

[805 Ill. Comp. Stat. §§ 180/37-5 through 180/37-40.]

§§ 180/37-5 through 180/37-40: Conversions, Domestications, Mergers, and Series – Limited Liability Company Act.

§ 37-5. Definitions.

In this Article:

"Constituent limited liability company" means a constituent organization that is a limited liability company.

"Constituent organization" means an organization that is party to a merger.

"Governing statute" means the statute that governs an organization's internal affairs.

"Organization" means a general partnership, including a limited liability partnership, limited partnership, including a limited liability limited partnership, limited liability company, business trust, corporation, or any other person having a governing statute. The term includes a domestic or foreign organization regardless of whether organized for profit.

"Organizational document" means:

- (1) for a domestic or foreign general partnership, its partnership agreement;
- (2) for a limited partnership or foreign limited partnership, its certificate of limited partnership and partnership agreement;
- (3) for a domestic or foreign limited liability company, its certificate or articles of organization and operating agreement, or comparable records as provided in its governing statute;
- (4) for a business trust, its agreement of trust and declaration of trust;
- (5) for a domestic or foreign corporation for profit, its articles of incorporation, bylaws, and any agreements among its shareholders which are authorized by its governing statute, or comparable records as provided in its governing statute; and
- (6) for any other organization, the basic records that create the organization and determine its internal governance and the relations among the persons that own it, have an interest in it, or are members of it.

"Personal liability" means liability for a debt, obligation, or other liability of an organization which is imposed on a person that co-owns, has an interest in, or is a member of the organization:

- (1) by the governing statute solely by reason of the person co-owning, having an interest in, or being a member of the organization; or

(2) by the organization's organizational documents under a provision of the governing statute authorizing those documents to make one or more specified persons liable for all or specified debts, obligations, or other liabilities of the organization solely by reason of the person or persons co-owning, having an interest in, or being a member of the organization.

"Surviving organization" means an organization into which one or more other organizations are merged, whether the organization preexisted the merger or was created by the merger.

§ 37-10. Conversions and domestications.

(a) Conversions and domestications are governed by the Entity Omnibus Act.

§§ 37-15 through 37-17. (Repealed).

§ 37-20. Merger of entities.

(a) A limited liability company may merge with one or more other constituent organizations pursuant to this Section, Sections 37-21 through 37-30, and a plan of merger, if:

(1) the governing statute of each of the other organizations authorizes the merger;

(2) the merger is not prohibited by the law of a jurisdiction that enacted any of the governing statutes;
and

(3) each of the other organizations complies with its governing statute in effecting the merger.

(b) A plan of merger must be in a record and must include:

(1) the name and form of each constituent organization;

(2) the name and form of the surviving organization and, if the surviving organization is to be created by the merger, a statement to that effect;

(3) the terms and conditions of the merger, including the manner and basis for converting the interests in each constituent organization into any combination of money, interests in the surviving organization, and other consideration;

(4) if the surviving organization is to be created by the merger, the surviving organization's organizational documents that are proposed to be in a record; and

(5) if the surviving organization is not to be created by the merger, any amendments to be made by the merger to the surviving organization's organizational documents that are, or are proposed to be, in a record.

§ 37-21. Action on plan of merger by constituent limited liability company.

(a) Subject to Section 37-36, a plan of merger must be consented to by all the members of a constituent limited liability company.

(b) Subject to Section 37-36 and any contractual rights, after a merger is approved and at any time before articles of merger are delivered to the Secretary of State for filing under Section 37-25, a constituent limited liability company may amend the plan or abandon the merger:

(1) as provided in the plan; or

(2) except as otherwise prohibited in the plan, with the same consent as was required to approve the plan.

§ 37-25. Articles of merger.

(a) After each constituent organization has approved a merger, articles of merger must be signed on behalf of:

(1) each constituent limited liability company as provided in Section 5-45; and

(2) each other constituent organization, as provided in its governing statute.

(b) Articles of merger under this Section must include:

(1) the name and form of each constituent organization and the jurisdiction of its governing statute;

(2) the name and form of the surviving organization, the jurisdiction of its governing statute and, if the surviving organization is created by the merger, a statement to that effect;

(3) the date merger is effective under the governing statute of the surviving organization;

(4) if the surviving organization is to be created by the merger:

(A) if it will be a limited liability company, the company's articles of organization; or

(B) if it will be an organization other than a limited liability company, the organizational document that creates the organization that is in a public record;

(5) if the surviving organization preexists the merger, any amendments provided for in the plan of merger for the organizational document that created the organization that are in a public record;

(6) a statement as to each constituent organization that the merger was approved as required by the organization's governing statute;

(7) if the surviving organization is a foreign organization not authorized to transact business in this State, the street and mailing addresses of an office the Secretary of State may use for the purposes of subsection (b) of Section 37-30; and

(8) any additional information required by the governing statute of any constituent organization.

(c) Each constituent limited liability company shall deliver the articles of merger for filing to the Secretary of State, together with a copy of that portion of the plan of merger that contains the name and form of each constituent organization and the surviving organization.

(d) A merger becomes effective:

(1) if the surviving organization is a limited liability company, upon the later of:

(A) the filing of the articles of merger with the Secretary of State; or

(B) subject to Section 5-40, as specified in the articles of merger; or

(2) if the surviving organization is not a limited liability company, as provided by the governing statute of the surviving organization.

§ 37-30. Effect of merger.

(a) When a merger becomes effective:

(1) the surviving organization continues or comes into existence;

(2) each constituent organization that merges into the surviving organization ceases to exist as a separate entity;

(3) all property owned by each constituent organization that ceases to exist vests in the surviving organization;

(4) all debts, obligations, or other liabilities of each constituent organization that ceases to exist continue as debts, obligations, or other liabilities of the surviving organization;

(5) an action or proceeding pending by or against any constituent organization that ceases to exist may be continued as if the merger had not occurred;

(6) except as prohibited by other law, all of the rights, privileges, immunities, powers, and purposes of each constituent organization that ceases to exist vest in the surviving organization;

(7) except as otherwise provided in the plan of merger, the terms and conditions of the plan of merger take effect;

(8) except as otherwise agreed, if a constituent limited liability company ceases to exist, the merger does not dissolve the limited liability company for the purposes of Article 35;

(9) if the surviving organization is created by the merger:

(A) if it is a limited liability company, the articles of organization become effective; or

(B) if it is an organization other than a limited liability company, the organizational document that creates the organization becomes effective; and

(10) if the surviving organization preexisted the merger, any amendments provided for in the articles of merger for the organizational document that created the organization become effective.

(b) A surviving organization that is a foreign organization consents to the jurisdiction of the courts of this State to enforce any debt, obligation, or other liability owed by a constituent organization, if before the merger the constituent organization was subject to suit in this State on the debt, obligation, or other liability. A surviving organization that is a foreign organization and not authorized to transact business in this State appoints the Secretary of State as its agent for service of process for the purposes of enforcing a debt, obligation, or other liability under this subsection. Service on the Secretary of State under this subsection must be made in the same manner and has the same consequences as in subsections (b) and (c) of Section 1-50.

(c) A surviving organization that is a foreign organization may not do business in this State until an application for that authority is filed with the Secretary of State.

§§ 37-31 through 37-34. (Repealed).

§ 37-35. Article not exclusive.

This Article does not preclude an entity from being converted or merged under other law. A bank or savings bank that converts to or merges with and into a limited liability company shall be subject to the provisions of this Article or to other applicable law to the extent that those provisions do not conflict with the State or federal law pursuant to which the conversion or merger of the bank or savings bank is authorized.

§ 37-36. Restrictions on approval of mergers.

(a) If a member of a merging limited liability company will have personal liability with respect to a surviving organization, approval or amendment of a plan of merger is ineffective without the consent of the member, unless:

(1) the company's operating agreement provides for approval of a merger with the consent of fewer than all the members; and

(2) the member has consented to the provision of the operating agreement.

(b) A member does not give the consent required by subsection (a) merely by consenting to a provision of the operating agreement that permits the operating agreement to be amended with the consent of fewer than all the members.

§ 37-40. Series of members, managers or limited liability company interests.

(a) An operating agreement may establish or provide for the establishment of designated series of members, managers or limited liability company interests having separate rights, powers or duties with respect to specified property or obligations of the limited liability company or profits and losses associated

with specified property or obligations, and to the extent provided in the operating agreement, any such series may have a separate business purpose or investment objective.

(b) Notwithstanding anything to the contrary set forth in this Section or under other applicable law, in the event that an operating agreement creates one or more series, and if separate and distinct records are maintained for any such series and the assets associated with any such series are held (directly or indirectly, including through a nominee or otherwise) and accounted for separately from the other assets of the limited liability company, or any other series thereof, and if the operating agreement so provides, and notice of the limitation on liabilities of a series as referenced in this subsection is set forth in the articles of organization of the limited liability company and if the limited liability company has filed a certificate of designation for each series which is to have limited liability under this Section, then the debts, liabilities and obligations incurred, contracted for or otherwise existing with respect to a particular series shall be enforceable against the assets of such series only, and not against the assets of the limited liability company generally or any other series thereof, and unless otherwise provided in the operating agreement, none of the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to the limited liability company generally or any other series thereof shall be enforceable against the assets of such series. The fact that the articles of organization contain the foregoing notice of the limitation on liabilities of a series and a certificate of designation for a series is on file in the Office of the Secretary of State shall constitute notice of such limitation on liabilities of a series. A series with limited liability shall be treated as a separate entity to the extent set forth in the articles of organization. Each series with limited liability may, in its own name, contract, hold title to assets, grant security interests, sue and be sued and otherwise conduct business and exercise the powers of a limited liability company under this Act. The limited liability company and any of its series may elect to consolidate their operations as a single taxpayer to the extent permitted under applicable law, elect to work cooperatively, elect to contract jointly or elect to be treated as a single business for purposes of qualification to do business in this or any other state. Such elections shall not affect the limitation of liability set forth in this Section except to the extent that the series have specifically accepted joint liability by contract.

(c) Except in the case of a foreign limited liability company that has adopted an assumed name pursuant to Section 45-15, the name of the series with limited liability must commence with the entire name of the limited liability company, as set forth in its articles of organization, and be distinguishable from the names of the other series set forth in the articles of organization. In the case of a foreign limited liability company that has adopted an assumed name pursuant to Section 45-15, the name of the series with limited liability must commence with the entire name, as set forth in the foreign limited liability company's assumed name application, under which the foreign limited liability company has been admitted to transact business in this State.

(d) Upon the filing of the certificate of designation with the Secretary of State setting forth the name of each series with limited liability, the series' existence shall begin, and each of the duplicate copies stamped "Filed" and marked with the filing date shall be conclusive evidence, except as against the State, that all conditions precedent required to be performed have been complied with and that the series has been or shall be legally organized and formed under this Act. If different from the limited liability company, the certificate of designation for each series shall list the name and business address of all of the managers and any member having the authority of a manager. The name of a series with limited liability under subsection (b) of this

Section may be changed by filing with the Secretary of State a certificate of designation identifying the series whose name is being changed and the new name of such series. If not the same as the limited liability company, the name and business address of all of the managers and any member having the authority of a manager may be changed by filing a new certificate of designation with the Secretary of State. A series with limited liability under subsection (b) of this Section may be dissolved by filing with the Secretary of State a certificate of designation identifying the series being dissolved or by the dissolution of the limited liability company as provided in subsection (m) of this Section. Certificates of designation may be executed by the limited liability company or any manager, person or entity designated in the operating agreement for the limited liability company.

(e) A series of a limited liability company will be deemed to be in good standing as long as the limited liability company is in good standing.

(f) The registered agent and registered office for the limited liability company in Illinois shall serve as the agent and office for service of process in Illinois for each series.

(g) An operating agreement may provide for classes or groups of members or managers associated with a series having such relative rights, powers and duties as the operating agreement may provide, and may make provision for the future creation of additional classes or groups of members or managers associated with the series having such relative rights, powers and duties as may from time to time be established, including rights, powers and duties senior to existing classes and groups of members or managers associated with the series.

(h) A series may be managed by either the member or members associated with the series or by a manager or managers chosen by the members of such series, as provided in the operating agreement. Unless otherwise provided in an operating agreement, the management of a series shall be vested in the members associated with such series.

(i) An operating agreement may grant to all or certain identified members or managers or a specified class or group of the members or managers associated with a series the right to vote separately or with all or any class or group of the members or managers associated with the series, on any matter. An operating agreement may provide that any member or class or group of members associated with a series shall have no voting rights.

(j) Except to the extent modified in this Section, the provisions of this Act which are generally applicable to limited liability companies, their managers, members and transferees shall be applicable to each particular series with respect to the operation of such series.

(k) Except as otherwise provided in an operating agreement, any event under this Act or in an operating agreement that causes a manager to cease to be a manager with respect to a series shall not, in itself, cause such manager to cease to be a manager of the limited liability company or with respect to any other series thereof.

(l) Except as otherwise provided in an operating agreement, any event under this Act or an operating agreement that causes a member to cease to be associated with a series shall not, in itself, cause such member to cease to be associated with any other series or terminate the continued membership of a member

in the limited liability company or cause the termination of the series, regardless of whether such member was the last remaining member associated with such series.

(m) Except to the extent otherwise provided in the operating agreement, a series may be dissolved and its affairs wound up without causing the dissolution of the limited liability company. The dissolution of a series established in accordance with subsection (b) of this Section shall not affect the limitation on liabilities of such series provided by subsection (b) of this Section. A series is terminated and its affairs shall be wound up upon the dissolution of the limited liability company under Article 35 of this Act.

(n) If a limited liability company with the ability to establish series does not register to do business in a foreign jurisdiction for itself and certain of its series, a series of a limited liability company may itself register to do business as a limited liability company in the foreign jurisdiction in accordance with the laws of the foreign jurisdiction.

(o) If a foreign limited liability company, as permitted in the jurisdiction of its organization, has established a series having separate rights, powers or duties and has limited the liabilities of such series so that the debts, liabilities and obligations incurred, contracted for or otherwise existing with respect to a particular series are enforceable against the assets of such series only, and not against the assets of the limited liability company generally or any other series thereof, or so that the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to the limited liability company generally or any other series thereof are not enforceable against the assets of such series, then the limited liability company, on behalf of itself or any of its series, or any of its series on their own behalf may register to do business in the State in accordance with Section 45-5 of this Act. The limitation of liability shall be so stated on the application for admission as a foreign limited liability company and a certificate of designation shall be filed for each series being registered to do business in the State by the limited liability company. Unless otherwise provided in the operating agreement, the debts, liabilities and obligations incurred, contracted for or otherwise existing with respect to a particular series of such a foreign limited liability company shall be enforceable against the assets of such series only, and not against the assets of the foreign limited liability company generally or any other series thereof and none of the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to such a foreign limited liability company generally or any other series thereof shall be enforceable against the assets of such series.