

**[15 Pa. Cons. Stat. §§ 311 through 312, 341 through 346.]**

§§ 311 through 312, 341 through 346: Entity Transactions Law — Interest Exchange

**§ 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."

**§ 341. Interest exchange authorized.**

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

(1) A domestic or foreign association may acquire all of one or more classes or series of interests of a domestic entity in exchange for interests, securities, obligations, money, other property, rights to acquire interests or securities or any combination of the foregoing.

(2) A domestic entity may acquire all of one or more classes or series of interests of a foreign association in exchange for interests, securities, obligations, money, other property, rights to acquire interests or securities or any combination of the foregoing.

(b) Foreign associations.--By complying with the applicable provisions of this subchapter:

(1) A foreign association may be the acquiring association in an interest exchange under this subchapter regardless of whether the laws of its jurisdiction of formation authorizes an interest exchange.

(2) A foreign association may be the acquired association in an interest exchange under this subchapter only if the interest exchange is authorized by the laws of its jurisdiction of formation.

(c) Protected agreements.--If a protected agreement of a domestic entity other than a business corporation contains a provision that applies to a merger of the entity but does not refer to an interest exchange, the provision shall apply to an interest exchange in which the domestic entity is the acquired association as if the interest exchange were a merger until the provision is amended after July 1, 2015.

(d) Excluded entities.--The following domestic entities shall not be the acquired association in an interest exchange:

(1) a health maintenance organization;

(2) a hospital plan corporation; or

(3) a professional health service organization.

(e) Transitional provision.--A reference to a share exchange in a provision of the organic rules of a domestic business corporation which took effect before July 1, 2015, shall be deemed to include an interest exchange.

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

Cross References. Section 341 is referred to in section 1106 of this title.

**§ 342. Plan of interest exchange.**

(a) General rule.--A domestic entity may be the acquired association in an interest exchange under this chapter by approving a plan of interest exchange. The plan shall be in record form and contain all of the following:

- (1) The name and type of the acquired association.
  - (2) The name, jurisdiction of formation and type of the acquiring association.
  - (3) The manner of:
    - (i) exchanging the interests in the acquired association to be acquired in the interest exchange into interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing; and
    - (ii) canceling, if desired, some or all other interests in the acquired association.
  - (4) Any proposed amendments to:
    - (i) the public organic record, if any, of the acquired association; and
    - (ii) the private organic rules of the acquired association that are or are proposed to be in record form.
  - (5) Provisions, if any, providing special treatment of interests in the acquired 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).
  - (6) The other terms and conditions of the interest exchange.
  - (7) Any other provision required by:
    - (i) the laws of this Commonwealth; or
    - (ii) the organic rules of the acquired association.
- (b) Optional contents.--In addition to the requirements of subsection (a), a plan of interest exchange may contain any other provision not prohibited by law.
- (c) Cross reference.--See section 316(c) (relating to contents of plan).

Cross References. Section 342 is referred to in sections 8415, 8615, 8815 of this title.

**§ 343. Approval of interest exchange.**

- (a) Approval by domestic entities.--A plan of interest exchange in which the acquired association is a domestic entity shall not be effective unless it has been approved in the following ways:
- (1) By the acquired domestic entity in accordance with the applicable provisions of Subchapter B (relating to approval of entity transactions).

- (2) In record form, by each interest holder of the acquired domestic entity that will have interest holder liability for debts, obligations and other liabilities that arise after the interest exchange 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 entity provide in record form for the approval of an interest exchange or 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 voted for or consented in record form to that provision of the organic rules or became an interest holder after the adoption of that provision.
- (3) Except as provided in the organic rules of the domestic entity, by the following class votes:
- (i) the holders of any class or series of interests of the acquired association to be exchanged or canceled shall be entitled to vote as a class on the plan; and
  - (ii) the holders of any class or series of interests of the acquired association shall be entitled to vote as a class on the plan if the plan effects any change in the organic rules and those holders would have been entitled to vote as a class if the change had been made in any other manner.
- (b) Approval by foreign associations.--An interest exchange in which the acquired association is a foreign association is not effective unless it is approved by the foreign association in accordance with the laws of its jurisdiction of formation.
- (c) Acquiring association.--Except as provided in its organic law or organic rules, the interest holders of the acquiring association are not required to approve the interest exchange.
- (d) Dissenters rights.--If a shareholder of a domestic business corporation that is to be the acquired association in an interest exchange objects to the plan of exchange 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.
- (e) Cross references.--See sections 317 (relating to contractual dissenters rights in entity transactions) and 329(c) (relating to special treatment of interest holders).

Cross References. Section 343 is referred to in sections 346, 1571, 8415, 8615, 8815 of this title.

**§ 344. Amendment or abandonment of plan of interest exchange.**

- (a) General rule.--A plan of interest exchange 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 the acquired association may approve an amendment of a plan of interest exchange 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 any of the interest holders of the entity under the plan.

(ii) The public organic record, if any, or private organic rules of the entity that will be in effect immediately after the interest exchange becomes effective, except for changes that do not require approval of the interest holders of the entity 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 interest exchange has been approved by a domestic entity that is the acquired entity and before a statement of interest exchange becomes effective, the plan may be abandoned as provided in the plan. Unless prohibited by the plan, a domestic entity that is the acquired association may abandon the plan in the same manner as the plan was approved.

(d) Statement of abandonment.--If a plan of interest exchange is abandoned after a statement of interest exchange 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 the acquired association, must be delivered to the department for filing before the time the statement of interest exchange becomes effective.

**§ 345. Statement of interest exchange; effectiveness.**

(a) General rule.--If the acquired association is a domestic entity, a statement of interest exchange shall be signed by that entity and delivered to the department for filing.

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

(1) With respect to the acquired association:

(i) its name;

(ii) its jurisdiction of formation;

(iii) its type;

- (iv) if it is a domestic filing association or domestic limited liability partnership, 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); and
  - (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.
- (2) With respect to the acquiring 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 interest exchange 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 plan of interest exchange was approved by the acquired association in accordance with this chapter.
- (5) Any amendments to the public organic record of the acquired association approved as part of the plan of interest exchange.
- (c) Other provisions.--In addition to the requirements of subsection (b), a statement of interest exchange may contain any other provision not prohibited by law.
- (d) Filing of plan.--A plan of interest exchange that is signed by the domestic entity that is the acquired association and that meets all of the requirements of subsection (b) may be delivered to the department for filing instead of a statement of interest exchange and on filing shall have the same effect. If a plan of interest exchange is delivered to the department for filing as provided in this subsection, references in this chapter to a statement of interest exchange shall refer to the plan of interest exchange filed under this subsection.



(e) Effectiveness.--An interest exchange in which the acquired association is a domestic entity is effective when the statement of interest exchange is effective as provided in section 136(c) (relating to processing of documents by Department of State).

(f) Cross references.--See sections 134 (relating to docketing statement) and 135 (relating to requirements to be met by filed documents).

**§ 346. Effect of interest exchange.**

(a) General rule.--When an interest exchange in which the acquired association is a domestic entity becomes effective, all of the following apply:

(1) Interests in the acquired association are exchanged or canceled as provided in the plan of exchange, 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 343(d) (relating to approval of interest exchange).

(2) The acquiring association becomes the interest holder of the interests in the acquired association stated in the plan of interest exchange to be acquired by the acquiring entity.

(3) The public organic record, if any, of the acquired association is amended to the extent provided in the statement of interest exchange.

(4) The private organic rules of the acquired association that are to be in record form, if any, are amended to the extent provided in the plan of interest exchange.

(b) No dissolution rights.--Except as provided in the organic rules of the acquired association, the interest exchange shall not give rise to any rights that an interest holder, governor or third party would have upon a dissolution, liquidation or winding up of the acquired association.

(c) New interest holder liability.--When an interest exchange becomes effective, a person that becomes subject to interest holder liability with respect to an association as a result of the interest exchange has interest holder liability only to the extent provided by the organic law of the association and only for those debts, obligations and other liabilities that arise after the interest exchange becomes effective.

(d) Prior interest holder liability.--When an interest exchange becomes effective, the interest holder liability of a person that ceases to hold an interest in a domestic acquired association with respect to which the person had interest holder liability is as follows:

(1) The interest exchange does not discharge any interest holder liability under the organic law of the domestic acquired association to the extent the interest holder liability arose before the interest exchange became effective.

(2) The person does not have interest holder liability under the organic law of the domestic acquired association for any debt, obligation or other liability that arises after the interest exchange becomes effective.

(3) The organic law of the domestic acquired association continues to apply to the release, collection or discharge of any interest holder liability preserved under paragraph (1) as if the interest exchange had not occurred.

(4) The person has whatever rights of contribution from any other person as are provided by law other than this title or the organic law or organic rules of the domestic acquired association with respect to any interest holder liability preserved under paragraph (1) as if the interest exchange had not occurred.