

[215 Ill. Comp. Stat. §§ 5/156 through 5/166.]

§§ 5/156 through 5/166: Merger Consolidation or Plans of Exchange

§ 156. Merger and consolidation permitted.

(a) Upon complying with the provisions of this article, any domestic company, except a Lloyds, is hereby authorized and empowered to merge or consolidate with any domestic company or with any foreign or alien company, except a Lloyds if the surviving company meets the requirements for authorization to engage in the insurance business in this state and, if such merger or consolidation is authorized by the laws of the state or country under which such foreign or alien company is incorporated or organized.

(b) The Director may permit the formation of a domestic stock company that is established for the sole purpose of merging or consolidating with an existing stock company simultaneously with the effectiveness of a division authorized by this Code. Upon request of the dividing company, the Director may waive the requirements of Section 131.8 of this Code. Each domestic stock company formed under this subsection shall be deemed to exist before a merger and division under this Section becomes effective, but solely for the purpose of being a party to such merger and division. The Director shall not require that such domestic stock company be licensed to transact insurance business in this state before such merger and division. All insurance policies, annuities, or reinsurance agreements allocated to such domestic stock company shall become the obligation of the domestic stock company that survives the merger simultaneously with the effectiveness of the merger and division. The plan of merger or consolidation shall be deemed to have been authorized and approved by such domestic stock company if the dividing company authorized and approved such plan. The certificate of merger shall state that it was approved by the domestic stock company formed under this subsection.

§ 156.1. Acquisition by exchange of stock permitted.

Any domestic stock insurance company may adopt a plan of exchange of the outstanding stock of its stockholders for the consideration herein designated to be paid or provided by a corporation which acquires such stock, in the manner provided in this Article.

The plan of exchange may provide that the acquiring corporation, as consideration for the stock of the domestic corporation, (1) transfer shares of its stock, or (2) transfer other securities issued by it, or (3) pay cash therefor, or (4) pay or provide other consideration, or (5) pay or provide any combination of the foregoing types of consideration.

"Acquiring corporation", as used in this Article, means any stock insurance corporation incorporated under this Code or under prior laws of this State relating to the incorporation of domestic insurance corporations; any stock corporation incorporated under the "Business Corporation Act of 1983" or under prior laws of this State authorizing the establishment of business corporations; and any foreign or alien stock corporation qualified to do business in Illinois and registered by the corporation department; and any foreign or alien stock insurance company authorized to do business in Illinois.

§ 157. Powers of company not enlarged.

Nothing in this article contained shall be construed to authorize any company to engage in any kind of insurance business not authorized by its articles of incorporation nor to authorize any foreign or alien company to engage in any kind of insurance business in this State not covered by its certificate of authority to do business in this State.

§ 158. Resolutions for merger or consolidation or adoption of a plan of exchange.

The Board of Directors, Trustees or other governing body of each domestic company desiring to merge or consolidate or to adopt a plan of exchange shall, by resolution, approve an agreement of merger or consolidation or plan of exchange, as the case may be, setting forth:

(a) the names of the companies proposing to merge or consolidate or to adopt a plan of exchange, and the names of the states or countries under which each of the companies is incorporated or organized;

(b) in the case of a merger, the name of the company into which they propose to merge, hereafter designated as the surviving company; in the case of a consolidation, the name of the company into which they propose to consolidate, hereafter designated as the new company, and the name of the state or country under the laws of which the new company is to be incorporated or organized;

(c) the terms and conditions of the proposed merger or consolidation or plan of exchange, and the mode of carrying the same into effect;

(d) the manner and basis of converting the shares of stock, if any, of each merging or consolidating company into shares, securities and obligations, if any are to be issued, of the surviving or new company as the case may be;

(e) in the case of a merger, a statement of any changes in the articles of incorporation of the surviving company; in the case of consolidation, all the statements with respect to the new company required to be set forth in original articles of incorporation for a similar company formed under this Code; and

(f) such other provisions with respect to the merger or consolidation or plan of exchange as are deemed necessary or advisable.

§ 159. Vote of shareholders and policyholders.

(1) The agreement of merger or consolidation shall be submitted to a vote at a meeting of the shareholders, if any, of each domestic company and at a meeting of such policyholders of each domestic company, other than a fraternal benefit society, as are entitled to vote. The plan of exchange shall be submitted to a vote at a meeting of the shareholders of the company to be acquired. The meetings may be either annual, periodic or special. Written or printed notice shall be given not less than 20 days before each such meeting, either personally or by mail, to each shareholder of record and to each policyholder entitled to vote. If mailed, such notice is deemed to be delivered when deposited in the United States mail, with postage prepaid, addressed to the shareholder or policyholder, at his address as it appears on the records of the company. However, a domestic mutual company licensed in 2 or more States may give notice by publication in a newspaper of

general circulation in the county in which the company has its principal office and in either of the two largest cities in each State in which the company shall be licensed to do business except as provided in paragraph (3). If the domestic mutual company is licensed in Illinois only, then such notice may be given by publication in a newspaper of general circulation in the 10 counties that have the largest concentration of its policyholders. Notice by publication as approved by the Director shall be published once weekly on 3 successive weeks, the last publication to be at least 20 days before such meeting and not more than 40 days before such meeting. Such notice, whether the meeting is annual, periodic or special, shall state the place, day, hour and purpose of the meeting. A copy or a summary of the agreement of merger or consolidation, or plan of exchange, as the case may be, shall be included in or enclosed with such notice. The shareholders or policyholders may vote in person or by proxy. Each shareholder entitled to vote at such meeting shall have one vote for each share of stock held by him. In the case of domestic companies other than fraternal benefit societies the affirmative vote of two-thirds of all outstanding shares, if any, and if policyholders are entitled to vote, two-thirds of the votes cast by such policyholders of each such company, as are represented at the meeting in person or by proxy, is necessary for the approval of any such agreement or plan.

(2) In the event that a domestic fraternal benefit society is a party to the agreement of merger or consolidation, the board of managers, directors or trustees of such society shall submit the agreement to the supreme legislative and governing body of such society at any regular or special meeting thereof, provided a copy or summary of such agreement shall have been included in or enclosed with the notice of such meeting. Such notice shall be given as provided in the laws of the society for the convening of such supreme legislative and governing body in regular or special session, as the case may be. The affirmative votes of two-thirds of all members of such supreme legislative and governing body is necessary for the approval of the agreement.

(3) The provisions of paragraph (1) relating to notice by publication shall not apply to a merger or consolidation between a mutual company and a stock company if the agreement provides that the stock company is the surviving company. In such case, notice either mailed or personal as provided by paragraph (1) shall be given to each shareholder of record and to each policyholder entitled to vote.

§ 160. Execution of agreement or plan of exchange by domestic company.

Upon such approval of an agreement of merger or consolidation or plan of exchange it shall be executed by any domestic company party thereto by its president or a vice-president and secretary or an assistant secretary, or the executive officers corresponding thereto.

§ 161. Approval and execution of agreement or plan of exchange by foreign or alien company.

In the event that a foreign or alien company is a party to the agreement of merger or consolidation or plan of exchange, the agreement or plan shall be executed by the proper officers of such foreign or alien company when they are duly authorized thereto by such action on the part of the directors, shareholders, members, or policyholders of such foreign or alien company as may be required by the laws of the domiciliary state or country of such foreign or alien company.

§ 162. Certificate of Merger or Consolidation or Plan of Exchange and Certificate of Approval.

(1) Upon the execution of an agreement of merger or consolidation or plan of exchange, there shall be delivered to the Director:

(a) two duplicate originals of the agreement or plan;

(b) affidavits of officers of each of the companies setting forth the facts necessary to show that all requirements of law with respect to notices to persons entitled to vote have been complied with;

(c) certificates of the secretaries or assistant secretaries or corresponding officers of each of the companies, in case of a merger or consolidation, or of the company to be acquired in case of a plan of exchange, certifying to the number of shares, if any, outstanding, the number of shares voted for and against such agreement or plan, and further in the case of a merger or consolidation (1) the number of policyholders represented at the meeting at which the agreement was considered, and (2) the number of votes cast by policyholders for and against such agreement or (3) in the case of a fraternal benefit society, the number of delegates of the supreme legislative or governing body, and the number of votes cast by the delegates for and against the agreement;

(d) the certificates required by Section 171;

(e) if the surviving or new company is a domestic company and any foreign or alien company is a party to the merger or consolidation and the laws of the state or country under which such foreign or alien company is incorporated require approval of the merger or consolidation by an official of such state or country, a certificate of approval of such official; and

(f) in case of consolidation where the new company is a foreign or alien company, an instrument appointing the Director and his or her successor or successors in office, the attorney of such company for service of process, containing the same provisions and having the same effect as the instrument required of a foreign or alien company in order to be admitted to transact business in this State.

In addition, the Director shall be provided, in substantially the same form, the information required under Article VIII 1/2 of this Code.

(2) In case the surviving or new company is a domestic company, if the Director finds that:

(a) the agreement of merger or consolidation is in accordance with the provisions of this Article and not inconsistent with the laws and the Constitutions of this State and the United States;

(b) the surviving or new company has complied with all applicable provisions of this Code;

(c) no reasonable objection exists to such merger or consolidation; and

(d) the standards established under Article VIII 1/2 are satisfied; he or she shall approve the agreement. The provisions of any law with reference to age limits and medical examination shall be inoperative in so far as agreements of merger or consolidation are concerned. If the agreement of merger or consolidation be

approved by the Director, he or she shall file the affidavits and certificates and one of the duplicate originals of the agreement in his or her office, endorse upon the other duplicate original his or her approval thereof, and deliver it, together with a certificate of merger or consolidation, as the case may be, to the surviving or new company. In the case of a consolidation, the Director shall also issue a certificate of authority to the new company.

(3) In case the surviving or new company is a foreign or alien company, if the Director finds that:

(a) the agreement of merger or consolidation is in accordance with the provisions of this Article and not inconsistent with the laws and the Constitutions of this State and the United States;

(b) the agreement of merger or consolidation provides for the assumption by the new or surviving company of all the liabilities and obligations of the companies parties to the merger or consolidation and otherwise affords proper protection for creditors and policyholders and that such provisions are not inconsistent with the laws of the state or country of incorporation of such new or surviving company;

(c) the surviving or new company has complied with all applicable provisions of this Code;

(d) no reasonable objection exists to such merger or consolidation; and

(e) the standards established under Article VIII 1/2 are satisfied; he or she shall approve the agreement. If the agreement be approved by the Director, he or she shall file the affidavits and certificates and one of the duplicate originals of the agreement in his or her office, endorse upon the other duplicate original his or her approval thereof, and deliver it, together with a certificate of approval of the merger or consolidation, as the case may be, to the surviving or new company.

(4) In the case of a plan of exchange, if the Director finds that the parties to the exchange have established that:

(a) the plan, if effective, will not tend adversely to affect the financial stability or management of any domestic company which is a party thereto or the general capacity or intention to continue the safe and prudent transaction of the insurance business of such domestic company or companies;

(b) the interests of the policyholders and shareholders of each domestic insurance company which is a party to the plan are protected;

(c) the competence, experience and integrity of those persons who would control the operation of the domestic company are such as to be in the best interests of the policyholders of such company to permit such exchange;

(d) the terms and conditions of the plan are fair and reasonable; and

(e) the standards established under Article VIII 1/2 are satisfied; he or she shall approve the plan of exchange. If the plan of exchange be approved by the Director, he or she shall file the affidavits and certificates and one of the duplicate originals of the plan of exchange in his or her office, endorse upon the

other duplicate original his or her approval thereof, and deliver it, together with a certificate of approval of the plan of exchange to the domestic company.

(5) If the Director refuses to approve the agreement of merger or consolidation, or plan of exchange, notice of such refusal, assigning the reasons therefor, shall be given in writing by the Director to each of the companies party thereto, within 60 days from the date of the delivery of such agreements or plan to him or her, and he or she shall grant any of such companies a hearing upon request. The hearing shall be held within 30 days of the Director's receipt of request for hearing. All persons to whom it is proposed to issue securities in such agreements or exchange shall have a right to appear. Within 30 days after the close of the hearing the Director shall approve or disapprove or place conditions precedent upon his or her approval of the merger or consolidation or plan by issuing a written order stating his or her determination and the reasons therefor.

§ 163. Date merger or consolidation or plan of exchange effected.

(1) If the surviving or new company is a domestic company, the merger or consolidation is effected upon the issuance of the certificate of merger or the certificate of consolidation, as the case may be.

(2) If the surviving or new company is a foreign or alien company and the Director has issued a certificate of approval of the merger or consolidation, the date upon which the merger or consolidation is effected shall be determined by the laws of the state or country of incorporation or organization of the surviving or new company. However, the merger or consolidation shall in no event become effective in this State until a certificate of merger or consolidation, as the case may be, or other evidence that the merger or consolidation is effected is issued by the proper official of the state or country of incorporation or organization of the surviving or new company and is filed with and approved by the Director.

(3) Notice of adoption of the plan and the approval thereof by the Director shall be delivered or mailed to each shareholder of record of the domestic insurance company to be acquired who was entitled to vote thereon and an affidavit of the secretary or assistant secretary of such company or of an officer of the company's transfer agent that such notice was given shall be filed with the Director. The plan shall become effective 10 days after receipt of the affidavit by the Director. A plan of exchange may be abandoned pursuant to any provisions for abandonment contained therein at any time, provided that notice of such abandonment shall be delivered or mailed to each such stockholder and filed with the Director prior to the termination of such 10 day period.

§ 164. Removal of property of domestic, merged or consolidated company from this State.

(1) If the surviving or new company shall be a foreign or alien company, no property of the domestic merged or consolidated company shall be removed from this State by reason of such merger or consolidation, prior to, nor shall title to such property vest in the surviving or new company until, the merger or consolidation shall become effective in this State as provided in section 163.

(2) Any director or officer of any domestic company removing or permitting the removal of any property of company from this State in violation of this section, shall be guilty of a Class A misdemeanor.

§ 165. Recording of certificate of merger or consolidation.

Within 15 days after such merger or consolidation has become effective, the surviving or new company shall file for record with the recorder of the county in which the principal office of any of the companies parties to the agreement is located in this State, the agreement of merger or consolidation, or copy thereof, certified by the Director, any certificate of approval issued by the Director, or copy thereof, certified by him and a certificate of merger or consolidation, as the case may be, or a copy thereof, certified by the Director, or by the official of the state or country that issued such certificate. The certificate of merger or consolidation, or a copy thereof so certified, shall also be recorded with the recorder of each other county in this State in which any of the companies parties to the agreement, shall have real property at the time of such merger or consolidation, the title to which will be transferred by the merger or consolidation.

§ 166. Effect of merger or consolidation.

(1) If the surviving or new company is a domestic company, when such merger or consolidation has been effected

(a) the several companies parties to the agreement of merger or consolidation shall be a single company, which, in the case of a merger, shall be that company designated in the agreement of merger as the surviving company, and in the case of a consolidation, shall be the new company provided for in the agreement of consolidation;

(b) the separate existence of all of the companies parties to the agreement of merger or consolidation, except the surviving company in the case of a merger, shall cease;

(c) such surviving or new company shall have all of the rights, privileges, immunities and powers and shall be subject to all of the duties and liabilities granted or imposed by this Code;

(d) such surviving or new company shall thereupon and thereafter possess all the rights, privileges, immunities, powers and franchises of a public as well as of a private nature, of each of the companies so merged or consolidated; and all property, real, personal and mixed, and all debts due on whatever account, including subscriptions to shares, assessments payable from members or policyholders, and all other choses in action and all and every other interest of, or belonging to or due to, each of the companies so merged or consolidated shall be deemed to be transferred to and vested in such surviving or new company without further act or deed; and the title to any real estate, or any interest therein, under the laws of this State vested in any of such companies shall not revert or be in any way impaired by reason of such merger or consolidation;

(e) such surviving or new company shall thenceforth be responsible and liable for all the liabilities and obligations of each of the companies so merged or consolidated; any claim existing or action or proceeding pending by or against any of such companies may be prosecuted to judgment as if such merger or consolidation had not taken place, or such surviving or new company may be substituted in its place; neither the rights of creditors nor any liens upon the property of any of such companies shall be impaired by such merger or consolidation, but such liens shall be limited to the property upon which they were liens immediately prior to the time of such merger or consolidation, unless otherwise provided in the agreement of merger or consolidation; and

(f) in case of a merger, the articles of incorporation of the surviving company shall be supplanted and superseded to the extent, if any, that any provision or provisions of such articles shall be restated in the agreement of merger as provided in section 158, and such articles of incorporation, shall be deemed to be thereby and to that extent amended; in case of a consolidation, the statements set forth in the agreement of consolidation as provided in section 158 shall be deemed to be articles of incorporation of the new company formed by such consolidation.

(2) If the surviving or new company is a foreign or alien company, when such merger or consolidation has become effective in this State

(a) the effect of the merger or consolidation shall be determined by the law of the state of incorporation or organization of such company;

(b) the separate existence of all domestic companies parties to the plan of merger or consolidation shall cease;

(c) all property, real, personal, and mixed, and all debts due on whatever account including subscriptions to shares, assessments payable from members or policyholders and all other choses in action and all and every other interest of or belonging to and due to each of the companies so merged or consolidated shall be taken and deemed to be transferred to and vested in such surviving or new company without further act or deed, and the title to any real estate, or any interest therein, shall not revert or be in any way impaired by reason of such merger or consolidation.

(3) In the event of a merger or consolidation under this article, the surviving company or the consolidated company shall be considered as having the age of the oldest company which is a party to such merger or consolidation for the purpose of complying with requirements of the laws relating to age of company.