nonprofit, cooperative, and business trust statutes. Article 5 of META would also not be enacted because the organic laws for each type of entity would have domestication provisions.

States can also repeal all the existing same-type and cross-type transaction provisions in all of the organic laws and add to META all the corporate merger approval and related statutory provisions such as appraisal rights, as well as substantially modifying Sections 203, 303, 403, and 503 so that there will be one set of approval provisions for a corporation engaging in a META transaction and a second set of approval provisions for unincorporated entities engaging in a META transaction. Making all of these modifications will be a monumental task.

Finally, integrating META with a state's existing organic laws could be achieved by repealing any provisions for cross-type transactions from the corporation laws (see Sections A2-1 and A2-2 for the appropriate amendments in a state that has enacted the Model Business Corporation Act and the Model Nonprofit Corporation Act) and, in addition by repealing all of the provisions for same-type and cross-type transactions in all of the state's unincorporated entity organic laws. This approach, which is a variant of avoids the problem of incorporating the corporation law voting requirements and related provisions such as appraisal rights. It will work best, however, in a state where all of the existing unincorporated entity organic laws require unanimity for approval of a merger or similar transaction (and where unanimity is also required to amend each type of entity's organic rules), since that is the ultimate default rule in META. This approach will be quite cumbersome if the state's unincorporated entity organic laws require less than unanimous consent for some types of entities, because the less than unanimous approval requirements would have to be incorporated into META.

The ULC suggests states place a reference to META in the state's entity statutes specifying the transactions that are governed by META. As an alternative to the statutory references proposed in this appendix, legislative notes could be used in those states that follow that practice. A note would be placed in the corporate statutes at the end of the merger and share exchange provisions stating that META is the primary statute that applies to reorganization transactions involving a corporation and another form of entity. For other entities whose organic laws have merger provisions, the legislative notes would appear at the end of those provisions stating META is the primary statute for any cross-type merger involving that type of entity and also is the primary statute governing both same-type and cross-type interest exchange and domestication transactions where that type of entity is a party. Finally, if there are no merger provisions for a particular type of entity, a legislative note should be placed at the end of the governing statute stating that META is the statute that governs merger, interest exchange, conversion and domestication transactions where that type of entity is involved.

Interested readers can see how one state adopted META by viewing amendments Kansas

made to its law when it adopted META as SB 132 in 2009. However, the text in this *SSL* volume is the model ULC language, includes legislative notes about the act, and excludes line numbers. Readers can access official commentary about the act and detailed suggestions about how to implement the Act vis-à-vis existing business entity laws at this Web address: http://www.law.upenn.edu/bll/archives/ulc/uela/2007_final.htm or at www.nccusl.org.

Submitted as:

Kansas

SB 132

Status: Enacted into law in 2009.

Comment:

Notes about ULC Acts:

For information on the specific drafting rules used by the ULC, the ULC *Procedural and Drafting Manual* is available online at www.nccusl.org.

In general, the use of bracketed language in ULC acts indicates that a choice must be made between alternate bracketed language, or that specific language must be inserted into the empty brackets. For example: “An athlete agent who violates Section 14 is guilty of a [misdemeanor] [felony] and, upon conviction, is punishable by [].

A word, number, or phrase, or even an entire section, may be placed in brackets to indicate that the bracketed language is suggested but may be changed to conform to state usage or requirements, or to indicate that the entire section is optional. For example: “An applicant for registration shall submit an application for registration to the [Secretary of State] in a form prescribed by the [Secretary of State]. [An application filed under this section is a public record.] The application must be in the name of an individual, and, except as otherwise provided in subsection (b), signed or otherwise authenticated by the applicant under penalty of perjury.”

The sponsor may need to be consulted when dealing with bracketed language.

Questions about META?

Michael Kerr, ULC Legislative Director: 312-915-0195, michael.kerr@nccusl.org

Harry Haynsworth, Chair of the META drafting committee: hhaynsworth@briggs.com

Suggested State Legislation

(Title, enacting clause, etc.)

MODEL ENTITY TRANSACTIONS ACT (Last Revised or Amended in 2007)

[ARTICLE] 1 GENERAL PROVISIONS

SECTION 101. SHORT TITLE. This [act] may be cited as the Model Entity Transactions Act.

SECTION 102. DEFINITIONS. In this [act]:

(1) “Acquired entity” means the entity, all of one or more classes or series of interests in which are acquired in an interest exchange.

(2) “Acquiring entity” means the entity that acquires all of one or more classes or series of interests of the acquired entity in an interest exchange.

(3) “Approve” means, in the case of an entity, for its governors and interest holders to take whatever steps are necessary under its organic rules, organic law, and other law to:

(A) propose a transaction subject to this [act];

(B) adopt and approve the terms and conditions of the transaction; and

(C) conduct any required proceedings or otherwise obtain any required votes or consents of the governors or interest holders.

(4) “Business corporation” means a corporation whose internal affairs are governed by [the Model Business Corporation Act].

(5) “Conversion” means a transaction authorized by [Article] 4.

(6) “Converted entity” means the converting entity as it continues in existence after a conversion.

(7) “Converting entity” means the domestic entity that approves a plan of conversion pursuant to Section 403 or the foreign entity that approves a conversion pursuant to the law of its jurisdiction of organization.

(8) “Domestic entity” means an entity whose internal affairs are governed by the law of this state.

(9) “Domesticated entity” means the domesticating entity as it continues in existence after a domestication.

(10) “Domesticating entity” means the domestic entity that approves a plan of domestication pursuant to Section 503 or the foreign entity that approves a domestication pursuant to the law of its jurisdiction of organization.

(11) “Domestication” means a transaction authorized by [Article] 5.

(12) “Entity” means:

(A) a business corporation;

(B) a nonprofit corporation;

(C) a general partnership, including a limited liability partnership;

(D) a limited partnership, including a limited liability limited partnership;

(E) a limited liability company;

(F) a business trust or statutory trust entity;

(G) an unincorporated nonprofit association;

(H) a cooperative; or

(I) any other person that has a separate legal existence or has the power to acquire an interest in real property in its own name other than:

(i) an individual;

(ii) a testamentary, inter vivos, or charitable trust, with the exception of a business trust, statutory trust entity or similar trust;

(iii) an association or relationship that is not a partnership solely by reason of [Section 202(c) of the Uniform Partnership Act (1997)] or a similar provision of the law of any other jurisdiction;

(iv) a decedent’s estate; or

(v) a government, a governmental subdivision, agency, or instrumentality, or a quasi-governmental instrumentality.

(13) “Filing entity” means an entity that is created by the filing of a public organic document.

(14) “Foreign entity” means an entity other than a domestic entity.

(15) “Governance interest” means the right under the organic law or organic rules of an entity, other than as a governor, agent, assignee, or proxy, to:

(A) receive or demand access to information concerning, or the books and records of, the entity;

(B) vote for the election of the governors of the entity; or

(C) receive notice of or vote on any or all issues involving the internal affairs of the entity.

(16) “Governor” means a person by or under whose authority the powers of an entity are exercised and under whose direction the business and affairs of the entity are managed pursuant to the organic law and organic rules of the entity.

(17) “Interest” means:

(A) a governance interest in an unincorporated entity;

(B) a transferable interest in an unincorporated entity; or

(C) a share or membership in a corporation.

(18) “Interest exchange” means a transaction authorized by [Article] 3.

(19) “Interest holder” means a direct holder of an interest.

(20) “Interest holder liability” means:

(A) personal liability for a liability of an entity that is imposed on a person:

(i) solely by reason of the status of the person as an interest holder; or

(ii) by the organic rules of the entity pursuant to a provision of the organic law authorizing the organic rules to make one or more specified interest holders or categories of interest holders liable in their capacity as interest holders for all or specified liabilities of the entity; or

(B) an obligation of an interest holder under the organic rules of an entity to contribute to the entity.

(21) “Jurisdiction of organization” of an entity means the jurisdiction whose law includes the organic law of the entity.

(22) “Liability” means a debt, obligation, or any other liability arising in any manner, regardless of whether it is secured or whether it is contingent.

(23) “Merger” means a transaction in which two or more merging entities are combined into a surviving entity pursuant to a filing with the [Secretary of State].

(24) “Merging entity” means an entity that is a party to a merger and exists immediately before the merger becomes effective.

(25) “Nonprofit corporation” means a corporation whose internal affairs are governed by [the Model Nonprofit Corporation Act].

(26) “Organic law” means the statutes, if any, other than this [act], governing the internal affairs of an entity.

(27) “Organic rules” means the public organic document and private organic rules of an entity.

(28) “Person” means an individual, corporation, estate, trust, partnership, limited liability company, business or similar trust, association, joint venture, public corporation, government, or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(29) “Plan” means a plan of merger, interest exchange, conversion, or domestication.

(30) “Private organic rules” mean the rules, whether or not in a record, that govern the internal affairs of an entity, are binding on all of its interest holders, and are not part of its public organic document, if any.

(31) “Protected agreement” means:

(A) a record evidencing indebtedness and any related agreement in effect on the effective date of this [act];

(B) an agreement that is binding on an entity on the effective date of this [act];
(C) the organic rules of an entity in effect on the effective date of this [act]; or
(D) an agreement that is binding on any of the governors or interest holders of an entity on the effective date of this [act].

(32) “Public organic document” means the public record the filing of which creates an entity, and any amendment to or restatement of that record.

(33) “Qualified foreign entity” means a foreign entity that is authorized to transact business in this state pursuant to a filing with the [Secretary of State].

(34) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(35) “Sign” means, with present intent to authenticate or adopt a record:

- (A) to execute or adopt a tangible symbol; or
- (B) to attach to or logically associate with the record an electronic sound, symbol, or process.

(36) “Surviving entity” means the entity that continues in existence after or is created by a merger.

(37) “Transferable interest” means the right under an entity’s organic law to receive distributions from the entity.

(38) “Type,” with regard to an entity, means a generic form of entity:

- (A) recognized at common law; or
- (B) organized under an organic law, whether or not some entities organized under that organic law are subject to provisions of that law that create different categories of the form of entity.

SECTION 103. RELATIONSHIP OF [ACT] TO OTHER LAWS.

(a) Unless displaced by particular provisions of this [act], the principles of law and equity supplement this [act].

(b) This [act] does not authorize an act prohibited by, and does not affect the application or requirements of, law other than this [act].

(c) A transaction effected under this [act] may not create or impair any right or obligation on the part of a person under a provision of the law of this state other than this [act] relating to a change in control, takeover, business combination, control-share acquisition, or similar transaction involving a domestic merging, acquired, converting, or domesticating corporation unless:

(1) if the corporation does not survive the transaction, the transaction satisfies any requirements of the provision; or

(2) if the corporation survives the transaction, the approval of the plan is by a vote of the shareholders or directors which would be sufficient to create or impair the right or obligation directly under the provision.

SECTION 104. REQUIRED NOTICE OR APPROVAL.

(a) A domestic or foreign entity that is required to give notice to, or obtain the approval of, a governmental agency or officer in order to be a party to a merger must give the notice or obtain the approval in order to be a party to an interest exchange, conversion, or domestication.

(b) Property held for a charitable purpose under the law of this state by a domestic or foreign entity immediately before a transaction under this [act] becomes effective may not, as a result of the transaction, be diverted from the objects for which it was donated, granted, or devised unless, to the extent required by or pursuant to the law of this state concerning cy pres or other law dealing with nondiversion of charitable assets, the entity obtains an appropriate order

of [name of court] [the attorney general] specifying the disposition of the property.

Legislative Note: As an alternative to enacting subsection (a), a state may identify each of its regulatory laws that requires prior approval for a merger of a regulated entity, decide whether regulatory approval should be required for an interest exchange, conversion, or domestication, and make amendments as appropriate to those laws. As with subsection (a), an adopting state may choose to amend its various laws with respect to the nondiversions of charitable property to cover the various transactions authorized by this act as an alternative to enacting subsection (b).

SECTION 105. STATUS OF FILINGS. A filing under this [act] signed by a domestic entity becomes part of the public organic document of the entity if the entity's organic law provides that similar filings under that law become part of the public organic document of the entity.

SECTION 106. NONEXCLUSIVITY. The fact that a transaction under this [act] produces a certain result does not preclude the same result from being accomplished in any other manner permitted by law other than this [act].

SECTION 107. REFERENCE TO EXTERNAL FACTS. A plan may refer to facts ascertainable outside of the plan if the manner in which the facts will operate upon the plan is specified in the plan. The facts may include the occurrence of an event or a determination or action by a person, whether or not the event, determination, or action is within the control of a party to the transaction.

SECTION 108. ALTERNATIVE MEANS OF APPROVAL OF TRANSACTIONS. Except as otherwise provided in the organic law or organic rules of a domestic entity, approval of a transaction under this [act] by the unanimous vote or consent of its interest holders satisfies the requirements of this [act] for approval

SECTION 109. APPRAISAL RIGHTS.

(a) An interest holder of a domestic merging, acquired, converting, or domesticating entity is entitled to appraisal rights in connection with the transaction if the interest holder would have been entitled to appraisal rights under the entity's organic law in connection with a merger in which the interest of the interest holder was changed, converted, or exchanged unless:

(1) the organic law permits the organic rules to limit the availability of appraisal rights; and

(2) the organic rules provide such a limit.

(b) An interest holder of a domestic merging, acquired, converting, or domesticating entity is entitled to contractual appraisal rights in connection with a transaction under this [act] to the extent provided:

(1) in the entity's organic rules;

(2) in the plan; or

(3) in the case of a business corporation, by action of its governors.

(c) If an interest holder is entitled to contractual appraisal rights under subsection (b) and the entity's organic law does not provide procedures for the conduct of an appraisal rights proceeding, [Chapter 13 of the Model Business Corporation Act] applies to the extent practicable or as otherwise provided in the entity's organic rules or the plan.

Legislative Note: Section 109(a) preserves appraisal rights (sometimes referred to as “dissenters’ rights”) granted by other laws. As an alternative to enacting subsection (a), a state may amend the appraisal rights provisions of its organic laws to specify which transactions under this act will give rise to appraisal rights. See the suggested amendments in Appendix 2. If that alternative approach is adopted, subsections (b) and (c) should be designated as subsections (a) and (b).

SECTION 110. EXCLUDED ENTITIES AND TRANSACTIONS.

- (a) The following entities may not participate in a transaction under this [act]:
 - (1)
 - (2)
- (b) This [act] may not be used to effect a transaction that:
 - (1)
 - (2)
 - (3).]

Legislative Note: Subsection (a) may be used by states that have special statutes restricted to the organization of certain types of entities. A common example is banking statutes that prohibit banks from engaging in transactions other than pursuant to those statutes.

Nonprofit entities may participate in transactions under this act with for-profit entities, subject to compliance with Section 104(b). If a state desires, however, to exclude entities with a charitable purpose from the scope of the act, that may be done by referring to those entities in subsection (a).

More limited provisions that exclude certain types of domestic entities just from certain provisions of this act are set forth in Sections 201(d) (mergers), 301(e) (interest exchanges), 401(d) (conversions), and 501(e) (domestications).

Subsection (b) may be used to exclude certain types of transactions governed by more specific statutes. A common example is the conversion of an insurance company from mutual to stock form. There may be other types of transactions that vary greatly among the states.

[ARTICLE] 2

MERGER

SECTION 201. MERGER AUTHORIZED.

- (a) Except as otherwise provided in this section, by complying with this [article]:
 - (1) one or more domestic entities may merge with one or more domestic or foreign entities into a domestic or foreign surviving entity; and
 - (2) two or more foreign entities may merge into a domestic entity.
- (b) Except as otherwise provided in this section, by complying with the provisions of this [article] applicable to foreign entities a foreign entity may be a party to a merger under this [article] or may be the surviving entity in such a merger if the merger is authorized by the law of the foreign entity’s jurisdiction of organization.
- (c) This [article] does not apply to a transaction under:
 - (1) [Chapter 11 of the Model Business Corporation Act];
 - (2) [Chapter 11 of the Model Nonprofit Corporation Act];
 - (3) [Article 9 of the Uniform Partnership Act (1997)];
 - (4) [Article 11 of the Uniform Limited Partnership Act (2001)];
 - (5) [Article 12 of the Prototype Limited Liability Company Act];
 - (6) [Article 9 of the Uniform Limited Liability Company Act (1996)];

- (7) [Article 10 of the Uniform Limited Liability Company Act (2006)]; or
- (8) [Article 15 of the Uniform Limited Cooperative Association Act (2007)] [; or
- (9) Cite provisions of any other organic law that has merger provisions for entities of the same type.]

[(d) The following entities may not participate in a merger under this [article]:

- (1)
- (2).]

Legislative Note: *The text of subsection (c) will depend on which choice a state makes with respect to the scope of the act. It is anticipated that most states will choose to retain all of the merger provisions for entities of the same type it currently has in its organic laws and will repeal any merger provisions for entities of different types in those laws. The end result will be that the merger provisions in the organic laws will apply to mergers of entities of the same type and this act will apply to mergers involving entities of more than one type. If a state chooses to add merger provisions for entities of the same type to all of its organic laws and the list of statutes in subsection (c) will need to be expanded.*

If a state chooses option (d), the list of statutes in subsection (c) will probably include only the business and nonprofit corporation act merger provisions since under option (d) this act will apply to mergers of unincorporated entities involving entities of the same type, as well as mergers involving different types of entities.

If a state chooses option (c), subsection (c) is not necessary because this act will govern all mergers whether involving the same type of entity or different types of entities.

SECTION 202. PLAN OF MERGER.

(a) A domestic entity may become a party to a merger under this [article] by approving a plan of merger. The plan must be in a record and contain:

- (1) as to each merging entity, its name, jurisdiction of organization, and type;
- (2) if the surviving entity is to be created in the merger, a statement to that effect and its name, jurisdiction of organization, and type;
- (3) the manner of converting the interests in each party to the merger into interests, securities, obligations, rights to acquire interests or securities, cash, or other property, or any combination of the foregoing;
- (4) if the surviving entity exists before the merger, any proposed amendments to its public organic document or to its private organic rules that are, or are proposed to be, in a record;
- (5) if the surviving entity is to be created in the merger, its proposed public organic document, if any, and the full text of its private organic rules that are proposed to be in a record;
- (6) the other terms and conditions of the merger; and
- (7) any other provision required by the law of a merging entity's jurisdiction of organization or the organic rules of a merging entity.

(b) A plan of merger may contain any other provision not prohibited by law.

SECTION 203. APPROVAL OF MERGER.

(a) A plan of merger is not effective unless it has been approved:

- (1) by a domestic merging entity:

(A) in accordance with the requirements, if any, in its organic law and organic rules for approval of:

- (i) in the case of an entity that is not a business corporation, a

merger; or

(ii) in the case of a business corporation, a merger requiring approval by a vote of the interest holders of the business corporation; or

(B) if neither its organic law nor organic rules provide for approval of a merger described in subparagraph (A)(ii), by all of the interest holders of the entity entitled to vote on or consent to any matter; and

(2) in a record, by each interest holder of a domestic merging entity that will have interest holder liability for liabilities that arise after the merger becomes effective, unless, in the case of an entity that is not a business corporation or nonprofit corporation:

(A) the organic rules of the entity provide in a record for the approval of a merger in which some or all of its interest holders become subject to interest holder liability by the vote or consent of fewer than all of the interest holders; and

(B) the interest holder voted for or consented in a record to that provision of the organic rules or became an interest holder after the adoption of that provision.

(b) A merger involving a foreign merging entity is not effective unless it is approved by the foreign entity in accordance with the law of the foreign entity's jurisdiction of organization.

SECTION 204. AMENDMENT OR ABANDONMENT OF PLAN OF MERGER.

(a) A plan of merger of a domestic merging entity may be amended:

(1) in the same manner as the plan was approved, if the plan does not provide for the manner in which it may be amended; or

(2) by the governors or interest holders of the entity in the manner provided in the plan, but an interest holder that was entitled to vote on or consent to approval of the merger is entitled to vote on or consent to any amendment of the plan that will change:

(A) the amount or kind of interests, securities, obligations, rights to acquire interests or securities, cash, or other property, or any combination of the foregoing, to be received by the interest holders of any party to the plan;

(B) the public organic document or private organic rules of the surviving entity that will be in effect immediately after the merger becomes effective, except for changes that do not require approval of the interest holders of the surviving entity under its organic law or organic rules; or

(C) any other terms or conditions of the plan, if the change would adversely affect the interest holder in any material respect.

(b) After a plan of merger has been approved by a domestic merging entity and before a statement of merger becomes effective, the plan may be abandoned:

(1) as provided in the plan; or

(2) unless prohibited by the plan, in the same manner as the plan was approved.

(c) If a plan of merger is abandoned after a statement of merger has been filed with the [Secretary of State] and before the filing becomes effective, a statement of abandonment, signed on behalf of a merging entity, must be filed with the [Secretary of State] before the time the statement of merger becomes effective. The statement of abandonment takes effect upon filing, and the merger is abandoned and does not become effective. The statement of abandonment must contain:

(1) the name of each merging or surviving entity that is a domestic entity or a qualified foreign entity;

(2) the date on which the statement of merger was filed; and

(3) a statement that the merger has been abandoned in accordance with this section.

SECTION 205. STATEMENT OF MERGER; EFFECTIVE DATE.

(a) A statement of merger must be signed on behalf of each merging entity and filed with the [Secretary of State].

(b) A statement of merger must contain:

(1) the name, jurisdiction of organization, and type of each merging entity that is not the surviving entity;

(2) the name, jurisdiction of organization, and type of the surviving entity;

(3) if the statement of merger is not to be effective upon filing, the later date and time on which it will become effective, which may not be more than 90 days after the date of filing;

(4) a statement that the merger was approved by each domestic merging entity, if any, in accordance with this [article] and by each foreign merging entity, if any, in accordance with the law of its jurisdiction of organization;

(5) if the surviving entity exists before the merger and is a domestic filing entity, any amendment to its public organic document approved as part of the plan of merger;

(6) if the surviving entity is created by the merger and is a domestic filing entity, its public organic document, as an attachment;

(7) if the surviving entity is created by the merger and is a domestic limited liability partnership, its [statement of qualification], as an attachment; and

(8) if the surviving entity is a foreign entity that is not a qualified foreign entity, a mailing address to which the [Secretary of State] may send any process served on the [Secretary of State] pursuant to Section 206(e).

(c) In addition to the requirements of subsection (b), a statement of merger may contain any other provision not prohibited by law.

(d) If the surviving entity is a domestic entity, its public organic document, if any, must satisfy the requirements of the law of this state, except that it does not need to be signed and may omit any provision that is not required to be included in a restatement of the public organic document.

(e) A plan of merger that is signed on behalf of all of the merging entities and meets all of the requirements of subsection (b) may be filed with the [Secretary of State] instead of a statement of merger and upon filing has the same effect. If a plan of merger is filed as provided in this subsection, references in this [act] to a statement of merger refer to the plan of merger filed under this subsection.

(f) A statement of merger becomes effective upon the date and time of filing or the later date and time specified in the statement of merger.

SECTION 206. EFFECT OF MERGER.

(a) When a merger becomes effective:

(1) the surviving entity continues or comes into existence;

(2) each merging entity that is not the surviving entity ceases to exist;

(3) all property of each merging entity vests in the surviving entity without assignment, reversion, or impairment;

(4) all liabilities of each merging entity are liabilities of the surviving entity;

(5) except as otherwise provided by law other than this [act] or the plan of merger, all of the rights, privileges, immunities, powers, and purposes of each merging entity vest in the surviving entity;

(6) if the surviving entity exists before the merger:

(A) all of its property continues to be vested in it without reversion or impairment;

(B) it remains subject to all of its liabilities; and
(C) all of its rights, privileges, immunities, powers, and purposes continue to be vested in it;

(7) the name of the surviving entity may be substituted for the name of any merging entity that is a party to any pending action or proceeding;

(8) if the surviving entity exists before the merger:

(A) its public organic document, if any, is amended as provided in the statement of merger and is binding on its interest holders; and

(B) its private organic rules that are to be in a record, if any, are amended to the extent provided in the plan of merger and are binding on and enforceable by:

(i) its interest holders; and

(ii) in the case of a surviving entity that is not a business corporation or a nonprofit corporation, any other person that is a party to an agreement that is part of the surviving entity's private organic rules;

(9) if the surviving entity is created by the merger:

(A) its public organic document, if any, is effective and is binding on its interest holders; and

(B) its private organic rules are effective and are binding on and enforceable by:

(i) its interest holders; and

(ii) in the case of a surviving entity that is not a business corporation or a nonprofit corporation, any other person that was a party to an agreement that was part of the organic rules of a merging entity if that person has agreed to be a party to an agreement that is part of the surviving entity's private organic rules; and

(10) the interests in each merging entity that are to be converted in the merger are converted, and the interest holders of those interests are entitled only to the rights provided to them under the plan of merger and to any appraisal rights they have under Section 109 and the merging entity's organic law.

(b) Except as otherwise provided in the organic law or organic rules of a merging entity, the merger does not give rise to any rights that an interest holder, governor, or third party would otherwise have upon a dissolution, liquidation, or winding-up of the merging entity.

(c) When a merger becomes effective, a person that did not have interest holder liability with respect to any of the merging entities and that becomes subject to interest holder liability with respect to a domestic entity as a result of a merger has interest holder liability only to the extent provided by the organic law of the entity and only for those liabilities that arise after the merger becomes effective.

(d) When a merger becomes effective, the interest holder liability of a person that ceases to hold an interest in a domestic merging entity with respect to which the person had interest holder liability is as follows:

(1) the merger does not discharge any interest holder liability under the organic law of the domestic merging entity to the extent the interest holder liability arose before the merger became effective;

(2) the person does not have interest holder liability under the organic law of the domestic merging entity for any liability that arises after the merger becomes effective;

(3) the organic law of the domestic merging entity continues to apply to the release, collection, or discharge of any interest holder liability preserved under paragraph (1) as if the merger had not occurred and the surviving entity were the domestic merging entity; and

(4) the person has whatever rights of contribution from any other person as are provided by the organic law or organic rules of the domestic merging entity with respect to any

interest holder liability preserved under paragraph (1) as if the merger had not occurred.

(e) When a merger becomes effective, a foreign entity that is the surviving entity:

(1) may be served with process in this state for the collection and enforcement of any liabilities of a domestic merging entity; and

(2) appoints the [Secretary of State] as its agent for service of process for collecting or enforcing those liabilities.

(f) When a merger becomes effective, the certificate of authority or other foreign qualification of any foreign merging entity that is not the surviving entity is canceled.

[ARTICLE] 3 INTEREST EXCHANGE

SECTION 301. INTEREST EXCHANGE AUTHORIZED.

(a) Except as otherwise provided in this section, by complying with this [article]:

(1) a domestic entity may acquire all of one or more classes or series of interests of another domestic or foreign entity in exchange for interests, securities, obligations, rights to acquire interests or securities, cash, or other property, or any combination of the foregoing; or

(2) all of one or more classes or series of interests of a domestic entity may be acquired by another domestic or foreign entity in exchange for interests, securities, obligations, rights to acquire interests or securities, cash, or other property, or any combination of the foregoing.

(b) Except as otherwise provided in this section, by complying with the provisions of this [article] applicable to foreign entities a foreign entity may be the acquiring or acquired entity in an interest exchange under this [article] if the interest exchange is authorized by the law of the foreign entity's jurisdiction of organization.

(c) If a protected agreement contains a provision that applies to a merger of a domestic entity but does not refer to an interest exchange, the provision applies to an interest exchange in which the domestic entity is the acquired entity as if the interest exchange were a merger until the provision is amended after the effective date of this [act].

[(d) This [article] does not apply to a transaction under:

(1) [Chapter 11 of the Model Business Corporation Act]; or
(2).]

[(e) The following entities may not participate in an interest exchange under this [article]:

(1)
(2).]

Legislative Note: *It is anticipated that most states will choose to limit any existing interest exchange provisions to same-type transactions, for example interest exchanges where all of the entities are corporations. Any interest exchange provisions added to entity statutes should similarly be limited to same-type transactions. The net effect will be that the interest exchange provisions in the various entity statutes will govern same-type interest exchanges and Article 3 will govern cross-type interest exchanges. In the event a state does not have any existing interest exchange legislation and chooses not to add interest exchange provisions to any of its entity statutes, Article 3 will govern and will cover both same-type and cross-type interest exchanges. See Section 2 of the Prefatory Note and Appendix 2.*

SECTION 302. PLAN OF INTEREST EXCHANGE.

(a) A domestic entity may be the acquired entity in an interest exchange under this

[article] by approving a plan of interest exchange. The plan must be in a record and contain:

- (1) the name and type of the acquired entity;
- (2) the name, jurisdiction of organization, and type of the acquiring entity;
- (3) the manner of converting the interests in the acquired entity into interests, securities, obligations, rights to acquire interests or securities, cash, or other property, or any combination of the foregoing;
- (4) any proposed amendments to the public organic document or private organic rules that are, or are proposed to be, in a record of the acquired entity;
- (5) the other terms and conditions of the interest exchange; and
- (6) any other provision required by the law of this state or the organic rules of the acquired entity.

(b) A plan of interest exchange may contain any other provision not prohibited by law.

SECTION 303. APPROVAL OF INTEREST EXCHANGE.

(a) A plan of interest exchange is not effective unless it has been approved:

(1) by a domestic acquired entity:

(A) in accordance with the requirements, if any, in its organic law and organic rules for approval of an interest exchange;

(B) except as otherwise provided in subsection (d), if neither its organic law nor organic rules provide for approval of an interest exchange, in accordance with the requirements, if any, in its organic law and organic rules for approval of:

(i) in the case of an entity that is not a business corporation, a merger, as if the interest exchange were a merger; or

(ii) in the case of a business corporation, a merger requiring approval by a vote of the interest holders of the business corporation, as if the interest exchange were that type of merger; or

(C) if neither its organic law nor organic rules provide for approval of an interest exchange or a merger described in subparagraph (B)(ii), by all of the interest holders of the entity entitled to vote on or consent to any matter; and

(2) in a record, by each interest holder of a domestic acquired entity that will have interest holder liability for liabilities that arise after the interest exchange becomes effective, unless, in the case of an entity that is not a business corporation or nonprofit corporation:

(A) the organic rules of the entity provide in a record for the approval of an interest exchange or a merger in which some or all of its interest holders become subject to interest holder liability by the vote or consent of fewer than all of the interest holders; and

(B) the interest holder voted for or consented in a record to that provision of the organic rules or became an interest holder after the adoption of that provision.

(b) An interest exchange involving a foreign acquired entity is not effective unless it is approved by the foreign entity in accordance with the law of the foreign entity's jurisdiction of organization.

(c) Except as otherwise provided in its organic law or organic rules, the interest holders of the acquiring entity are not required to approve the interest exchange.

(d) A provision of the organic law of a domestic acquired entity that would permit a merger between the acquired entity and the acquiring entity to be approved without the vote or consent of the interest holders of the acquired entity because of the percentage of interests in the acquired entity held by the acquiring entity does not apply to approval of an interest exchange under subsection (a)(1)(B).

Legislative Note: An issue that needs to be analyzed under this section is what approval requirements apply to an interest exchange if there are no interest exchange provisions for entities of the same type in the organic law for a particular type of entity. If an entity's organic law, and also its organic rules, are silent on approving an interest exchange, subsection (a)(1)(B) provides that the required approval is the approval required for a merger under the entity's organic law. If the entity's organic law required a majority vote of the entity's interest holders, the approval of an interest exchange if the entity is the acquired entity would also require a majority vote of its interest holders. If the organic law, on the other hand, required a unanimous vote of the entity's interest holders to approve a merger, a unanimous vote would also be required to approve an interest exchange. As a result, differences between entity laws on the vote required to approve a merger will be carried over into this act. It is important, therefore, that states review any differences in the merger approval requirements in their organic laws to determine if those differences are supported by appropriate policy considerations.

If an entity's organic law does not provide for approval of either a merger or an interest exchange, and if the entity's organic rules are also silent on approval of a merger or interest exchange, then subsection (a)(1)(C) requires approval of an interest exchange by all of the entity's interest holders. States should evaluate how that approval requirement compares to any approval requirements it has adopted for mergers or interest exchanges in any of its other organic laws.

This article permits the organic rules of an acquired entity to be amended in the context of an interest exchange. The other articles in this act also permit the organic rules to be amended in the contexts of the other types of transactions that may be accomplished under this act. When states conduct the analysis described in this Legislative Note of what approval requirement to adopt, they should also evaluate that question from the perspective of what approval requirements they provide in their organic laws for amending the organic rules of each type of entity.

The analysis described in this Legislative Note needs to be undertaken with respect to Sections 403 and 503 as well.

SECTION 304. AMENDMENT OR ABANDONMENT OF PLAN OF INTEREST EXCHANGE.

(a) A plan of interest exchange of a domestic acquired entity may be amended:

(1) in the same manner as the plan was approved, if the plan does not provide for the manner in which it may be amended; or

(2) by the governors or interest holders of the entity in the manner provided in the plan, but an interest holder that was entitled to vote on or consent to approval of the interest exchange is entitled to vote on or consent to any amendment of the plan that will change:

(A) the amount or kind of interests, securities, obligations, rights to acquire interests or securities, cash, or other property, or any combination of the foregoing, to be received by any of the interest holders of the acquired entity under the plan;

(B) the public organic document or private organic rules of the acquired entity that will be in effect immediately after the interest exchange becomes effective, except for changes that do not require approval of the interest holders of the acquired entity under its organic law or organic rules; or

(C) any other terms or conditions of the plan, if the change would adversely affect the interest holder in any material respect.

(b) After a plan of interest exchange has been approved by a domestic acquired entity and before a statement of interest exchange becomes effective, the plan may be abandoned:

- (1) as provided in the plan; or
- (2) unless prohibited by the plan, in the same manner as the plan was approved.

(c) If a plan of interest exchange is abandoned after a statement of interest exchange has been filed with the [Secretary of State] and before the filing becomes effective, a statement of abandonment, signed on behalf of the acquired entity, must be filed with the [Secretary of State] before the time the statement of interest exchange becomes effective. The statement of abandonment takes effect upon filing, and the interest exchange is abandoned and does not become effective. The statement of abandonment must contain:

- (1) the name of the acquired entity;
- (2) the date on which the statement of interest exchange was filed; and
- (3) a statement that the interest exchange has been abandoned in accordance with this section.

SECTION 305. STATEMENT OF INTEREST EXCHANGE; EFFECTIVE DATE.

- (a) A statement of interest exchange must be signed on behalf of a domestic acquired entity and filed with the [Secretary of State].
- (b) A statement of interest exchange must contain:
 - (1) the name and type of the acquired entity;
 - (2) the name, jurisdiction of organization, and type of the acquiring entity;
 - (3) if the statement of interest exchange is not to be effective upon filing, the later date and time on which it will become effective, which may not be more than 90 days after the date of filing;
 - (4) a statement that the plan of interest exchange was approved by the acquired entity in accordance with this [article]; and
 - (5) any amendments to the acquired entity's public organic document approved as part of the plan of interest exchange.
- (c) In addition to the requirements of subsection (b), a statement of interest exchange may contain any other provision not prohibited by law.
- (d) A plan of interest exchange that is signed on behalf of a domestic acquired entity and meets all of the requirements of subsection (b) may be filed with the [Secretary of State] instead of a statement of interest exchange and upon filing has the same effect. If a plan of interest exchange is filed as provided in this subsection, references in this [act] to a statement of interest exchange refer to the plan of interest exchange filed under this subsection.
- (e) A statement of interest exchange becomes effective upon the date and time of filing or the later date and time specified in the statement of interest exchange.

SECTION 306. EFFECT OF INTEREST EXCHANGE.

- (a) When an interest exchange becomes effective:
 - (1) the interests in the acquired entity that are the subject of the interest exchange cease to exist or are converted or exchanged, and the interest holders of those interests are entitled only to the rights provided to them under the plan of interest exchange and to any appraisal rights they have under Section 109 and the acquired entity's organic law;
 - (2) the acquiring entity becomes the interest holder of the interests in the acquired entity stated in the plan of interest exchange to be acquired by the acquiring entity;
 - (3) the public organic document, if any, of the acquired entity is amended as provided in the statement of interest exchange and is binding on its interest holders; and
 - (4) the private organic rules of the acquired entity that are to be in a record, if any, are amended to the extent provided in the plan of interest exchange and are binding on and enforceable by:

(A) its interest holders; and

(B) in the case of an acquired entity that is not a business corporation or nonprofit corporation, any other person that is a party to an agreement that is part of the acquired entity's private organic rules.

(b) Except as otherwise provided in the organic law or organic rules of the acquired entity, the interest exchange does not give rise to any rights that an interest holder, governor, or third party would otherwise have upon a dissolution, liquidation, or winding-up of the acquired entity.

(c) When an interest exchange becomes effective, a person that did not have interest holder liability with respect to the acquired entity and that becomes subject to interest holder liability with respect to a domestic entity as a result of the interest exchange has interest holder liability only to the extent provided by the organic law of the entity and only for those liabilities that arise after the interest exchange becomes effective.

(d) When an interest exchange becomes effective, the interest holder liability of a person that ceases to hold an interest in a domestic acquired entity with respect to which the person had interest holder liability is as follows:

(1) the interest exchange does not discharge any interest holder liability under the organic law of the domestic acquired entity to the extent the interest holder liability arose before the interest exchange became effective;

(2) the person does not have interest holder liability under the organic law of the domestic acquired entity for any liability that arises after the interest exchange becomes effective;

(3) the organic law of the domestic acquired entity continues to apply to the release, collection, or discharge of any interest holder liability preserved under paragraph (1) as if the interest exchange had not occurred; and

(4) the person has whatever rights of contribution from any other person as are provided by the organic law or organic rules of the domestic acquired entity with respect to any interest holder liability preserved under paragraph (1) as if the interest exchange had not occurred.

[ARTICLE] 4 CONVERSION

SECTION 401. CONVERSION AUTHORIZED.

(a) Except as otherwise provided in this section, by complying with this [article], a domestic entity may become:

(1) a domestic entity of a different type; or

(2) a foreign entity of a different type, if the conversion is authorized by the law of the foreign jurisdiction.

(b) Except as otherwise provided in this section, by complying with the provisions of this [article] applicable to foreign entities a foreign entity may become a domestic entity of a different type if the conversion is authorized by the law of the foreign entity's jurisdiction of organization.

(c) If a protected agreement contains a provision that applies to a merger of a domestic entity but does not refer to a conversion, the provision applies to a conversion of the entity as if the conversion were a merger until the provision is amended after the effective date of this [act].

[d) The following entities may not engage in a conversion:

(1)

(2).]

Legislative Note: Many states have provisions in their corporate and unincorporated entity statutes that allow conversions. These statutes, however, vary greatly. A few allow conversion of one type of entity into any other type of entity. Most, however, allow only limited types of conversions, e.g., general partnerships to limited partnerships (and limited partnerships to general partnerships) but not to all other types of entities. If a state has conversion provisions, the recommended course of action is to repeal all those statutes. See Appendix 2. The net effect will be that this act will apply to all conversions. Leaving the existing conversion provisions in place will create confusion for practitioners because in some cases there will be two applicable conversion statutes, the existing conversion statute and Article 4 of this act, but in other situations only Article 4 of this act will apply.

SECTION 402. PLAN OF CONVERSION.

(a) A domestic entity may convert to a different type of entity under this [article] by approving a plan of conversion. The plan must be in a record and contain:

- (1) the name and type of the converting entity;
- (2) the name, jurisdiction of organization, and type of the converted entity;
- (3) the manner of converting the interests in the converting entity into interests, securities, obligations, rights to acquire interests or securities, cash, or other property, or any combination of the foregoing;
- (4) the proposed public organic document of the converted entity if it will be a filing entity;
- (5) the full text of the private organic rules of the converted entity that are proposed to be in a record;
- (6) the other terms and conditions of the conversion; and
- (7) any other provision required by the law of this state or the organic rules of the converting entity.

(b) A plan of conversion may contain any other provision not prohibited by law.

SECTION 403. APPROVAL OF CONVERSION.

(a) A plan of conversion is not effective unless it has been approved:

- (1) by a domestic converting entity:
 - (A) in accordance with the requirements, if any, in its organic rules for approval of a conversion;
 - (B) if its organic rules do not provide for approval of a conversion, in accordance with the requirements, if any, in its organic law and organic rules for approval of:
 - (i) in the case of an entity that is not a business corporation, a merger, as if the conversion were a merger; or
 - (ii) in the case of a business corporation, a merger requiring approval by a vote of the interest holders of the business corporation, as if the conversion were that type of merger; or
 - (C) if neither its organic law nor organic rules provide for approval of a conversion or a merger described in subparagraph (B)(ii), by all of the interest holders of the entity entitled to vote on or consent to any matter; and
- (2) in a record, by each interest holder of a domestic converting entity that will have interest holder liability for liabilities that arise after the conversion becomes effective, unless, in the case of an entity that is not a business or nonprofit corporation:
 - (A) the organic rules of the entity provide in a record for the approval of a conversion or a merger in which some or all of its interest holders become subject to interest

holder liability by the vote or consent of fewer than all of the interest holders; and

(B) the interest holder voted for or consented in a record to that provision of the organic rules or became an interest holder after the adoption of that provision.

(b) A conversion of a foreign converting entity is not effective unless it is approved by the foreign entity in accordance with the law of the foreign entity's jurisdiction of organization.

Legislative Note: The analysis of approval requirements in the Legislative Note to Section 303 should also be undertaken with respect to conversions.

SECTION 404. AMENDMENT OR ABANDONMENT OF PLAN OF CONVERSION.

(a) A plan of conversion of a domestic converting entity may be amended:

(1) in the same manner as the plan was approved, if the plan does not provide for the manner in which it may be amended; or

(2) by the governors or interest holders of the entity in the manner provided in the plan, but an interest holder that was entitled to vote on or consent to approval of the conversion is entitled to vote on or consent to any amendment of the plan that will change:

(A) the amount or kind of interests, securities, obligations, rights to acquire interests or securities, cash, or other property, or any combination of the foregoing, to be received by any of the interest holders of the converting entity under the plan;

(B) the public organic document or private organic rules of the converted entity that will be in effect immediately after the conversion becomes effective, except for changes that do not require approval of the interest holders of the converted entity under its organic law or organic rules; or

(C) any other terms or conditions of the plan, if the change would adversely affect the interest holder in any material respect.

(b) After a plan of conversion has been approved by a domestic converting entity and before a statement of conversion becomes effective, the plan may be abandoned:

(1) as provided in the plan; or

(2) unless prohibited by the plan, in the same manner as the plan was approved.

(c) If a plan of conversion is abandoned after a statement of conversion has been filed with the [Secretary of State] and before the filing becomes effective, a statement of abandonment, signed on behalf of the entity, must be filed with the [Secretary of State] before the time the statement of conversion becomes effective. The statement of abandonment takes effect upon filing, and the conversion is abandoned and does not become effective. The statement of abandonment must contain:

(1) the name of the converting entity;

(2) the date on which the statement of conversion was filed; and

(3) a statement that the conversion has been abandoned in accordance with this section.

SECTION 405. STATEMENT OF CONVERSION; EFFECTIVE DATE.

(a) A statement of conversion must be signed on behalf of the converting entity and filed with the [Secretary of State].

(b) A statement of conversion must contain:

(1) the name, jurisdiction of organization, and type of the converting entity;

(2) the name, jurisdiction of organization, and type of the converted entity;

(3) if the statement of conversion is not to be effective upon filing, the later date and time on which it will become effective, which may not be more than 90 days after the date of filing;

(4) if the converting entity is a domestic entity, a statement that the plan of conversion was approved in accordance with this [article] or, if the converting entity is a foreign entity, a statement that the conversion was approved by the foreign converting entity in accordance with the law of its jurisdiction of organization;

(5) if the converted entity is a domestic filing entity, the text of its public organic document, as an attachment;

(6) if the converted entity is a domestic limited liability partnership, the text of its [statement of qualification], as an attachment; and

(7) if the converted entity is a foreign entity that is not a qualified foreign entity, a mailing address to which the [Secretary of State] may send any process served on the [Secretary of State] pursuant to Section 406(e).

(c) In addition to the requirements of subsection (b), a statement of conversion may contain any other provision not prohibited by law.

(d) If the converted entity is a domestic entity, its public organic document, if any, must satisfy the requirements of the law of this state, except that it does not need to be signed and may omit any provision that is not required to be included in a restatement of the public organic document.

(e) A plan of conversion that is signed on behalf of a domestic converting entity and meets all of the requirements of subsection (b) may be filed with the [Secretary of State] instead of a statement of conversion and upon filing has the same effect. If a plan of conversion is filed as provided in this subsection, references in this [act] to a statement of conversion refer to the plan of conversion filed under this subsection.

(f) A statement of conversion becomes effective upon the date and time of filing or the later date and time specified in the statement of conversion.

SECTION 406. EFFECT OF CONVERSION.

(a) When a conversion becomes effective:

(1) the converted entity is:

(A) organized under and subject to the organic law of the converted entity; and

(B) the same entity without interruption as the converting entity;

(2) all property of the converting entity continues to be vested in the converted entity without assignment, reversion, or impairment;

(3) all liabilities of the converting entity continue as liabilities of the converted entity;

(4) except as provided by law other than this [act] or the plan of conversion, all of the rights, privileges, immunities, powers, and purposes of the converting entity remain in the converted entity;

(5) the name of the converted entity may be substituted for the name of the converting entity in any pending action or proceeding;

(6) if a converted entity is a filing entity, its public organic document is effective and is binding on its interest holders;

(7) if the converted entity is a limited liability partnership, its [statement of qualification] is effective simultaneously;

(8) the private organic rules of the converted entity that are to be in a record, if any, approved as part of the plan of conversion are effective and are binding on and enforceable by:

(A) its interest holders; and

(B) in the case of a converted entity that is not a business corporation or

nonprofit corporation, any other person that is a party to an agreement that is part of the entity's private organic rules; and

(9) the interests in the converting entity are converted, and the interest holders of the converting entity are entitled only to the rights provided to them under the plan of conversion and to any appraisal rights they have under Section 109 and the converting entity's organic law.

(b) Except as otherwise provided in the organic law or organic rules of the converting entity, the conversion does not give rise to any rights that an interest holder, governor, or third party would otherwise have upon a dissolution, liquidation, or winding-up of the converting entity.

(c) When a conversion becomes effective, a person that did not have interest holder liability with respect to the converting entity and that becomes subject to interest holder liability with respect to a domestic entity as a result of a conversion has interest holder liability only to the extent provided by the organic law of the entity and only for those liabilities that arise after the conversion becomes effective.

(d) When a conversion becomes effective:

(1) the conversion does not discharge any interest holder liability under the organic law of a domestic converting entity to the extent the interest holder liability arose before the conversion became effective;

(2) a person does not have interest holder liability under the organic law of a domestic converting entity for any liability that arises after the conversion becomes effective;

(3) the organic law of a domestic converting entity continues to apply to the release, collection, or discharge of any interest holder liability preserved under paragraph (1) as if the conversion had not occurred; and

(4) a person has whatever rights of contribution from any other person as are provided by the organic law or organic rules of the domestic converting entity with respect to any interest holder liability preserved under paragraph (1) as if the conversion had not occurred.

(e) When a conversion becomes effective, a foreign entity that is the converted entity:

(1) may be served with process in this state for the collection and enforcement of any of its liabilities; and

(2) appoints the [Secretary of State] as its agent for service of process for collecting or enforcing those liabilities.

(f) If the converting entity is a qualified foreign entity, the certificate of authority or other foreign qualification of the converting entity is canceled when the conversion becomes effective.

(g) A conversion does not require the entity to wind up its affairs and does not constitute or cause the dissolution of the entity.

[ARTICLE] 5 DOMESTICATION

SECTION 501. DOMESTICATION AUTHORIZED.

(a) Except as otherwise provided in this section, by complying with this [article], a domestic entity may become a domestic entity of the same type in a foreign jurisdiction if the domestication is authorized by the law of the foreign jurisdiction.

(b) Except as otherwise provided in this section, by complying with the provisions of this [article] applicable to foreign entities a foreign entity may become a domestic entity of the same type in this state if the domestication is authorized by the law of the foreign entity's jurisdiction of organization.

(c) When the term domestic entity is used in this [article] with reference to a foreign

jurisdiction, it means an entity whose internal affairs are governed by the law of the foreign jurisdiction.

(d) If a protected agreement contains a provision that applies to a merger of a domestic entity but does not refer to a domestication, the provision applies to a domestication of the entity as if the domestication were a merger until the provision is amended after the effective date of this [act].

(e) The following entities may not engage in a domestication under this [article]:

(1) [a business corporation – if the state has adopted Subchapter 9B of the Model Business Corporation Act];

(2) a limited liability company, if the state has enacted Article 10 of the Uniform Limited Liability Company Act (2006)]; or

(3).]

Legislative Note: *A few states have domestication provisions in their organic laws. The only uniform or model organic laws authorizing domestications are Subchapter 9B of the Model Business Corporation Act and Article 10 of the Uniform Limited Liability Company Act (2006). Because a domestication is a transaction involving entities of the same type, as opposed to a transaction involving entities of different types, a state may choose to keep any existing domestication provisions in its organic laws and it may decide to add domestication provisions to its other organic laws. Any domestication provisions in other organic laws should be listed in subsection (e). In that case, Article 5 will apply only to domestications of an entity whose organic law does not authorize a domestication. If a state does not have domestication provisions in its organic laws, subsection (e) should be omitted.*

SECTION 502. PLAN OF DOMESTICATION.

(a) A domestic entity may become a foreign entity in a domestication by approving a plan of domestication. The plan must be in a record and contain:

(1) the name and type of the domesticating entity;

(2) the name and jurisdiction of organization of the domesticated entity;

(3) the manner of converting the interests in the domesticating entity into interests, securities, obligations, rights to acquire interests or securities, cash, or other property, or any combination of the foregoing;

(4) the proposed public organic document of the domesticated entity if it is a filing entity;

(5) the full text of the private organic rules of the domesticated entity that are proposed to be in a record;

(6) the other terms and conditions of the domestication; and

(7) any other provision required by the law of this state or the organic rules of the domesticating entity.

(b) A plan of domestication may contain any other provision not prohibited by law.

SECTION 503. APPROVAL OF DOMESTICATION.

(a) A plan of domestication is not effective unless it has been approved:

(1) by a domestic domesticating entity:

(A) in accordance with the requirements, if any, in its organic rules for approval of a domestication;

(B) if its organic rules do not provide for approval of a domestication, in accordance with the requirements, if any, in its organic law and organic rules for approval of:

(i) in the case of an entity that is not a business corporation, a

merger, as if the domestication were a merger; or

(ii) in the case of a business corporation, a merger requiring approval by a vote of the interest holders of the business corporation, as if the domestication were that type of merger; or

(C) if neither its organic law nor organic rules provide for approval of a domestication or a merger described in subparagraph (B)(ii), by all of the interest holders of the entity entitled to vote on or consent to any matter; and

(2) in a record, by each interest holder of a domestic domesticating entity that will have interest holder liability for liabilities that arise after the domestication becomes effective, unless, in the case of an entity that is not a business corporation or nonprofit corporation:

(A) the organic rules of the entity in a record provide for the approval of a domestication or merger in which some or all of its interest holders become subject to interest holder liability by the vote or consent of fewer than all of the interest holders; and

(B) the interest holder voted for or consented in a record to that provision of the organic rules or became an interest holder after the adoption of that provision.

(b) A domestication of a foreign domesticating entity is not effective unless it is approved in accordance with the law of the foreign entity's jurisdiction of organization.

Legislative Note: The analysis of approval requirements in the Legislative Note to Section 303 should also be undertaken with respect to domestications.

SECTION 504. AMENDMENT OR ABANDONMENT OF PLAN OF DOMESTICATION.

(a) A plan of domestication of a domestic domesticating entity may be amended:

(1) in the same manner as the plan was approved, if the plan does not provide for the manner in which it may be amended; or

(2) by the governors or interest holders of the entity in the manner provided in the plan, but an interest holder that was entitled to vote on or consent to approval of the domestication is entitled to vote on or consent to any amendment of the plan that will change:

(A) the amount or kind of interests, securities, obligations, rights to acquire interests or securities, cash, or other property, or any combination of the foregoing, to be received by any of the interest holders of the domesticating entity under the plan;

(B) the public organic document or private organic rules of the domesticated entity that will be in effect immediately after the domestication becomes effective, except for changes that do not require approval of the interest holders of the domesticated entity under its organic law or organic rules; or

(C) any other terms or conditions of the plan, if the change would adversely affect the interest holder in any material respect.

(b) After a plan of domestication has been approved by a domestic domesticating entity and before a statement of domestication becomes effective, the plan may be abandoned:

(1) as provided in the plan; or

(2) unless prohibited by the plan, in the same manner as the plan was approved.

(c) If a plan of domestication is abandoned after a statement of domestication has been filed with the [Secretary of State] and before the filing becomes effective, a statement of abandonment, signed on behalf of the entity, must be filed with the [Secretary of State] before the time the statement of domestication becomes effective. The statement of abandonment takes effect upon filing, and the domestication is abandoned and does not become effective. The statement of abandonment must contain:

- (1) the name of the domesticating entity;
- (2) the date on which the statement of domestication was filed; and
- (3) a statement that the domestication has been abandoned in accordance with this section.

SECTION 505. STATEMENT OF DOMESTICATION; EFFECTIVE DATE.

(a) A statement of domestication must be signed on behalf of the domesticating entity and filed with the [Secretary of State].

(b) A statement of domestication must contain:

- (1) the name, jurisdiction of organization, and type of the domesticating entity;
- (2) the name and jurisdiction of organization of the domesticated entity;
- (3) if the statement of domestication is not to be effective upon filing, the later date and time on which it will become effective, which may not be more than 90 days after the date of filing;

(4) if the domesticating entity is a domestic entity, a statement that the plan of domestication was approved in accordance with this [article] or, if the domesticating entity is a foreign entity, a statement that the domestication was approved in accordance with the law of its jurisdiction of organization;

(5) if the domesticated entity is a domestic filing entity, its public organic document, as an attachment;

(6) if the domesticated entity is a domestic limited liability partnership, its [statement of qualification], as an attachment; and

(7) if the domesticated entity is a foreign entity that is not a qualified foreign entity, a mailing address to which the [Secretary of State] may send any process served on the [Secretary of State] pursuant to Section 506(e).

(c) In addition to the requirements of subsection (b), a statement of domestication may contain any other provision not prohibited by law.

(d) If the domesticated entity is a domestic entity, its public organic document, if any, must satisfy the requirements of the law of this state, except that it does not need to be signed and may omit any provision that is not required to be included in a restatement of the public organic document.

(e) A plan of domestication that is signed on behalf of a domesticating domestic entity and meets all of the requirements of subsection (b) may be filed with the [Secretary of State] instead of a statement of domestication and upon filing has the same effect. If a plan of domestication is filed as provided in this subsection, references in this [act] to a statement of domestication refer to the plan of domestication filed under this subsection.

(f) A statement of domestication becomes effective upon the date and time of filing or the later date and time specified in the statement of domestication.

SECTION 506. EFFECT OF DOMESTICATION.

(a) When a domestication becomes effective:

- (1) the domesticated entity is:
 - (A) organized under and subject to the organic law of the domesticated entity; and
 - (B) the same entity without interruption as the domesticating entity;
- (2) all property of the domesticating entity continues to be vested in the domesticated entity without assignment, reversion, or impairment;
- (3) all liabilities of the domesticating entity continue as liabilities of the domesticated entity;

(4) except as provided by law other than this [act] or the plan of domestication, all of the rights, privileges, immunities, powers, and purposes of the domesticating entity remain in the domesticated entity;

(5) the name of the domesticated entity may be substituted for the name of the domesticating entity in any pending action or proceeding;

(6) if the domesticated entity is a filing entity, its public organic document is effective and is binding on its interest holders;

(7) if the domesticated entity is a limited liability partnership, its [statement of qualification] is effective simultaneously;

(8) the private organic rules of the domesticated entity that are to be in a record, if any, approved as part of the plan of domestication are effective and are binding on and enforceable by:

(A) its interest holders; and

(B) in the case of a domesticated entity that is not a business corporation or nonprofit corporation, any other person that is a party to an agreement that is part of the domesticated entity's private organic rules; and

(9) the interests in the domesticating entity are converted to the extent and as approved in connection with the domestication, and the interest holders of the domesticating entity are entitled only to the rights provided to them under the plan of domestication and to any appraisal rights they have under Section 109 and the domesticating entity's organic law.

(b) Except as otherwise provided in the organic law or organic rules of the domesticating entity, the domestication does not give rise to any rights that an interest holder, governor, or third party would otherwise have upon a dissolution, liquidation, or winding-up of the domesticating entity.

(c) When a domestication becomes effective, a person that did not have interest holder liability with respect to the domesticating entity and that becomes subject to interest holder liability with respect to a domestic entity as a result of the domestication has interest holder liability only to the extent provided by the organic law of the entity and only for those liabilities that arise after the domestication becomes effective.

(d) When a domestication becomes effective:

(1) the domestication does not discharge any interest holder liability under the organic law of a domesticating domestic entity to the extent the interest holder liability arose before the domestication became effective;

(2) a person does not have interest holder liability under the organic law of a domestic domesticating entity for any liability that arises after the domestication becomes effective;

(3) the organic law of a domestic domesticating entity continues to apply to the release, collection, or discharge of any interest holder liability preserved under paragraph (1) as if the domestication had not occurred; and

(4) a person has whatever rights of contribution from any other person as are provided by the organic law or organic rules of a domestic domesticating entity with respect to any interest holder liability preserved under paragraph (1) as if the domestication had not occurred.

(e) When a domestication becomes effective, a foreign entity that is the domesticated entity:

(1) may be served with process in this state for the collection and enforcement of any of its liabilities; and

(2) appoints the [Secretary of State] as its agent for service of process for collecting or enforcing those liabilities.

(f) If the domesticating entity is a qualified foreign entity, the certificate of authority or other foreign qualification of the domesticating entity is canceled when the domestication becomes effective.

(g) A domestication does not require the entity to wind up its affairs and does not constitute or cause the dissolution of the entity.

[ARTICLE] 6 MISCELLANEOUS PROVISIONS

SECTION 601. CONSISTENCY OF APPLICATION. In applying and construing this [act], consideration must be given to the need to promote consistency of the law with respect to its subject matter among states that enact it.

SECTION 602. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This [act] modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act,15 U.S.C. § 7001, et seq., but does not modify, limit, or supersede Section 101(c) of that act,15 U.S.C. § 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act,15 U.S.C. § 7003(b).

SECTION 603. CONFORMING AMENDMENTS AND REPEALS. [See Appendix 2.]

SECTION 604. SAVINGS CLAUSE. This [act] does not affect an action or proceeding commenced or right accrued before the effective date of this [act].

SECTION 605. EFFECTIVE DATE. This [act] takes effect [January 1, 20__.]

Legislative Drafting Note: For conforming amendments to existing uniform business entity acts, please see the official final act with comments (Copyright © 2004, 2005, 2007 Jointly By the NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS and the AMERICAN BAR ASSOCIATION) at:

http://www.law.upenn.edu/bll/archives/ulc/ueta/2007_final.pdf