

**[15 Pa. Cons. Stat. §§ 311 through 312, 331 through 336.]**

§§ 311 through 312, 331 through 336: Entity Transactions Law — Mergers

**§ 311. Short title of chapter.**

This chapter shall be known and may be cited as the Entity Transactions Law.

**§ 312. Definitions.**

(a) Definitions.--The following words and phrases when used in this chapter shall have the meanings given to them in this subsection unless the context clearly indicates otherwise:

"Acquired association." The domestic entity or foreign association, all of one or more classes or series of interests in which are acquired in an interest exchange.

"Acquiring association." The domestic entity or foreign association that acquires all of one or more classes or series of interests of the acquired association in an interest exchange.

"Conversion." A transaction authorized by Subchapter E (relating to conversion).

"Converted association." The converting association as it continues in existence after a conversion.

"Converting association." The domestic entity or domestic banking institution that approves a plan of conversion pursuant to section 353 (relating to approval of conversion) or the foreign association that approves a conversion pursuant to the laws of its jurisdiction of formation.

"Dividing association." The domestic entity that approves a plan of division pursuant to section 363 (relating to approval of division) or 364 (relating to division without interest holder approval) or the foreign association that approves a division pursuant to the laws of its jurisdiction of formation.

"Division." A transaction authorized by Subchapter F (relating to division).

"Domesticated entity." The domesticating entity as it continues in existence after a domestication.

"Domesticating entity." The domestic entity that approves a plan of domestication pursuant to section 373(a) (relating to approval of domestication) or the foreign entity that approves a domestication pursuant to section 373(b).

"Domestication." A transaction authorized by Subchapter G (relating to domestication).

"Interest exchange." A transaction authorized by Subchapter D (relating to interest exchange).

"Interest holder liability." Either of the following:

(1) Personal liability for a liability of an association that is imposed on a person either:

(i) Solely by reason of the status of the person as an interest holder.

(ii) By the organic rules of the association that make one or more specified interest holders or categories of interest holders liable in their capacity as interest holders for all or specified liabilities of the entity.

(2) An obligation of an interest holder under the organic rules of an association to contribute to the association.

"Merger." A transaction in which two or more merging associations are combined into a surviving association pursuant to a document filed by the department or similar office in another jurisdiction.

"Merging association." A domestic entity, domestic banking institution or foreign association that is a party to a merger under Subchapter C (relating to merger) and exists immediately before the merger becomes effective.

"New association." An association that is created by a division.

"Plan." A plan of merger, plan of interest exchange, plan of conversion, plan of division or plan of domestication, as applicable.

"Protected agreement." Either of the following:

(1) A record evidencing indebtedness and any related agreement in effect on July 1, 2015.

(2) A protected governance agreement.

"Protected governance agreement." Either of the following:

(1) The organic rules of a domestic entity or foreign association in effect on July 1, 2015.

(2) An agreement that is binding on any of the governors or interest holders of a domestic entity or foreign association on July 1, 2015.

"Registered office." In the case of a domestic banking institution that is a corporation, the principal place of business of the corporation set forth in its articles of incorporation as required by section 1004 of the act of November 30, 1965 (P.L.847, No.356), known as the Banking Code of 1965.

"Resulting association." A dividing association, if it survives the division, or a new association.

"Special treatment." A provision of a plan permitted by section 329 (relating to special treatment of interest holders).

"Surviving association." The domestic entity, domestic banking institution or foreign association that continues in existence after or is created by a merger under Subchapter C.

(b) Index of definitions.--Following is a nonexclusive list of definitions in section 102 (relating to definitions) that apply to this chapter:

"Act" or "action."

"Banking institution."

"Department."

"Dissenters rights."

"Domestic entity."

"Entity."

"Filing entity."

"Foreign entity."

"Governor."

"Interest."

"Interest holder."

"Obligation."

"Organic law."

"Organic rules."

"Private organic rules."

"Property."

"Public organic record."

"Record form."

"Registered foreign association."

"Representative."

"Sign."

"Transfer."

"Type."

**§ 331. Merger authorized.**

(a) General rule.--Except as provided in section 318 (relating to excluded entities and transactions) or this section, by complying with this chapter:

(1) One or more domestic entities may merge with one or more domestic entities or foreign associations into a surviving association.

(2) Two or more foreign associations may merge into a surviving association that is a domestic entity.

(3) A domestic banking institution may be a merging association or surviving association in a merger with one or more domestic or foreign associations if the surviving association or at least one of the merging associations is a domestic entity.

(b) Foreign law authorization required.--By complying with the applicable provisions of this subchapter, a foreign association may be a party to a merger under this subchapter or may be the surviving association in such a merger if the merger is authorized by the laws of the jurisdiction of formation of the foreign association.

(c) Banking institutions.--Subsection (a)(3) controls over any inconsistent provision of the organic law of a domestic banking institution that is a merging association.

(d) Exception.--A health maintenance organization may be a merging association only if the surviving association is a health maintenance organization.

(e) Cross reference.--See section 314 (relating to regulatory conditions and required notices and approvals).

**§ 332. Plan of merger.**

(a) General rule.--A domestic entity may become a party to a merger by approving a plan of merger. The plan shall be in record form and contain all of the following:

(1) As to each merging association, its name, jurisdiction of formation and type.

(2) If the surviving association is to be created in the merger, a statement to that effect and the association's name, jurisdiction of formation and type.

(3) The manner, if any, of:

(i) converting some or all of the interests in a merging association into interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing; or

(ii) canceling some or all of the interests in a merging association.

(4) If the surviving association exists before the merger, any proposed amendments to:

(i) its public organic record, if any; or

- (ii) its private organic rules that are or are proposed to be in record form.
- (5) If the surviving association is to be created in the merger:
  - (i) its proposed public organic record, if any; and
  - (ii) the full text of its private organic rules that are proposed to be in record form.
- (6) Provisions, if any, providing special treatment of interests in a merging association held by any interest holder or group of interest holders as authorized by and subject to section 329 (relating to special treatment of interest holders).
- (7) The other terms and conditions of the merger.
- (8) Any other provision required by:
  - (i) the laws of this Commonwealth;
  - (ii) the laws of the jurisdiction of formation of a foreign merging or surviving association; or
  - (iii) the organic rules of a merging association.
- (b) Optional contents.--In addition to the requirements of subsection (a), a plan of merger may contain any other provision not prohibited by law.
- (c) Cross reference.--See section 316 (relating to contents of plan).

Cross References. Section 332 is referred to in sections 8415, 8615, 8815 of this title.

**§ 333. Approval of merger.**

- (a) Approval by domestic entities.--A plan of merger shall not be effective unless it has been approved in both of the following ways:
  - (1) The plan is approved by a domestic entity that is a merging association in accordance with the applicable provisions of Subchapter B (relating to approval of entity transactions).
  - (2) The plan is approved in record form by each interest holder, if any, of a domestic entity that is a merging association that will have interest holder liability for debts, obligations and other liabilities that arise after the merger becomes effective, unless, as to an interest holder that does not approve the plan, both of the following apply:
    - (i) The organic rules of the domestic entity provide in record form for the approval of a merger in which some or all of its interest holders become subject to interest holder liability by the vote or consent of fewer than all the interest holders.

(ii) The interest holder consented in record form to or voted for that provision of the organic rules or became an interest holder after the adoption of that provision.

(b) Approval by foreign associations.--A merger under this subchapter in which a foreign association is a merging association is not effective unless the merger is approved by the foreign association in accordance with the laws of its jurisdiction of formation.

(c) Approval by domestic banking institutions.--A merger under this subchapter in which a domestic banking institution that is not a domestic entity is a merging association is not effective unless the merger is approved by the domestic banking institution in accordance with the requirements in its organic laws and organic rules for approval of a merger.

(d) Dissenters rights.--

(1) Except as provided in paragraph (2), if a shareholder of a domestic business corporation that is to be a merging association objects to the plan of merger and complies with Subchapter D of Chapter 15 (relating to dissenters rights), the shareholder shall be entitled to dissenters rights to the extent provided in that subchapter.

(2) Except as provided under section 317 (relating to contractual dissenters rights in entity transactions), dissenters rights shall not be available to shareholders of a domestic business corporation that is a merging association in a merger described in section 321(d)(1)(i) or (4) (relating to approval by business corporation).

(3) If a shareholder of a domestic banking institution that is to be a merging association objects to the plan of merger and complies with section 1222 of the act of November 30, 1965 (P.L.847, No.356), known as the Banking Code of 1965, the shareholder shall be entitled to the rights provided in that section.

(4) See section 329 (relating to special treatment of interest holders).

Cross References. Section 333 is referred to in sections 336, 1571, 8415, 8615, 8815 of this title.

**§ 334. Amendment or abandonment of plan of merger.**

(a) General rule.--A plan of merger may be amended or abandoned only with the consent of each party to the plan, except as otherwise provided in the plan.

(b) Approval of amendment.--A domestic entity that is a merging association may approve an amendment of a plan of merger in one of the following ways:

(1) In the same manner as the plan was approved, if the plan does not provide for the manner in which it may be amended.

(2) By its governors or interest holders in the manner provided in the plan, but an interest holder that was entitled to vote on or consent to approval of the plan is entitled to vote on or consent to any amendment of the plan that will change any of the following:

(i) The amount or kind of interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing, to be received by the interest holders of any party to the plan.

(ii) The public organic record, if any, or private organic rules of the surviving association that will be in effect immediately after the merger becomes effective, except for changes that do not require approval of the interest holders of the surviving association under its organic law or organic rules.

(iii) Any other terms or conditions of the plan, if the change would:

(A) increase the interest holder liability to which the interest holder will be subject; or

(B) otherwise adversely affect the interest holder in any material respect.

(c) Approval of abandonment.--After a plan of merger has been approved by a domestic entity that is a merging association and before a statement of merger becomes effective, the plan may be abandoned as provided in the plan. Unless prohibited by the plan, a domestic entity that is a merging association may abandon the plan in the same manner as the plan was approved.

(d) Statement of abandonment.--If a plan of merger is abandoned after a statement of merger has been delivered to the department for filing and before the statement becomes effective, a statement of abandonment under section 141 (relating to abandonment of filing before effectiveness), signed by a party to the plan, must be delivered to the department for filing before the statement of merger becomes effective.

**§ 335. Statement of merger; effectiveness.**

(a) General rule.--A statement of merger shall be signed by each merging association and delivered to the department for filing along with the certificates, if any, required by section 139 (relating to tax clearance of certain fundamental transactions).

(b) Contents.--A statement of merger shall contain all of the following:

(1) With respect to each merging association that is not the surviving association:

(i) its name;

(ii) its jurisdiction of formation;

(iii) its type;

(iv) if it is a domestic filing association, domestic limited liability partnership or registered foreign association, the address of its registered office, including street and number, if any, in this Commonwealth, subject to section 109 (relating to name of commercial registered office provider in lieu of registered address);

(v) if it is a domestic association that is not a domestic filing association or limited liability partnership, the address, including street and number, if any, of its principal office; and

- (vi) if it is a nonregistered foreign association, the address, including street and number, if any, of:
  - (A) its registered or similar office, if any, required to be maintained by the laws of its jurisdiction of formation; or
  - (B) if it is not required to maintain a registered or similar office, its principal office.
- (2) With respect to the surviving association:
  - (i) its name;
  - (ii) its jurisdiction of formation;
  - (iii) its type;
  - (iv) if it is a domestic filing association, domestic limited liability partnership or registered foreign association, the address of its registered office, including street and number, if any, in this Commonwealth, subject to section 109;
  - (v) if it is a domestic association that is not a domestic filing association or limited liability partnership, the address, including street and number, if any, of its principal office; and
  - (vi) if it is a nonregistered foreign association, the address, including street and number, if any, of:
    - (A) its registered or similar office, if any, required to be maintained by the laws of its jurisdiction of formation; or
    - (B) if it is not required to maintain a registered or similar office, its principal office.
- (3) If the statement of merger is not to be effective on filing, the later date or date and time on which it will become effective.
- (4) A statement that the merger was approved in the following ways as applicable:
  - (i) By a domestic entity that is a merging association, in accordance with this chapter.
  - (ii) By a foreign merging association, in accordance with the laws of its jurisdiction of formation.
  - (iii) By a domestic merging association that is not a domestic entity, in the same manner required by its organic law for approving a merger that requires the approval of its interest holders.
- (5) If the surviving association exists before the merger and is a domestic filing entity, any amendment to its public organic record approved as part of the plan of merger.
- (6) If the surviving association is created by the merger and is a domestic filing entity, its public organic record, as an attachment. The public organic record does not need to state the name or address of an



incorporator of a corporation, organizer of a limited liability company or similar person with respect to any other type of entity.

(7) If the surviving association is created by the merger and is a nonregistered foreign association, one of the following:

(i) The street and mailing addresses of its registered agent and registered office in its jurisdiction of formation if it is a filing entity.

(ii) The street and mailing address of its principal office if it is not a filing entity.

(8) If the surviving association is created by the merger and is a domestic limited liability partnership or a domestic limited liability limited partnership that is not using the alternative procedure in section 8201(f) (relating to scope), its statement of registration, as an attachment.

(9) If the surviving association is created by the merger and is a domestic electing partnership, its statement of election.

(c) Other provisions.--In addition to the requirements of subsection (b), a statement of merger may contain any other provision not prohibited by law.

(d) Domestic surviving association.--If the surviving association is a domestic entity, its public organic record, if any, shall satisfy the requirements of the laws of this Commonwealth, except that the public organic record does not need to be signed and may omit any provision that is not required to be included in a restatement of the public organic record.

(e) Filing of plan.--A plan of merger that is signed by all of the merging associations and meets all of the requirements of subsection (b) may be delivered to the department for filing instead of a statement of merger and on filing has the same effect. If a plan of merger is filed as provided in this subsection, references in this chapter to a statement of merger refer to the plan of merger filed under this subsection.

(f) Effectiveness of statement of merger.--A statement of merger is effective as provided in section 136(c) (relating to processing of documents by Department of State).

(g) Effectiveness of merger.--If the surviving association is a domestic association, the merger is effective when the statement of merger is effective. If the surviving association is a foreign association, the merger is effective on the later of:

(1) the date and time provided by the organic law of the surviving association; or

(2) when the statement of merger is effective.

(h) Cross references.--See sections 134 (relating to docketing statement), 135 (relating to requirements to be met by filed documents) and 316 (relating to contents of plan).

**§ 336. Effect of merger.**

(a) General rule.--When a merger under this subchapter becomes effective, all of the following apply:

(1) The surviving association continues or comes into existence.

(2) The separate existence of each merging association that is not the surviving association ceases.

(3) All property of each merging association vests in the surviving association without reversion or impairment, and the merger shall not constitute a transfer of any of that property.

(4) All debts, obligations and other liabilities of each merging association are debts, obligations and other liabilities of the surviving association.

(5) Except as otherwise provided by law, all the rights, privileges, immunities and powers of each merging association vest in the surviving association.

(6) If the surviving association exists before the merger, all of the following apply:

(i) All of its property continues to be vested in it without transfer, reversion or impairment.

(ii) It remains subject to all its debts, obligations and other liabilities.

(iii) All its rights, privileges, immunities and powers continue to be vested without change in it.

(iv) Its public organic record, if any, is amended to the extent provided in the statement of merger.

(v) Its private organic rules that are to be in record form, if any, are amended to the extent provided in the plan of merger.

(7) Liens on the property of the merging association shall not be impaired by the merger.

(8) A claim existing or an action or a proceeding pending by or against any of the merging associations may be prosecuted to judgment as if the merger had not taken place, or the surviving association may be proceeded against or substituted in place of the appropriate merging association.

(9) If the surviving association is created by the merger, its private organic rules are effective and the following apply:

(i) If it is a filing entity, its public organic record is effective.

(ii) If it is a limited liability partnership or a limited liability limited partnership that is not using the alternative procedure under section 8201(f) (relating to scope), its statement of registration is effective.

(iii) If it is an electing partnership, its statement of election is effective.

- (10) The interests in each merging association that are to be converted or canceled as provided in the plan of merger are converted or canceled, and the interest holders of those interests are entitled only to the rights provided to them under the plan and to any dissenters rights they have pursuant to section 317 (relating to contractual dissenters rights in entity transactions) or 333(d) (relating to approval of merger).
- (b) No dissolution rights.--Except as provided in the organic law or organic rules of a merging association, a merger under this subchapter does not give rise to any rights that an interest holder, governor or third party would have on a dissolution, liquidation or winding up of the merging association.
- (c) New interest holder liability.--When a merger under this subchapter becomes effective, a person that becomes subject to interest holder liability with respect to an association as a result of the merger has interest holder liability only to the extent provided by the organic law of that association and only for those debts, obligations and other liabilities that arise after the merger becomes effective.
- (d) Prior interest holder liability.--When a merger under this subchapter becomes effective, the interest holder liability of a person that ceases to hold an interest in a domestic entity that is a merging association with respect to which the person had interest holder liability shall be as follows:
- (1) The merger does not discharge any interest holder liability under the organic law of the domestic entity to the extent the interest holder liability arose before the merger became effective.
- (2) The person does not have interest holder liability under the organic law of the domestic entity for any debt, obligation or other liability that arises after the merger becomes effective.
- (3) The organic law of the domestic entity continues to apply to the release, collection or discharge of any interest holder liability preserved under paragraph (1) as if the merger had not occurred.
- (4) The person has whatever rights of contribution from any other person as are provided by law other than this chapter or the organic rules of the domestic entity with respect to any interest holder liability preserved under paragraph (1) as if the merger had not occurred.
- (e) Foreign surviving association.--When a merger under this subchapter becomes effective, a foreign association that is the surviving association may be served with process in this Commonwealth for the collection and enforcement of any debts, obligations or other liabilities of a domestic entity that is a merging association in accordance with applicable law.
- (f) Registration of foreign association.--When a merger under this subchapter becomes effective, the registration to do business in this Commonwealth of a registered foreign association that is a merging association and is not the surviving association is canceled.
- (g) Taxes.--Any taxes, interest, penalties and public accounts of the Commonwealth claimed against any of the merging associations that are settled, assessed or determined prior to or after the merger shall be the liability of the surviving association and, together with interest thereon, shall be a lien against the franchises and property of the surviving association.