

BUSINESS CORPORATION ACT (EXCERPT)
Act 284 of 1972

450.1703a Plan of merger or share exchange; approval; definitions.

Sec. 703a. (1) A plan of merger or share exchange adopted by the board of each constituent corporation shall, except as provided in subsections (2)(f) and (g) and (3), be submitted for approval at a meeting of the shareholders.

(2) All of the following apply to the approval of a plan of merger or share exchange under this section:

(a) The board must recommend the plan of merger or share exchange to the shareholders, or, if an offer described in subsection (3)(b) is made, recommend that the shareholders tender their shares to the offeror in response to the offer, unless section 529 applies or the board determines that because of conflict of interest, events occurring after the board adopts the plan, contractual obligations, or other special circumstances it should make no recommendation.

(b) If, because 1 or more of the exceptions described in subdivision (a) apply, the board does not make a recommendation described in subdivision (a), or the board recommends that the shareholders vote against the plan of merger or share exchange or recommends against a tender of shares by the shareholders in response to an offer described in subsection (3)(b), as applicable, the board must communicate to the shareholders the basis for its decision.

(c) The board may condition its submission of the proposed merger or share exchange on any basis.

(d) Notice of the shareholder meeting shall be given to each shareholder of record, whether or not entitled to vote at the meeting, within the time and in the manner provided in this act for giving notice of meetings of shareholders. The notice shall include or be accompanied by all of the following:

(i) A copy or summary of the plan of merger or share exchange. If a summary of the plan is given, the notice shall state that a copy of the plan is available on request.

(ii) A statement informing shareholders that are entitled to dissent under section 762 that they have the right to dissent and to be paid the fair value of their shares by complying with the procedures set forth in sections 764 to 772.

(e) At the meeting, the shareholders shall vote on the proposed plan of merger or share exchange. The plan is approved if it receives the affirmative vote of the holders of a majority of the outstanding shares of the corporation entitled to vote on the plan, and if a class or series is entitled to vote on the plan as a class, the affirmative vote of the holders of a majority of the outstanding shares of the class or series. A class or series of shares is entitled to vote as a class in the case of a merger, if the plan of merger contains a provision that, if contained in a proposed amendment to the articles of incorporation, would entitle the class or series of shares to vote as a class, or, in the case of a share exchange, if the class or series is included in the exchange. A class or series of shares is not entitled to vote as a class in the case of a merger or share exchange, if the board of directors determines on a reasonable basis that the class or series is to receive consideration under the plan of merger or share exchange that has a fair value that is not less than the fair value of the shares of the class or series on the date of adoption of the plan.

(f) Except as provided in section 754 or unless required by the articles of incorporation, action by the shareholders of the surviving corporation on a plan of merger is not required if all of the following apply:

(i) The articles of incorporation of the surviving corporation will not differ from its articles of incorporation before the merger.

(ii) Each shareholder of the surviving corporation whose shares were outstanding immediately before the effective date of the merger will hold the same number of shares, with identical designations, preferences, limitations, and relative rights, immediately after the merger.

(g) Except as provided in section 754, action by the shareholders of the acquiring corporation on a plan of share exchange is not required.

(h) Except as provided in subsection (3), a plan of merger or share exchange may provide for differing forms of consideration for holders of shares in the same class based on the election of the holders, the amount of shares held, or another reasonable basis.

(3) Unless the articles of incorporation provide otherwise, approval of a plan of merger or share exchange by the shareholders of a corporation that has a class of voting stock registered with the Securities and Exchange Commission under section 12 of the securities exchange act of 1934, 15 USC 78l, immediately before the execution of the plan of merger or share exchange is not required if all of the following are met:

(a) The plan of merger or share exchange meets both of the following:

(i) It expressly permits or requires the merger or share exchange to be effected under this subdivision.

(ii) It expressly provides that, if the merger or share exchange is to be effected under this subdivision, the merger or share exchange will be effected as soon as practicable after subdivision (f) is met.

(b) Another party to the merger or share exchange, or a parent of another party to the merger or share exchange, makes an offer to purchase, on the terms provided in the plan of merger or share exchange, any and all of the outstanding shares of the corporation that would be entitled to vote on the plan or merger or share exchange if this subdivision did not apply, except that the offer may exclude shares of the corporation that are owned at the commencement of the offer by the corporation, the offeror, or a parent of the offeror or by any wholly owned subsidiary of the corporation, offeror, or parent.

(c) The offer discloses that the plan of merger or share exchange provides that the merger or share exchange will be effected as soon as practicable following the satisfaction of the requirement set forth in subdivision (f) and that the shares of the corporation that are not tendered in response to the offer will be treated as set forth in subdivision (h).

(d) The offer remains open for at least 20 business days or for any other period that is required for tender offers under the rules or regulations of the Securities and Exchange Commission under section 14(e) of the securities exchange act of 1934, 15 USC 78n(e).

(e) The offeror purchases all shares that are properly tendered in response to the offer and not properly withdrawn.

(f) Shares that meet any of the following are collectively entitled to cast at least the minimum number of votes on the merger or share exchange that, except for this subdivision, would be required under this act and under the articles of incorporation of the corporation for the approval of the merger or share exchange by the shareholders and by any other voting group that is entitled to vote on the merger or share exchange at a meeting at which all shares entitled to vote on the approval were present and voted:

(i) Are purchased by the offeror in accordance with the offer.

(ii) Are otherwise owned by the offeror or by any parent or wholly owned subsidiary of the offeror.

(iii) Are subject to an agreement to be transferred, contributed, or delivered to the offeror, any parent of the offeror, or any wholly owned subsidiary of the offeror in exchange for stock or other equity interests in that offeror, parent, or subsidiary.

(g) The offeror or a wholly owned subsidiary of the offeror merges with or into, or effects a share exchange in which it acquires shares of, the corporation.

(h) Each outstanding share of each class or series of shares of the corporation that the offeror is offering to purchase in accordance with the offer, and that is not purchased in accordance with the offer, is to be converted in the merger into, or into the right to receive, or is to be exchanged in the share exchange for, or for the right to receive, the same amount and kind of securities, interests, obligations, rights, cash, or other property to be paid or exchanged in accordance with the offer for each share of that class or series of shares that is tendered in response to the offer, except that shares of the corporation that are owned by the corporation or that are described in subdivision (f)(ii) or (iii) need not be converted into or exchanged for the consideration described in this subparagraph.

(4) As used in subsection (3):

(a) "Offer" means the offer described in subsection (3)(b).

(b) "Offeror" means a person that makes the offer.

(c) "Parent" of an entity means a person that owns, directly or indirectly, through 1 or more wholly owned subsidiaries, all of the outstanding shares of or interests in that entity.

(d) Shares tendered in response to an offer are considered to have been "purchased" in accordance with the offer at the earliest time as of which both of the following are met:

(i) The offeror has irrevocably accepted those shares for payment.

(ii) One of the following is met, as applicable:

(A) In the case of shares represented by certificates, the offeror, or the offeror's designated depository or other agent, has physically received the certificates representing those shares.

(B) In the case of shares without certificates, those shares have been transferred into the account of the offeror or its designated depository or other agent, or an agent's message relating to those shares has been received by the offeror or its designated depository or other agent.

(e) "Wholly owned subsidiary" of a person means an entity of or in which that person owns, directly or indirectly, through 1 or more wholly owned subsidiaries, all of the outstanding shares or interests.

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