§ 55-11-10. Merger with unincorporated entity.

(a) Repealed by Session Laws 2001-387, s. 22, effective January 1, 2002.

(b) One or more domestic corporations may merge with one or more unincorporated entities and, if desired, one or more foreign corporations, domestic nonprofit corporations, or foreign nonprofit corporations if:

(1) The merger is permitted by the laws of the state or country governing the organization and internal affairs of each other merging business entity; and

(2) Each merging domestic corporation and each other merging business entity comply with the requirements of this section and, to the extent applicable, the laws referred to in subdivision (1) of this subsection.

(c) Each merging domestic corporation and each other merging business entity shall approve a written plan of merger containing all of the following:

(1) For each merging business entity, its name, type of business entity, and the state or country whose laws govern its organization and internal affairs.

(2) The name of the merging business entity that shall survive the merger and, if the surviving business entity is not authorized to transact business or conduct affairs in this State, a designation of its mailing address and a commitment to file with the Secretary of State a statement of any subsequent change in its mailing address.

(3) The terms and conditions of the merger.

(4) The manner and basis of converting the interests in each merging business entity into interests, obligations, or securities of the surviving business entity, or into cash or other property in whole or in part, or of cancelling the interests.

(5) If the surviving business entity is a domestic corporation, any amendments to its articles of incorporation that are to be made in connection with the merger.

(c1) The plan of merger may contain other provisions relating to the merger.

(c2) The provisions of the plan of merger, other than the provisions referred to in subdivisions (1), (2), and (5) of subsection (c) of this section, may be made dependent on facts objectively ascertainable outside the plan of merger if the plan of merger sets forth the manner in which the facts will operate upon the affected provisions. The facts may include any of the following:

(1) Statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data.

(2) A determination or action by the corporation or by any other person, group, or body.

(3) The terms of, or actions taken under, an agreement to which the corporation is a party, or any other agreement or document.

(c3) In the case of a domestic corporation, approval of the plan of merger requires that the plan of merger be adopted by its board of directors as provided in G.S. 55-11-03 and, unless shareholder approval is not required under subsection (g) of G.S. 55-11-03, be approved by its shareholders as provided in G.S. 55-11-03. If any shareholder of a merging domestic corporation has or will have personal liability for any existing or future obligation of the surviving business entity solely as a result of holding an interest in the surviving business entity, then in addition to the requirements of the preceding sentence, approval of the plan of merger by the domestic corporation shall require the affirmative vote or written consent of that shareholder. In the case of each other merging business entity, the plan of merger must be approved in accordance with the laws of the state or country governing the organization and internal affairs of that merging business entity.

(c4) After a plan of merger has been approved by a domestic corporation but before the articles of merger become effective, the plan of merger (i) may be amended as provided in the plan of merger, or (ii) may be abandoned (subject to any contractual rights) as provided in the plan of merger or, if there is no such provision, as determined by the board of directors without further shareholder action.

(d) After a plan of merger has been approved by each merging domestic corporation and each other merging business entity as provided in subsection (c) of this section, the surviving business entity shall deliver articles of merger to the Secretary of State for filing. The articles of merger shall set forth all of the following:

(1) Repealed by Session Laws 2005, c. 268, s. 27.

(2) For each merging business entity, its name, type of business entity, and the state or country whose laws govern its organization and internal affairs.

(3) The name of the merging business entity that shall survive the merger and, if the surviving business entity is not authorized to transact business or conduct affairs in this State, a designation of its mailing address and a commitment to file with the Secretary of State a statement of any subsequent change in its mailing address.

(3a) If the surviving business entity is a domestic corporation, any amendment to its articles of incorporation as provided in the plan of merger.

(4) A statement that the plan of merger has been approved by each merging business entity in the manner required by law.

(5) Repealed by Session Laws 2005, c. 268, s. 27.

If the plan of merger is amended after the articles of merger have been filed but before the articles of merger become effective, and any statement in the articles of merger becomes incorrect as a result of the amendment, the surviving business entity shall deliver to the Secretary of State for filing prior to the time the articles of merger become effective an amendment to the articles of merger correcting the incorrect statement. If the articles of merger are abandoned after the articles of merger are filed but before the articles of merger become effective, the surviving business entity shall deliver to the Secretary of State for filing prior to the time the articles of merger become effective an amendment reflecting abandonment of the plan of merger.

Certificates of merger shall also be registered as provided in G.S. 47-18.1.

(e) Repealed by Session Laws 2018-45, s. 21, effective October 1, 2018.

(e1) Repealed by Session Laws 2018-45, s. 21, effective October 1, 2018.

(f) This section does not apply to a merger that does not include a merging unincorporated entity. (1999-369, s. 1.8; 2000-140, s. 45; 2001-387, ss. 22, 23, 24, 25; 2005-268, ss. 26, 27, 28; 2007-385, s. 2; 2011-347, ss. 8, 9; 2018-45, ss. 20, 21.)