

## **IC 23-1-38.5**

### **Chapter 38.5. Domestication and Conversion**

#### **IC 23-1-38.5-1**

##### **Definitions**

Sec. 1. The following definitions apply throughout this chapter:

(1) "Charter" means:

(A) the original articles of incorporation and all amendments required to be filed by a domestic corporation; or

(B) any original public organic documents and all amendments required to be filed by a domestic other entity; with the secretary of state in connection with the formation of the corporation or other entity.

(2) "Converting entity" means a corporation or other entity that adopts a plan of entity conversion.

(3) "Domestic entity" means a corporation or other entity that is incorporated or organized under the laws of Indiana.

(4) "Filing entity" means an entity that is created by filing a public organic document.

(5) "Foreign entity" means a corporation or other entity that is incorporated or organized under a law other than the laws of Indiana.

(6) "Limited liability entity" means a corporation or other entity that provides for limited personal liability of its interest holders.

(7) "Other entity" means a limited liability company, limited liability partnership, limited partnership, general partnership, business trust, real estate investment trust, or any other entity that is formed under the requirements of applicable law and that is not a corporation.

(8) "Surviving entity" means the corporation or other entity that is in existence immediately after consummation of an entity conversion under this chapter.

(9) "Unlimited liability entity" means an entity that does not limit the personal liability of its interest holders.

*As added by P.L.178-2002, SEC.99. Amended by P.L.178-2005, SEC.3; P.L.130-2006, SEC.4.*

#### **IC 23-1-38.5-2**

##### **Limitations on use of chapter**

Sec. 2. (a) A corporation, a nonprofit corporation, or any other entity engaging in a business that is subject to regulation under another statute may be a party to a transaction under this chapter unless the transaction is prohibited or authorized under another statute.

(b) This chapter may not be used to effect a transaction that:

(1) converts an insurance company organized on the mutual principle to a company organized on a stock share basis;

(2) converts a nonprofit corporation to a corporation or other

entity; or

(3) converts a domestic corporation or other entity to a nonprofit corporation.

*As added by P.L.178-2002, SEC.99. Amended by P.L.178-2005, SEC.4; P.L.130-2006, SEC.5.*

### **IC 23-1-38.5-3**

#### **Approval of transactions by department of financial institutions or department of insurance; trust properties**

Sec. 3. (a) If a domestic or foreign business corporation, a nonprofit corporation, or another entity may not be a party to a merger without the approval of the department of financial institutions or the department of insurance, the corporation or other entity may not be a party to a transaction under this chapter without the prior approval of the department of financial institutions or the department of insurance.

(b) Property held in trust or for a charitable purpose under the law of this state by a domestic or foreign other entity shall not, by any transaction under this chapter, be diverted from the objects for which it was donated, granted, or devised.

*As added by P.L.178-2002, SEC.99. Amended by P.L.133-2009, SEC.29.*

### **IC 23-1-38.5-4**

#### **Limitations on change of form**

Sec. 4. (a) A foreign corporation may become a domestic corporation only if the domestication is permitted by the organic law of the foreign corporation. The laws of Indiana govern the effect of domesticating in Indiana under this chapter.

(b) A domestic corporation may become a foreign corporation only if the domestication is permitted by the laws of the foreign jurisdiction. Regardless of whether the laws of the foreign jurisdiction require the adoption of a plan of domestication, the domestication must be approved by the adoption by the corporation of a plan of domestication in the manner provided in this section. The laws of the foreign jurisdiction govern the effect of domesticating in that jurisdiction.

(c) The plan of domestication must include:

(1) a statement of the jurisdiction in which the corporation is to be domesticated;

(2) the terms and conditions of the domestication;

(3) the manner and basis of reclassifying the shares of the corporation following its domestication into:

(A) shares or other securities;

(B) obligations;

(C) rights to acquire shares or other securities;

(D) cash;

(E) other property; or

(F) any combination of the types of assets referred to in

clauses (A) through (E); and  
(4) any desired amendments to the articles of incorporation of the corporation following its domestication.  
*As added by P.L.178-2002, SEC.99. Amended by P.L.130-2006, SEC.6.*

#### **IC 23-1-38.5-5**

#### **Domestication of domestic corporation in foreign jurisdiction; requirements**

Sec. 5. In the case of a domestication of a domestic corporation in a foreign jurisdiction, the following apply:

- (1) The plan of domestication must be adopted by the board of directors.
- (2) After adopting the plan of domestication, the board of directors must submit the plan to the shareholders for their approval. The board of directors must also transmit to the shareholders a recommendation that the shareholders approve the plan, unless the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make that recommendation, in which case the board of directors must communicate to the shareholders the basis for that determination.
- (3) The board of directors may condition its submission of the plan of domestication to the shareholders on any basis.
- (4) If the approval of the shareholders is to be given at a meeting, the corporation must notify each shareholder, whether or not the shareholder is entitled to vote, of the meeting of shareholders at which the plan of domestication is to be submitted for approval. The notice must state that the purpose, or one (1) of the purposes, of the meeting is to consider the plan. The notice must contain or be accompanied by a copy or summary of the plan. The notice must include or be accompanied by a copy of the articles of incorporation as they will be in effect immediately after the domestication.
- (5) Unless a greater requirement is established by the articles of incorporation or by the board of directors acting under subdivision (3), the plan of domestication may be submitted for the approval of the shareholders:
  - (A) at a meeting at which a quorum consisting of at least a majority of the votes entitled to be cast on the plan exists; and
  - (B) if any class or series of shares is entitled to vote as a separate group on the plan, at a meeting at which a quorum of the voting group consisting of at least a majority of the votes entitled to be cast on the domestication by that voting group is present.
- (6) Separate voting on the plan of domestication by voting groups is required by each class or series of shares that:
  - (A) is to be reclassified under the plan of domestication into

other securities, obligations, rights to acquire shares or other securities, cash, other property, or any combination of the types of assets referred to in this clause;

(B) would be entitled to vote as a separate group on a provision of the plan that, if contained in a proposed amendment to articles of incorporation, would require action by separate voting groups under IC 23-1-30-7; or

(C) is entitled under the articles of incorporation to vote as a voting group to approve an amendment of the articles.

*As added by P.L.178-2002, SEC.99. Amended by P.L.130-2006, SEC.7.*

#### **IC 23-1-38.5-6**

##### **Execution and requirements for articles of domestication of foreign corporation; delivery to secretary of state; cancellation of certificate of authority**

Sec. 6. (a) After the domestication of a foreign corporation has been authorized as required by the laws of the foreign jurisdiction, the articles of domestication must be executed by an officer or other duly authorized representative. The articles must set forth:

(1) the name of the corporation immediately before the filing of the articles of domestication and, if that name is unavailable for use in Indiana or the corporation desires to change its name in connection with the domestication, a name that satisfies the requirements of IC 23-1-23-1;

(2) the jurisdiction of incorporation of the corporation immediately before the filing of the articles of domestication in that jurisdiction; and

(3) a statement that the domestication of the corporation in Indiana was duly authorized as required by the laws of the jurisdiction in which the corporation was incorporated immediately before its domestication under this chapter.

(b) The articles of domestication must either contain all of the provisions that IC 23-1-21-2(a) requires to be set forth in articles of incorporation and any other desired provisions that IC 23-1-21-2(b) permits to be included in the articles of incorporation or must have attached articles of incorporation. In either case, provisions that would not be required to be included in restated articles of incorporation may be omitted.

(c) The articles of domestication must be delivered to the secretary of state for filing and are effective at the time provided in IC 23-1-18-4.

(d) If the foreign corporation is authorized to transact business in this state under IC 23-1-49, its certificate of authority is canceled automatically on the effective date of its domestication.

*As added by P.L.178-2002, SEC.99. Amended by P.L.130-2006, SEC.8.*

#### **IC 23-1-38.5-7**

**Execution and requirements for articles of charter surrender; delivery to secretary of state**

Sec. 7. (a) Whenever a domestic corporation has adopted and approved, in the manner required by this chapter, a plan of domestication providing for the corporation to be domesticated in a foreign jurisdiction, an officer or another authorized representative of the corporation must execute articles of charter surrender on behalf of the corporation. The articles of charter surrender must set forth:

- (1) the name of the corporation;
- (2) a statement that the articles of charter surrender are being filed in connection with the domestication of the corporation in a foreign jurisdiction;
- (3) a statement that the domestication was approved by the shareholders and, if voting by any separate voting group was required, by each separate voting group, in the manner required by this chapter and the articles of incorporation; and
- (4) the corporation's new jurisdiction of incorporation.

(b) The articles of charter surrender must be delivered by the corporation to the secretary of state for filing. The articles of charter surrender are effective at the time provided in IC 23-1-18-4.

*As added by P.L.178-2002, SEC.99. Amended by P.L.130-2006, SEC.9.*

**IC 23-1-38.5-8**

**Effects of domestication of foreign corporation; owner liability of shareholder in foreign corporation**

Sec. 8. (a) When a domestication of a foreign corporation in Indiana becomes effective:

- (1) the title to all real and personal property, both tangible and intangible, held by the corporation remains in the corporation without reversion or impairment;
- (2) the liabilities of the corporation remain the liabilities of the corporation;
- (3) an action or proceeding pending against the corporation continues against the corporation as if the domestication had not occurred;
- (4) the articles of domestication, or the articles of incorporation attached to the articles of domestication, constitute the articles of incorporation of the corporation;
- (5) the shares of the corporation are reclassified into shares, other securities, obligations, rights to acquire shares or other securities, or cash or other property in accordance with the terms of the domestication as approved under the laws of the foreign jurisdiction, and the shareholders are entitled only to the rights provided by those terms and under those laws; and
- (6) the corporation is considered to:
  - (A) be incorporated under the laws of Indiana for all purposes;
  - (B) be the same corporation without interruption as the

corporation that existed under the laws of the foreign jurisdiction; and

(C) have been incorporated on the date it was originally incorporated in the foreign jurisdiction.

(b) When a domestication of a domestic corporation in a foreign jurisdiction becomes effective, the foreign corporation is considered to:

(1) appoint the secretary of state as its agent for service of process in a proceeding to enforce the rights of shareholders who exercise appraisal rights in connection with the domestication; and

(2) agree that it will promptly pay the amount, if any, to which shareholders are entitled under IC 23-1-40.

(c) The owner liability of a shareholder in a foreign corporation that is domesticated in Indiana is as follows:

(1) The domestication does not discharge owner liability under the laws of the foreign jurisdiction to the extent owner liability arose before the effective time of the articles of domestication.

(2) The shareholder does not have owner liability under the laws of the foreign jurisdiction for a debt, obligation, or liability of the corporation that arises after the effective time of the articles of domestication.

(3) The provisions of the laws of the foreign jurisdiction continue to apply to the collection or discharge of any owner liability preserved by subdivision (1), as if the domestication had not occurred and the corporation were still incorporated under the laws of the foreign jurisdiction.

(4) The shareholder has whatever rights of contribution from other shareholders are provided by the laws of the foreign jurisdiction with respect to any owner liability preserved by subdivision (1), as if the domestication had not occurred and the corporation were still incorporated under the laws of that jurisdiction.

*As added by P.L.178-2002, SEC.99. Amended by P.L.130-2006, SEC.10.*

### **IC 23-1-38.5-9**

#### **Abandonment of plan of domestication; delivery of statement to secretary of state**

Sec. 9. (a) Unless otherwise provided in a plan of domestication of a domestic corporation, after the plan has been adopted and approved as required by this chapter, and at any time before the domestication has become effective, the plan of domestication may be abandoned by the board of directors without action by the shareholders.

(b) If a domestication is abandoned under subsection (a) after articles of charter surrender have been filed with the secretary of state but before the domestication has become effective, a statement that the domestication has been abandoned under this section, executed

by an officer or other authorized representative, must be delivered to the secretary of state for filing before the effective date of the domestication. The statement is effective upon filing and the domestication is abandoned and may not become effective.

(c) If the domestication of a foreign corporation in Indiana is abandoned under the laws of the foreign jurisdiction after articles of domestication have been filed with the secretary of state, a statement that the domestication has been abandoned, executed by an officer or other authorized representative, must be delivered to the secretary of state for filing. The statement is effective upon filing and the domestication is abandoned and may not become effective.

*As added by P.L.178-2002, SEC.99. Amended by P.L.130-2006, SEC.11.*

### **IC 23-1-38.5-10**

#### **Conversion of domestic and foreign corporations and other entities**

Sec. 10. (a) A domestic corporation may become a domestic other entity under a plan of entity conversion. If the organic law of the surviving entity does not provide for a conversion, section 14 of this chapter governs the effect of converting to that form of entity.

(b) A domestic corporation may become a foreign other entity under a plan of entity conversion only if the entity conversion is permitted by the laws of the foreign jurisdiction. The laws of the foreign jurisdiction govern the effect of converting to an other entity in that jurisdiction.

(c) A domestic other entity may become a domestic corporation under a plan of entity conversion. Section 15 of this chapter governs the effect of converting to a domestic corporation.

(d) A domestic other entity may become a different domestic other entity under a plan of entity conversion. If the organic law of the surviving entity does not provide for a conversion, section 15 of this chapter governs the effect of converting to the different domestic other entity.

(e) A domestic other entity may become a foreign other entity under a plan of entity conversion only if the entity conversion is permitted by the laws of the foreign jurisdiction. The laws of the foreign jurisdiction govern the effect of converting to an other entity in that jurisdiction.

(f) A domestic other entity may become a foreign corporation under a plan of entity conversion only if the entity conversion is permitted by the laws of the foreign jurisdiction. The laws of the foreign jurisdiction govern the effect of converting to a corporation in that jurisdiction.

(g) A foreign other entity may become a domestic corporation or other entity if the organic law of the foreign other entity authorizes the entity to become an entity in another jurisdiction. The laws of Indiana govern the effect of converting to a domestic corporation or other entity under this chapter.

(h) A foreign corporation may become a domestic other entity if

the organic law of the foreign corporation authorizes the corporation to become an entity in another jurisdiction. The laws of Indiana govern the effect of converting to a domestic other entity under this chapter.

(i) If the organic law of a domestic other entity does not provide procedures for the approval of an entity conversion, the conversion must be adopted and approved, and the entity conversion effectuated, in the same manner as a merger of the other entity, and its interest holders are entitled to appraisal rights if appraisal rights are available upon any type of merger under the organic law of the other entity. If the organic law of a domestic other entity does not provide procedures for the approval of either an entity conversion or a merger, a plan of entity conversion must be adopted and approved and the entity conversion effectuated in accordance with the procedures set forth in this chapter and in IC 23-1-40. For purposes of applying this chapter and IC 23-1-40:

(1) the other entity and its interest holders, interests, and organic documents taken together are considered a domestic corporation and the shareholders, shares, and articles of incorporation of a domestic corporation, as the context may require; and

(2) if the business and affairs of the other entity are managed by a group of persons that is not identical to the interest holders, that group is considered the board of directors.

(j) If as a result of conversion one (1) or more shareholders or interest holders of a surviving entity become subject to owner liability for the debts, obligations, or liabilities of the surviving entity or any other person or entity, approval of the plan of conversion requires each shareholder or interest holder of the converting entity to execute a separate written consent to become subject to owner liability.

*As added by P.L.178-2002, SEC.99. Amended by P.L.130-2006, SEC.12.*

### **IC 23-1-38.5-11**

#### **Requirements for plan of entity conversion**

Sec. 11. (a) A plan of entity conversion must include:

(1) a statement of the type of other entity that the surviving entity will be and, if it will be a foreign other entity, its jurisdiction of organization;

(2) the terms and conditions of the conversion;

(3) the manner and basis of converting the shares or interests of the converting entity following its conversion into shares, interests, or other securities, obligations, rights to acquire interests or other securities of the surviving entity or cash, other property, or any combination of the types of assets referred to in this subdivision; and

(4) the full text, as in effect immediately after consummation of the conversion, of the organic documents of the surviving entity.

(b) The plan of entity conversion may also include a provision that



the plan may be amended before filing articles of entity conversion, except that subsequent to approval of the plan by the shareholders or interest holders the plan may not be amended to change:

- (1) the amount or kind of shares or other securities, interests, obligations, rights to acquire shares, other securities or interests, cash, or other property to be received under the plan by the shareholders or interest holders; or
- (2) the organic documents that will be in effect immediately following the conversion, except for changes permitted by a provision of the organic law of the surviving entity comparable to IC 23-1-38-2.

*As added by P.L.178-2002, SEC.99. Amended by P.L.130-2006, SEC.13; P.L.133-2009, SEC.30.*

### **IC 23-1-38.5-12**

#### **Adoption and approval of plan of entity conversion; written consent**

Sec. 12. In the case of an entity conversion of a domestic corporation to a domestic other entity or foreign other entity, the following apply:

- (1) The plan of entity conversion must be adopted by the board of directors.
- (2) After adopting the plan of entity conversion, the board of directors must submit the plan to the shareholders for their approval. The board of directors must also transmit to the shareholders a recommendation that the shareholders approve the plan, unless the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make that recommendation, in which case the board of directors must communicate to the shareholders the basis for that determination.
- (3) The board of directors may condition its submission of the plan of entity conversion to the shareholders on any basis.
- (4) If the approval of the shareholders is to be given at a meeting, the corporation must notify each shareholder, whether or not entitled to vote, of the meeting of shareholders at which the plan of entity conversion is to be submitted for approval. The notice must state that the purpose, or one (1) of the purposes, of the meeting is to consider the plan. The notice must contain or be accompanied by a copy or summary of the plan. The notice must include or be accompanied by a copy of the organic documents as they will be in effect immediately after the entity conversion.
- (5) Unless a greater requirement is established by the articles of incorporation or by the board of directors acting under subdivision (3), approval of the plan of entity conversion requires the approval of the shareholders at a meeting at which a quorum consisting of at least a majority of the votes entitled to be cast on the plan exists.

(6) In addition to the vote required under subdivision (5), separate voting on the plan of equity conversion by voting groups is also required by each class or series of shares. Unless the articles of incorporation, or the board of directors acting under subdivision (3), requires a greater vote or a greater number of votes to be present, if the corporation has more than one (1) class or series of shares outstanding, approval of the plan of entity conversion requires the approval of each separate voting group at a meeting at which a quorum of the voting group consisting of at least a majority of the votes entitled to be cast on the conversion by that voting group is present.

(7) If as a result of the conversion one (1) or more shareholders of the corporation would become subject to owner liability for the debts, obligations, or liabilities of any other person or entity, approval of the plan of conversion requires the execution, by each shareholder, of a separate written consent to become subject to the owner liability.

*As added by P.L.178-2002, SEC.99. Amended by P.L.130-2006, SEC.14.*

#### **IC 23-1-38.5-13**

##### **Execution of articles of entity conversion; requirements for articles; delivery to secretary of state; cancellation of certificate of authority**

Sec. 13. (a) After conversion of a domestic corporation to a domestic other entity has been adopted and approved as required by this chapter, articles of entity conversion must be executed on behalf of the corporation by any officer or other duly authorized representative. The articles must:

(1) set forth the name of the corporation immediately before the filing of the articles of entity conversion and the name to which the name of the corporation is to be changed, which must satisfy the organic law of the surviving entity;

(2) state the type of other entity that the surviving entity will be;

(3) set forth a statement that the plan of entity conversion was duly approved by the shareholders in the manner required by this chapter and the articles of incorporation; and

(4) if the surviving entity is a filing entity, either contain all of the provisions required to be set forth in its public organic document and any other desired provisions that are permitted, or have attached a public organic document, except that, in either case, provisions that would not be required to be included in a restated public organic document may be omitted.

(b) After the conversion of a domestic other entity to a domestic corporation has been adopted and approved as required by the organic law of the other entity, an officer or another duly authorized representative of the other entity must execute articles of entity conversion on behalf of the other entity. The articles must:

(1) set forth the name of the other entity immediately before the filing of the articles of entity conversion and the name to which

the name of the other entity is to be changed, which must satisfy the requirements of IC 23-1-23-1;

(2) set forth a statement that the plan of entity conversion was duly approved in accordance with the organic law of the converting entity; and

(3) either contain all of the provisions that IC 23-1-21-2(a) requires to be set forth in articles of incorporation and any other desired provisions that IC 23-1-21-2(b) permits to be included in articles of incorporation, or have attached articles of incorporation, except that, in either case provisions that would not be required to be included in restated articles of incorporation of a domestic corporation may be omitted.

(c) After the conversion of a domestic other entity to a different domestic other entity has been adopted and approved as required by the organic law of the different other entity and, if applicable, section 10(j) of this chapter, an officer or another authorized representative of the other entity must execute the articles of entity conversion on behalf of the other entity. The articles must:

(1) set forth the name of the other entity immediately before the filing of the articles of entity conversion and the name to which the name of the converting entity is to be changed, which must satisfy the requirements of the organic laws of the surviving entity;

(2) set forth a statement that the plan of entity conversion was approved in accordance with the organic law of the converting entity; and

(3) if the surviving entity is a filing entity, either contain all the provisions required to be set forth in its public organic document and any other desired provisions that are permitted or have attached a public organic document, except that, in either case, provisions that would not be required to be included in a restated public organic document may be omitted.

(d) After the conversion of a foreign other entity to a domestic corporation has been authorized as required by the laws of the foreign jurisdiction, articles of entity conversion must be executed on behalf of the foreign other entity by any officer or authorized representative. The articles must:

(1) set forth the name of the converting entity immediately before the filing of the articles of entity conversion and the name to which the name of the other entity is to be changed, which must satisfy the requirements of IC 23-1-23-1;

(2) set forth the jurisdiction under the laws of which the converting entity was organized immediately before the filing of the articles of entity conversion and the date on which the other entity was organized in that jurisdiction;

(3) set forth a statement that the conversion of the converting entity was duly approved in the manner required by its organic law; and

(4) either contain all of the provisions that IC 23-1-21-2(a)

requires to be set forth in articles of incorporation and any other desired provisions that IC 23-1-21-2(b) permits to be included in articles of incorporation, or have attached articles of incorporation, except that, in either case, provisions that would not be required to be included in restated articles of incorporation of a domestic business corporation may be omitted.

(e) After the conversion of a foreign other entity or foreign corporation to a domestic other entity has been authorized as required by the laws of the foreign jurisdiction, articles of entity conversion must be executed on behalf of the foreign converting entity by any officer or authorized representative. The articles must:

(1) set forth the name of the converting entity immediately before the filing of the articles of entity conversion and the name to which the name of the converting entity is to be changed, which must satisfy the requirements of the organic laws of the surviving entity;

(2) set forth the jurisdiction under the laws of which the converting entity was organized immediately before the filing of the articles of entity conversion and the date on which the converting entity was organized in that jurisdiction;

(3) set forth a statement that the conversion of the converting entity was approved in the manner required by its organic law; and

(4) if the surviving entity is a filing entity, either contain all the provisions required to be set forth in its public organic document and any other desired provisions that are permitted or have attached a public organic document, except that, in either case, provisions that would not be required to be included in a restated public organic document may be omitted.

(f) The articles of entity conversion must be delivered to the secretary of state for filing and take effect at the effective time provided in IC 23-1-18-4.

(g) If the converting entity is a foreign corporation or a foreign other entity that is authorized to transact business in Indiana under a provision of law similar to IC 23-1-49, its certificate of authority or other type of foreign qualification is canceled automatically on the effective date of its conversion.

*As added by P.L.178-2002, SEC.99. Amended by P.L.213-2003, SEC.2; P.L.178-2005, SEC.5; P.L.130-2006, SEC.15.*

#### **IC 23-1-38.5-14**

##### **Execution of articles of charter surrender; delivery to secretary of state**

Sec. 14. (a) Whenever a domestic filing entity has adopted and approved, in the manner required by this chapter, a plan of entity conversion providing for the converting entity to be converted to a foreign entity, articles of charter surrender must be executed on behalf of the converting entity by any officer or other duly authorized

representative. The articles of charter surrender must set forth:

- (1) the name of the converting entity;
- (2) a statement that the articles of charter surrender are being filed in connection with the conversion of the domestic entity to a foreign entity;
- (3) a statement that the conversion was duly approved by the shareholders or interest holders in the manner required by this chapter and the articles of incorporation if the converting entity is a domestic corporation or the organic laws of the converting entity and, if applicable, section 10(j) of this chapter if the converting entity is a domestic other entity;
- (4) the jurisdiction under the laws of which the surviving entity will be organized; and
- (5) if the surviving entity will not be a filing entity, the address of its executive office immediately after the conversion.

(b) The articles of charter surrender must be delivered by the converting entity to the secretary of state for filing. The articles of charter surrender take effect on the effective time provided in IC 23-1-18-4.

*As added by P.L.178-2002, SEC.99. Amended by P.L.130-2006, SEC.16.*

#### **IC 23-1-38.5-15**

##### **Effects of conversions; shareholder liability; owner liability**

Sec. 15. (a) When a conversion under this section in which the surviving entity is a domestic business corporation or domestic other entity becomes effective:

- (1) the title to all real and personal property, both tangible and intangible, of the converting entity remains in the surviving entity without reversion or impairment;
- (2) the liabilities of the converting entity remain the liabilities of the surviving entity;
- (3) an action or proceeding pending against the converting entity continues against the surviving entity as if the conversion had not occurred;
- (4) in the case of a surviving entity that is a filing entity, the articles of conversion and the articles of incorporation or public organic document attached to the articles of conversion constitute the articles of incorporation or public organic document of the surviving entity;
- (5) in the case of a surviving entity that is not a filing entity, the private organic document provided for in the plan of conversion constitutes the private organic document of the surviving entity;
- (6) the shares, interests, other securities, obligations, or rights to acquire shares, interests, or other securities of the converting entity are reclassified into shares, interests, other securities, obligations, rights to acquire shares, interests, or other securities of the surviving entity, or into cash or other property in accordance with the plan of conversion, and the shareholders or

interest holders of the converting entity are entitled only to the rights provided in the plan of conversion and to any rights they may have under the organic law of the converting entity;

(7) the surviving entity is considered for all purposes of the laws of Indiana to:

(A) be a domestic corporation or domestic other entity;

(B) be the same corporation or other entity without interruption as the converting entity that existed before the conversion; and

(C) have been incorporated or otherwise organized on the date that the converting entity was originally incorporated or organized; and

(8) unless otherwise agreed in writing, for all purposes of the laws of Indiana, the converting entity is not required to wind up its affairs or pay its liabilities and distribute its assets, and the conversion does not constitute a dissolution of the converting entity.

(b) If the shareholders or interest holders of a converting entity are entitled to receive dissenters' rights upon conversion, the surviving entity is considered to:

(1) appoint the secretary of state as its agent for service of process in a proceeding to enforce the rights of shareholders or interest holders who exercise dissenters' rights in connection with the conversion; and

(2) agree that it will promptly pay the amount, if any, to which the shareholders or interest holders referred to in subdivision (1) are entitled under the organic law of the converting entity.

(c) A shareholder or interest holder in a limited liability entity that is a converting entity who becomes subject to owner liability for some or all of the debts, obligations, or liabilities of the surviving entity is personally liable only for those debts, obligations, or liabilities of the surviving entity that arise after the effective time of the articles of entity conversion.

(d) The owner liability of an interest holder in an unlimited liability entity that is a converting entity that converts to a limited liability entity is as follows:

(1) The conversion does not discharge any owner liability under the organic law of the converting entity to the extent that any such owner liability arose before the effective time of the articles of entity conversion.

(2) The interest holder does not have owner liability under the organic law of the surviving entity for any debt, obligation, or liability of the surviving entity that arises after the effective time of the articles of entity conversion.

(3) The provisions of the organic law of the converting entity continue to apply to the collection or discharge of any owner liability preserved by subdivision (1), as if the conversion had not occurred and the surviving entity were still the converting entity.

(4) The interest holder has whatever rights of contribution from other interest holders are provided by the organic law of the converting entity with respect to any owner liability preserved by subdivision (1), as if the conversion had not occurred and the surviving entity were still the converting entity.

*As added by P.L.178-2002, SEC.99. Amended by P.L.130-2006, SEC.17; P.L.1-2007, SEC.162.*

#### **IC 23-1-38.5-16**

##### **Abandonment of plan of entity conversion before conversion becomes effective; delivery of statement to secretary of state**

Sec. 16. (a) Unless otherwise provided in a plan of entity conversion of a domestic entity, after the plan has been adopted and approved as required by this chapter, and at any time before the entity conversion becomes effective, the plan of entity conversion may be abandoned by the governing or managing body or person of the converting entity without action by the shareholders or interest holders of the converting entity.

(b) If an entity conversion is abandoned after articles of entity conversion or articles of charter surrender have been filed with the secretary of state but before the entity conversion becomes effective, a statement that the entity conversion has been abandoned under this section, executed by an officer or authorized representative, must be delivered to the secretary of state for filing before the effective date of the entity conversion. Upon filing, the statement takes effect and the entity conversion is considered abandoned and shall not become effective.

*As added by P.L.178-2002, SEC.99. Amended by P.L.130-2006, SEC.18.*