

490.1102 Merger.

1. By complying with [this subchapter](#), all of the following apply:

a. One or more domestic business corporations may merge with one or more domestic or foreign business corporations or eligible entities pursuant to a plan of merger, resulting in a survivor.

b. Two or more foreign business corporations or domestic or foreign eligible entities may merge, resulting in a survivor that is a domestic business corporation created in the merger.

2. By complying with the provisions of [this subchapter](#) applicable to foreign entities, a foreign business corporation or a foreign eligible entity may be a party to a merger with a domestic business corporation, or may be created as the survivor in a merger in which a domestic business corporation is a party, but only if the merger is permitted by the organic law of the foreign business corporation or eligible entity.

3. If the organic law or organic rules of a domestic eligible entity do not provide procedures for the approval of a merger, a plan of merger may nonetheless be adopted and approved by the unanimous consent of all of the interest holders of such eligible entity, and the merger may thereafter be effected as provided in the other provisions of [this subchapter](#); and for the purposes of applying [this subchapter](#) in such a case all of the following shall apply:

a. The eligible entity, its members or interest holders, eligible interests and articles of incorporation or other organic rules taken together shall be deemed to be a domestic business corporation, shareholders, shares and articles of incorporation, respectively and vice versa as the context may require.

b. If the business and affairs of the eligible entity are managed by a person or persons that are not identical to the members or interest holders, that group shall be deemed to be the board of directors.

4. The plan of merger must include all of the following:

a. As to each party to the merger, its name, jurisdiction of formation, and type of entity.

b. The survivor's name, jurisdiction of formation, and type of entity, and, if the survivor is to be created in the merger, a statement to that effect.

c. The terms and conditions of the merger.

d. The manner and basis of converting the shares of each merging domestic or foreign business corporation and eligible interests of each merging domestic or foreign eligible entity into shares or other securities, eligible interests, obligations, rights to acquire shares, other securities or eligible interests, cash, other property, or any combination of the foregoing.

e. The articles of incorporation of any domestic or foreign business or nonprofit corporation, or the public organic record of any domestic or foreign unincorporated entity, to be created by the merger, or if a new domestic or foreign business or nonprofit corporation or unincorporated entity is not to be created by the merger, any amendments to the survivor's articles of incorporation or other public organic record.

f. Any other provisions required by the laws under which any party to the merger is organized or by which it is governed, or by the articles of incorporation or organic rules of any such party.

5. In addition to the requirements of [subsection 4](#), a plan of merger may contain any other provision not prohibited by law.

6. Terms of a plan of merger may be made dependent on facts objectively ascertainable outside the plan in accordance with [section 490.120](#), [subsection 11](#).

7. A plan of merger may be amended only with the consent of each party to the merger, except as provided in the plan. A domestic party to a merger may approve an amendment to a plan in any of the following manners:

a. In the same manner as the plan was approved, if the plan does not provide for the manner in which it may be amended.

b. In the manner provided in the plan, except that shareholders, members, or interest holders that were entitled to vote on or consent to approval of the plan are entitled to vote on or consent to any amendment of the plan that will change any of the following:

(1) The amount or kind of shares or other securities, eligible interests, obligations, rights

to acquire shares, other securities or eligible interests, cash, or other property to be received under the plan by the shareholders, members, or interest holders of any party to the merger.

(2) The articles of incorporation of any domestic or foreign business or nonprofit corporation, or the organic rules of any unincorporated entity, that will be the survivor of the merger, except for changes permitted by [section 490.1005](#) or by comparable provisions of the organic law of any such foreign corporation or domestic or foreign nonprofit corporation or unincorporated entity.

(3) Any of the other terms or conditions of the plan if the change would adversely affect such shareholders, members, or interest holders in any material respect.

[89 Acts, ch 288, §122](#); [97 Acts, ch 117, §4](#); [2002 Acts, ch 1154, §66, 125](#); [2007 Acts, ch 140, §9](#); [2021 Acts, ch 165, §149, 230](#)

Referred to in [§490.140](#), [490.1106](#), [499.69A](#), [508B.2](#), [515G.2](#)
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Section stricken and rewritten