

IC 23-18-7

Chapter 7. Merger

IC 23-18-7-1

Planned merger; exchange or conversion of interests

Sec. 1. (a) Unless otherwise provided in writing by the operating agreement, a limited liability company may merge with or into another limited liability company according to a plan of merger.

(b) An interest in a limited liability company that is a party to the merger may be exchanged for or converted into an interest, obligation, or other securities of the surviving limited liability company or into cash or other property.

As added by P.L.8-1993, SEC.301.

IC 23-18-7-2

Written plan of merger; contents

Sec. 2. (a) Each constituent limited liability company shall enter into a written plan of merger that is approved under section 3 of this chapter.

(b) The plan of merger must include the following:

(1) The name of each limited liability company planning to merge and the name of the surviving limited liability company into which each other limited liability company plans to merge.

(2) The terms and conditions of the merger.

(3) The manner and basis of converting the interests of each limited liability company, in whole or in part, into interests, obligations, or other securities of the surviving limited liability company or cash or other property.

(c) The plan of merger may include the following:

(1) Amendments to the articles of organization of the surviving limited liability company.

(2) Other provisions relating to the merger.

As added by P.L.8-1993, SEC.301.

IC 23-18-7-3

Approval of plan of merger; abandonment

Sec. 3. (a) Unless otherwise provided in writing in the operating agreement, a limited liability company that is a party to a proposed merger must approve the plan of merger by the unanimous consent of the members.

(b) A party to the merger may abandon the merger under the plan of merger or this chapter.

As added by P.L.8-1993, SEC.301.

IC 23-18-7-4

Articles of merger; effective date of merger; recordation; dissolution effect

Sec. 4. (a) After a plan of merger is approved, the surviving limited liability company shall deliver to the secretary of state for filing articles of merger setting forth the following:

(1) The name and jurisdiction of organization of each limited liability company that is a party to merger.

(2) A statement that the plan of merger was approved by each limited liability company as required by the laws of the state of its organization.

(3) Any amendments to the articles of organization set forth in the plan of merger.

(b) Unless a delayed effective date is specified, a merger takes effect when the articles of merger are filed.

(c) The surviving limited liability company resulting from a merger may, after the merger has become effective, file for record with the county recorder of each county where the limited liability company has real property at the time of the merger, the title that will be transferred by the merger, a file-stamped copy of the articles of merger. If the plan of merger sets forth amendments to the articles of organization that change the name of the surviving limited liability company, a file-stamped copy of the articles of merger may be filed for record with the county recorder of each county where the surviving limited liability company has real property at the time the merger becomes effective. A failure to record a copy of the articles of merger under this subsection does not affect the validity of the merger or the change in the limited liability company's name.

(d) Articles of merger are articles of dissolution for each domestic limited liability company that is not the surviving limited liability company in the merger.

As added by P.L.8-1993, SEC.301. Amended by P.L.40-2013, SEC.11.

IC 23-18-7-5

Effect of merger

Sec. 5. When a merger takes effect:

(1) every other party to the merger merges into the surviving limited liability company and the separate existence of every limited liability company except the surviving limited liability company ceases;

(2) the title to all real estate and other property owned by each party to the merger is vested in the surviving limited liability company without reversion or impairment;

(3) the surviving limited liability company has all liabilities of each party to the merger;

(4) a proceeding pending against a party to the merger may be continued as if the merger did not occur or the surviving limited liability company may be substituted in the proceeding for each limited liability company whose existence ceased;

(5) the articles of organization of the surviving limited liability company are amended to the extent provided in the plan of merger; and

(6) the interests of each party to the merger that are to be converted into interests, obligations, or other securities of the surviving limited liability company or cash or other property are

converted and the former holders of interests are entitled only to the rights provided in the articles of merger.
As added by P.L.8-1993, SEC.301.

IC 23-18-7-6

Foreign and domestic company merger

Sec. 6. (a) A foreign limited liability company may participate in a merger with a domestic limited liability company if the following conditions are satisfied:

- (1) The merger is permitted by the laws of the jurisdiction under whose laws the foreign limited liability company is organized and the foreign limited liability company complies with the laws in effecting the merger.
- (2) The foreign limited liability company complies with section 4 of this chapter if it is the surviving limited liability company of the merger.
- (3) Each domestic limited liability company complies with the applicable provisions of sections 1 through 3 of this chapter and, if it is the surviving limited liability company of the merger, with section 4 of this chapter.

(b) Upon the merger taking effect, the surviving foreign limited liability company agrees to the following:

- (1) That it may be served with process in Indiana in any proceeding for enforcement of any obligation of any limited liability company to the merger that was organized under Indiana law, and for enforcement of any obligation of the surviving limited liability company arising from the merger.
- (2) That the surviving foreign limited liability company appoints the secretary of state as its agent for service of process in any such proceeding, and the surviving limited liability company shall specify the address to which a copy of the process shall be mailed by the secretary of state.

As added by P.L.8-1993, SEC.301.

IC 23-18-7-7

Abandonment of proposed merger

Sec. 7. (a) Unless the plan of merger precludes the right to abandon the merger, a proposed merger may be abandoned before the effective date of the articles of merger, unless provided otherwise in the operating agreement, by the affirmative vote, approval, or consent of a majority in interest of the members of each limited liability company that is party to the merger.

(b) If the articles of merger have been filed with the secretary of state, notice of the abandonment must be given promptly to the secretary of state.

(c) If the proposed merger is abandoned as provided in this section, no liability arises under the articles of merger.

(d) An abandonment does not prejudice the rights of a person under any other contract made by a limited liability company that is a party to the merger in connection with the proposed merger.

As added by P.L.8-1993, SEC.301.

IC 23-18-7-8

Certificates of merger

Sec. 8. The secretary of state shall prepare certificates of merger that specify the following:

- (1) The name of each party to the articles of merger.
- (2) The name of the successor and the location of the successor's registered office in Indiana.
- (3) The date the articles of merger are accepted for record by the secretary of state.

As added by P.L.8-1993, SEC.301.

IC 23-18-7-9

Requirements for merger of domestic limited liability company with other business entity; plan of merger

Sec. 9. (a) As used in this section, "other business entity" means a corporation, limited liability company, limited liability partnership, limited partnership, business trust, real estate investment trust, or any other entity that is formed under the requirements of applicable law and is not otherwise subject to section 1 of this chapter.

(b) As used in this section, "surviving entity" means the corporation, limited liability company, limited liability partnership, limited partnership, business trust, real estate investment trust, or any other entity that is in existence immediately after consummation of a merger under this section.

(c) One (1) or more domestic limited liability companies may merge with or into one (1) or more other business entities formed, organized, or incorporated under the laws of Indiana or any other state, the United States, a foreign country, or a foreign jurisdiction if the following requirements are met:

- (1) Each domestic limited liability company that is a party to the merger complies with the applicable provisions of this chapter.
- (2) Each domestic other business entity that is a party to the merger complies with the requirements of applicable law.
- (3) The merger is permitted by the laws of the state, country, or jurisdiction under which each other business entity that is a party to the merger is formed, organized, or incorporated, and each other business entity complies with the laws in effecting the merger.

(4) The merging entities approve a plan of merger that sets forth the following:

(A) The name of each domestic limited liability company and the name and jurisdiction of formation, organization, or incorporation of each other business entity planning to merge, and the name of the surviving or resulting domestic limited liability partnership or other business entity into which each other domestic limited liability partnership or other business entity plans to merge.

(B) The terms and conditions of the merger.

(C) The manner and basis of converting the limited liability company that is a party to the merger and the partnership interests, shares, obligations, or other securities of each other business entity that is a party to the merger into partnership interests, interests, shares, obligations, or other securities of the surviving entity or any other domestic corporation or other business entity or, in whole or in part, into cash or other property, and the manner and basis of converting rights to acquire the shares of each domestic corporation that is a party to the merger and rights to acquire partnership interests, interests, shares, obligations, or other securities of each other business entity that is a party to the merger into rights to acquire partnership interests, interests, shares, obligations, or other securities of the surviving entity or any other domestic corporation or other business entity or, in whole or in part, into cash or other property.

(D) If a partnership is to be the surviving entity, the names and business addresses of the general partners of the surviving entity.

(E) If a limited liability company is to be the surviving entity and management thereof is vested in one (1) or more managers, the names and business addresses of the managers.

(F) All statements required to be set forth in the plan of merger by the laws under which each other business entity that is a party to the merger is formed, organized, or incorporated.

(5) The plan of merger may set forth the following:

(A) If a domestic corporation is to be the surviving entity, any amendments to, or a restatement of, the articles of incorporation of the surviving entity, and the amendments or restatement will be effective at the effective date of the merger.

(B) Any other provisions relating to the merger.

(d) The plan of merger required by subsection (c)(4) must be adopted and approved by each domestic limited liability company that is a party to the merger in the same manner as is provided in this chapter.

(e) Notwithstanding subsection (c)(4), if the surviving entity is a partnership, a shareholder of a domestic corporation that is a party to the merger does not, as a result of the merger, become a general partner of the surviving entity and the merger does not become effective under this chapter, unless:

(1) the shareholder specifically consents in writing to become a general partner of the surviving entity; and

(2) written consent is obtained from each shareholder who, as a result of the merger, would become a general partner of the surviving entity;

A shareholder providing written consent under this subsection is considered to have voted in favor of the plan of merger for purposes of this chapter.

(f) This section, to the extent applicable, applies to the merger of one (1) or more domestic limited liability companies with or into one (1) or more other business entities.

(g) Notwithstanding any other law, a merger consisting solely of the merger of one (1) or more domestic limited liability company with or into one (1) or more foreign corporations must be consummated solely according to the requirements of this section.

As added by P.L.178-2002, SEC.106.

IC 23-18-7-10

Entity conversion

Sec. 10. (a) As used in this section, "other entity" has the meaning set forth in IC 23-1-38.5-1.

(b) A domestic business corporation, domestic other entity, foreign business corporation, or foreign other entity may convert to a domestic limited liability company in accordance with IC 23-1-38.5.

(c) A domestic limited liability company may convert to a domestic business corporation, domestic other entity, foreign business corporation, or foreign other entity in accordance with IC 23-1-38.5.

As added by P.L.130-2006, SEC.31.