



Ohio Revised Code

Section 1701.791 Merging or consolidating constituent entities that are not corporations.

Effective: April 12, 2021

Legislation: Senate Bill 276

(A) If the constituent entities in a merger or consolidation include entities that are not corporations, the constituent entities may be merged or consolidated into a surviving or new entity that is not a domestic corporation, as provided in this section. Pursuant to an agreement of merger or consolidation between the constituent entities as provided in this section, a domestic corporation and, if so provided, one or more additional domestic or foreign entities, may be merged into a surviving entity other than a domestic corporation, or a domestic corporation together with one or more additional domestic or foreign entities may be consolidated into a new entity other than a domestic corporation, to be formed by such consolidation. The merger or consolidation must be permitted by the chapter of the Revised Code under which each domestic constituent entity exists and by the laws under which each foreign constituent entity exists.

(B) The agreement of merger or consolidation shall set forth all of the following:

(1) The name and the form of entity of each constituent entity and the state under the laws of which each constituent entity exists;

(2) In the case of a merger, that one or more specified constituent entities will be merged into a specified surviving foreign entity or surviving domestic entity other than a domestic corporation or, in the case of a consolidation, that the constituent entities will be consolidated into a new foreign entity or domestic entity other than a corporation. The name of such a surviving or new entity may be the same as or similar to that of any constituent corporation or constituent limited liability company.

(3) The terms of the merger or consolidation, the mode of carrying them into effect, and the manner and basis of converting the shares or interests of the constituent entities into, or substituting the shares or interests of the constituent entities for, shares, interests, evidences of indebtedness, other securities, cash, rights, or any other property or any combination of shares, interests, evidences of



indebtedness, securities, cash, rights, or any other property of the surviving entity, of the new entity, or of any other entity, including the parent of any constituent entity, or any other person. No conversion or substitution shall be effected if there are reasonable grounds to believe that the surviving or new entity would be rendered insolvent by the conversion or substitution.

(4) If the surviving or new entity is a foreign corporation, all additional statements and matters, other than the name and address of the statutory agent, that would be required by section 1701.78 of the Revised Code if the surviving or new corporation were a domestic corporation;

(5) The name and the form of entity of the surviving or new entity, the state under the laws of which the surviving entity exists or the new entity is to exist, and the location of the principal office of the surviving or new entity in that state;

(6) All statements and matters required to be set forth in an agreement of merger or consolidation by the laws under which each constituent entity exists and, in the case of a consolidation, the new entity is to exist;

(7) The consent of the surviving or the new entity to be sued and served with process in this state and the irrevocable appointment of the secretary of state as its agent to accept service of process in any proceeding in this state to enforce against the surviving or new entity any obligation of any domestic constituent corporation, or to enforce the rights of a dissenting shareholder of any domestic constituent corporation;

(8) If the surviving or new entity is a foreign corporation that desires to transact business in this state as a foreign corporation, a statement to that effect, together with a statement regarding the appointment of a statutory agent and service of any process, notice, or demand upon that statutory agent or the secretary of state, as required when a foreign corporation applies for a license to transact business in this state;

(9) If the surviving or new entity is a foreign limited partnership that desires to transact business in this state as a foreign limited partnership, a statement to that effect, together with all of the information required under section 1782.49 of the Revised Code when a foreign limited partnership registers to transact business in this state;



(10) If the surviving or new entity is a foreign limited liability company that desires to transact business in this state as a foreign limited liability company, a statement to that effect, together with all of the information required under section 1705.54 or 1706.511 of the Revised Code when a foreign limited liability company registers to transact business in this state.

(C) The agreement of merger or consolidation also may set forth any additional provision permitted by the laws of any state under the laws of which any constituent entity exists, consistent with the laws under which the surviving entity exists or the new entity is to exist.

(D) To effect the merger or consolidation, the agreement of merger or consolidation shall be approved by the directors of each domestic constituent corporation, and adopted by the shareholders of each domestic constituent corporation, in the same manner and with the same notice to and vote of shareholders or of holders of a particular class of shares as is required by section 1701.78 of the Revised Code. The agreement also shall be approved or otherwise authorized by or on behalf of each other constituent entity in accordance with the laws under which it exists.

(E) At any time before the filing of the certificate of merger or consolidation under section 1701.81 of the Revised Code, the merger or consolidation may be abandoned by the directors of any constituent corporation, the general partners of any constituent partnership, or the comparable representatives of any other constituent entity if the directors, general partners, or comparable representatives are authorized to do so by the agreement of merger or consolidation.

The agreement of merger or consolidation may contain a provision authorizing the directors of any constituent corporation, the general partners of any constituent partnership, or the comparable representatives of any other constituent entity to amend the agreement of merger or consolidation at any time before the filing of the certificate of merger or consolidation, except that, after the adoption of the agreement by the shareholders of any domestic constituent corporation, the directors shall not be authorized to amend the agreement to do any of the following:

(1) Alter or change the amount or kind of shares, interests, evidences of indebtedness, other securities, cash, rights, or any other property to be received by shareholders of the domestic constituent corporation in conversion of, or in substitution for, their shares;



- (2) If the surviving or new entity is a foreign corporation, alter or change any term of the articles of the surviving or new foreign corporation, except for alterations or changes that could otherwise be adopted by the directors of the surviving or new foreign corporation;

- (3) If the surviving or new entity is a partnership or other entity other than a corporation, alter or change any term of the partnership agreement or comparable instrument of the surviving or new partnership or other entity, except for alterations or changes that otherwise could be adopted by the general partners or comparable representatives of the surviving or new partnership or other entity;

- (4) Alter or change any other terms and conditions of the agreement of merger or consolidation if any of the alterations or changes, alone or in the aggregate, would materially adversely affect the holders of any class or series of shares of the domestic constituent corporation.