

§ 55A-11B-04. Approval of domestication.

(a) If a domestic nonprofit corporation is to be the domesticating corporation, the plan of domestication shall be adopted in the following manner:

- (1) The plan of domestication shall first be adopted by the board of directors. The board may set conditions for (i) approval of the plan of domestication by the members or (ii) the effectiveness of the plan of domestication. If the domesticating corporation does not have any members entitled to vote on the domestication, a plan of domestication is adopted by the corporation when it has been adopted by the board of directors pursuant to this subdivision.
- (2) Except as provided in subdivision (1) of this subsection, the plan of domestication shall then be approved by the members. In submitting the plan of domestication to the members for approval, the board of directors shall recommend that the members 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 the recommendation, in which case the board shall inform the members of the basis for not making the recommendation.
- (3) If the plan of domestication is required to be approved by the members, and if the approval is to be given at a meeting, the corporation shall notify each member entitled to vote of the meeting of the members at which the plan of domestication is to be submitted for approval. The notice shall (i) state that the purpose, or one of the purposes, of the meeting is to consider the plan of domestication and (ii) contain or be accompanied by a copy or summary of the plan. The notice shall include or be accompanied by a copy of the articles of incorporation and the bylaws as they will be in effect immediately after the domestication.
- (4) Unless the articles of incorporation or bylaws, or the board of directors acting pursuant to subdivision (1) of this subsection, require a greater vote or a greater quorum, approval of the plan of domestication requires (i) the approval of the members at a meeting at which a quorum exists consisting of a majority of the votes entitled to be cast on the plan and (ii), if any class of membership is entitled to vote as a separate group on the plan of merger, the approval of each class of members voting as a separate voting group at a meeting at which a quorum of the voting group exists consisting of a majority of the votes entitled to be cast on the plan by that voting group.
- (5) Subject to subdivision (6) of this subsection, separate voting by voting groups on a plan of domestication is required in the following circumstances:
 - a. By each class of memberships that is either of the following:
 1. To be converted under the plan of domestication into security interests, obligations, rights to acquire securities or interests, cash, other property, or any combination thereof.
 2. Entitled to vote as a separate group on a provision in the plan that constitutes a proposed amendment to the articles or bylaws of the domesticated corporation that requires action by separate voting groups under the provisions of this Chapter.
 - b. If the voting group is entitled under the articles of incorporation or bylaws to vote as a group to approve a plan of domestication.
- (6) The articles of incorporation or bylaws may expressly limit or eliminate the separate voting rights provided in sub-sub-subdivision (5)a.1. of this subsection as to any class of members, except when the plan includes what

would be in effect an amendment subject to sub-sub-subdivision (5)a.2. of this subsection.

- (7) If, as a result of a domestication, one or more members of the domesticating corporation would become subject to new interest holder liability, approval of the plan of domestication requires the signing in connection with the domestication, by each affected member, of a separate consent in a record to become subject to the new interest holder liability. This subdivision does not apply in the case of a member that already has interest holder liability with respect to the domesticating corporation, if the terms and conditions of the new interest holder liability with respect to the domesticated corporation are substantially identical to those of the existing interest holder liability, other than for changes that eliminate or reduce the interest holder liability.
- (8) In addition to the adoption and approval of the plan of domestication by the board of directors and members as required by this section, the plan of domestication shall also be approved in a record by any person or group of persons whose approval is required under G.S. 55A-10-30 to amend the articles or bylaws.

(b) The plan of domestication of a charitable or religious corporation is subject to the approval requirements described in G.S. 55A-11B-02(c). (2026-52, s. 3.1.)