

[Alaska Stat. §§ 10.55.301 through 10.55.306, 10.55.901 through 10.55.902.]

§§ 10.55.301 through 10.55.306: Alaska Entity Transactions Act — Interest Exchange

§ 10.55.301. Interest exchange authorized.

(a) Except as otherwise provided in this section, by complying with AS 10.55.301 — 10.55.306,

(1) a domestic entity may acquire all of one or more classes or series of interests of another domestic or foreign entity in exchange for interests, securities, obligations, rights to acquire interests or securities, cash, or other property, or any combination of interests, securities, obligations, rights to acquire interests or securities, cash, or other property; or

(2) all of one or more classes or series of interests of a domestic entity may be acquired by another domestic or foreign entity in exchange for interests, securities, obligations, rights to acquire interests or securities, cash, or other property, or any combination of interests, securities, obligations, rights to acquire interests or securities, cash, or other property.

(b) Except as otherwise provided in this section, by complying with the provisions of AS 10.55.301 — 10.55.306 applicable to foreign entities, a foreign entity may be the acquiring or acquired entity in an interest exchange under AS 10.55.301 — 10.55.306 if the interest exchange is authorized by the law of the foreign entity's jurisdiction of organization.

(c) Unless the provision is amended after July 1, 2014, if a protected agreement contains a provision that applies to a merger of a domestic entity but does not refer to an interest exchange, the provision applies to an interest exchange in which the domestic entity is the acquired entity as if the interest exchange were a merger.

(d) The provisions of AS 10.55.301 — 10.55.306 do not apply to a share exchange under AS 10.06.530 — 10.06.582 or 10.06.960. In this subsection, "share exchange" means a share exchange authorized by AS 10.06.538 or an exchange regulated by AS 10.06.960.

§ 10.55.302. Plan of interest exchange.

(a) A domestic entity may be the acquired entity in an interest exchange under AS 10.55.301 — 10.55.306 by approving a plan of interest exchange. The plan must be in a record and contain

(1) the name and type of the acquired entity;

(2) the name, jurisdiction of organization, and type of the acquiring entity;

(3) the manner of converting the interests in the acquired entity into interests, securities, obligations, rights to acquire interests or securities, cash, or other property, or any combination of interests, securities, obligations, rights to acquire interests or securities, cash, or other property;

(4) any proposed amendments to the public organic document or private organic rules that are, or are proposed to be, in a record of the acquired entity;

(5) the other terms and conditions of the interest exchange; and

(6) any other provision required by the law of this state or the organic rules of the acquired entity.

(b) A plan of interest exchange may contain any other provision not prohibited by law.

§ 10.55.303. Approval of interest exchange.

(a) A plan of interest exchange is not effective unless it has been approved

(1) by a domestic acquired entity

(A) in accordance with the requirements, if any, in the acquired entity's organic law and organic rules for approval of an interest exchange;

(B) except as otherwise provided in (d) of this section, if neither the acquired entity's organic law nor organic rules provide for approval of an interest exchange, in accordance with the requirements, if any, in the acquired entity's organic law and organic rules for approval of,

(i) in the case of an entity that is not a business corporation, a merger, as if the interest exchange were a merger; or

(ii) in the case of a business corporation, a merger requiring approval by a vote of the interest holders of the business corporation, as if the interest exchange were that type of merger; or

(C) if neither its organic law nor organic rules provide for approval of an interest exchange or a merger described in (B)(ii) of this paragraph, by all of the interest holders of the entity entitled to vote on or consent to any matter; and

(2) in a record, by each interest holder of a domestic acquired entity that will have interest-holder liability for liabilities that arise after the interest exchange becomes effective, unless, in the case of an entity that is not a business corporation or nonprofit corporation,

(A) the organic rules of the entity provide in a record for the approval of an interest exchange or a merger in which some or all of the entity's interest holders become subject to interest-holder liability by the vote or consent of fewer than all of the interest holders; and

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

(b) An interest exchange involving a foreign acquired entity is not effective unless it is approved by the foreign entity in accordance with the law of the foreign entity's jurisdiction of organization.

(c) Except as otherwise provided in the acquiring entity's organic law or organic rules, the interest holders of the acquiring entity are not required to approve the interest exchange.

(d) A provision of the organic law of a domestic acquired entity that would permit a merger between the acquired entity and the acquiring entity to be approved without the vote or consent of the interest holders of the acquired entity because of the percentage of interests in the acquired entity held by the acquiring entity does not apply to approval of an interest exchange under (a)(1)(B) of this section.

§ 10.55.304. Amendment or abandonment of plan of interest exchange.

(a) A plan of interest exchange of a domestic acquired entity may be amended

(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; or

(2) by the governors or interest holders of the entity in the manner provided in the plan; however, an interest holder that was entitled to vote on or consent to approval of the interest exchange is entitled to vote on or consent to any amendment of the plan that will change

(A) the amount or kind of interests, securities, obligations, rights to acquire interests or securities, cash, or other property, or any combination of interests, securities, obligations, rights to acquire interests or securities, cash, or other property, to be received by any of the interest holders of the acquired entity under the plan;

(B) the public organic document or private organic rules of the acquired 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 acquired entity under its organic law or organic rules; or

(C) any other terms or conditions of the plan, if the change would adversely affect the interest holder in any material respect.

(b) After a plan of interest exchange has been approved by a domestic acquired entity and before a statement of interest exchange becomes effective, the plan may be abandoned

(1) as provided in the plan; or

(2) unless prohibited by the plan, in the same manner as the plan was approved.

(c) If a plan of interest exchange is abandoned after a statement of interest exchange has been filed with the department and before the filing becomes effective, a statement of abandonment, signed on behalf of the

acquired entity, must be filed with the department before the time the statement of interest exchange becomes effective. The statement of abandonment takes effect on filing, and the interest exchange is abandoned and does not become effective. The statement of abandonment must contain

- (1) the name of the acquired entity;
- (2) the date on which the statement of interest exchange was filed; and
- (3) a statement that the interest exchange has been abandoned in accordance with this section.

§ 10.55.305. Statement of interest exchange; effective date.

(a) A statement of interest exchange shall be signed on behalf of a domestic acquired entity and filed with the department.

(b) A statement of interest exchange must contain

- (1) the name and type of the acquired entity;
- (2) the name, jurisdiction of organization, and type of the acquiring entity;
- (3) if the statement of interest exchange is not to be effective upon filing, the later date and time on which it will become effective, which may not be more than 90 days after the date of filing;
- (4) a statement that the plan of interest exchange was approved by the acquired entity in accordance with AS 10.55.301 — 10.55.306; and
- (5) any amendments to the acquired entity's public organic document approved as part of the plan of interest exchange.

(c) In addition to the requirements of (b) of this section, a statement of interest exchange may contain any other provision not prohibited by law.

(d) A plan of interest exchange that is signed on behalf of a domestic acquired entity and meets all of the requirements of (b) of this section may be filed with the department instead of a statement of interest exchange and, on filing, has the same effect as a statement of interest exchange. If a plan of interest exchange is filed as provided in this subsection, references in this chapter to a statement of interest exchange refer to the plan of interest exchange filed under this subsection.

(e) A statement of interest exchange becomes effective on the date and time of filing or the later date and time specified in the statement of interest exchange.

§ 10.55.306. Effect of interest exchange.

(a) When an interest exchange becomes effective,

(1) the interests in the acquired entity that are the subject of the interest exchange cease to exist or are converted or exchanged, and the interest holders of those interests are entitled only to the rights provided to them under the plan of interest exchange and to any dissenters' rights they have under AS 10.55.109 and the acquired entity's organic law;

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

(3) the public organic document, if any, of the acquired entity is amended as provided in the statement of interest exchange and is binding on the acquired entity's interest holders; and

(4) the private organic rules of the acquired entity that are to be in a record, if any, are amended to the extent provided in the plan of interest exchange and are binding on and enforceable by

(A) the acquired entity's interest holders; and

(B) in the case of an acquired entity that is not a business corporation or nonprofit corporation, any other person that is a party to an agreement that is part of the acquired entity's private organic rules.

(b) Except as otherwise provided in the organic law or organic rules of the acquired entity, the interest exchange does not give rise to any rights that an interest holder, governor, or third party would otherwise have upon a dissolution, liquidation, or winding up of the acquired entity.

(c) When an interest exchange becomes effective, a person that did not have interest-holder liability with respect to the acquired entity and that becomes subject to interest-holder liability with respect to a domestic entity as a result of the interest exchange has interest-holder liability only to the extent provided by the organic law of the entity and only for those liabilities that arise after the interest exchange becomes effective.

(d) When an interest exchange becomes effective, the interest-holder liability of a person that ceases to hold an interest in a domestic acquired entity 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 entity 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 entity for any liability that arises after the interest exchange becomes effective;

(3) the organic law of the domestic acquired entity continues to apply to the release, collection, or discharge of any interest-holder liability preserved under (1) of this subsection as if the interest exchange had not occurred; and

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

§ 10.55.901. Definitions.

In this chapter,

(1) "acquired entity" means the entity, all of one or more classes or series of interests in which are acquired in an interest exchange;

(2) "acquiring entity" means the entity that acquires all of one or more classes or series of interests of the acquired entity in an interest exchange;

(3) "approve" means, in the case of an entity, for its governors and interest holders to take whatever steps are necessary under its organic rules, organic law, and other law to

(A) propose a transaction subject to this chapter;

(B) adopt and approve the terms and conditions of the transaction; and

(C) conduct any required proceedings or otherwise obtain any required votes or consents of the governors or interest holders;

(4) "business corporation" means a corporation whose internal affairs are governed by AS 10.06;

(5) "commissioner" means the commissioner of commerce, community, and economic development;

(6) "conversion" means a transaction authorized by AS 10.55.401 — 10.55.406;

(7) "converted entity" means the converting entity as it continues in existence after a conversion;

(8) "converting entity" means the domestic entity that approves a plan of conversion under AS 10.55.403 or the foreign entity that approves a conversion under the law of its jurisdiction of organization;

(9) "department" means the Department of Commerce, Community, and Economic Development;

(10) "domesticated entity" means the domesticating entity as it continues in existence after a domestication;

(11) "domesticating entity" means the domestic entity that approves a plan of domestication under AS 10.55.503 or the foreign entity that approves a domestication under the law of its jurisdiction of organization;

(12) "domestication" means a transaction authorized by AS 10.55.501 — 10.55.506;

(13) "domestic entity" means an entity whose internal affairs are governed by the law of this state;

(14) "entity" means

(A) a business corporation;

(B) a nonprofit corporation;

(C) a general partnership, including a limited liability partnership;

(D) a limited partnership, including a limited liability limited partnership;

(E) a limited liability company;

(F) a business trust or statutory trust entity;

(G) an unincorporated nonprofit association;

(H) a cooperative; or

(I) any other person that has a separate legal existence or has the power to acquire an interest in real property in its own name, other than

(i) an individual;

(ii) a testamentary, inter vivos, or charitable trust, with the exception of a trust that carries on a business;

(iii) an association or relationship that is not a partnership solely by reason of AS 32.06.202(c) (Uniform Partnership Act) or a similar provision of the law of any other jurisdiction;

(iv) a decedent's estate; or

(v) a government, a governmental subdivision, agency, or instrumentality, or a quasi-governmental instrumentality;

(15) "filing entity" means an entity that is created by the filing of a public organic document;

(16) "foreign entity" means an entity other than a domestic entity;

(17) "governance interest" means the right under the organic law or organic rules of an entity, other than as a governor, agent, assignee, or proxy, to

(A) receive or demand access to information concerning, or the books and records of, the entity;

(B) vote for the election of the governors of the entity; or

(C) receive notice of or vote on any or all issues involving the internal affairs of the entity;

(18) "governor" means a person by or under whose authority the powers of an entity are exercised and under whose direction the business and affairs of the entity are managed under the organic law and organic rules of the entity;

(19) "interest" means

(A) a governance interest in an unincorporated entity;

(B) a transferable interest in an unincorporated entity; or

(C) a share or membership in a corporation;

(20) "interest exchange" means a transaction authorized by AS 10.55.301 — 10.55.306;

(21) "interest holder" means a direct holder of an interest;

(22) "interest-holder liability" means

(A) personal liability for a liability of an entity that is imposed on a person

(i) solely by reason of the status of the person as an interest holder; or

(ii) by the organic rules of the entity under a provision of the organic law authorizing the organic rules to 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; or

(B) an obligation of an interest holder under the organic rules of an entity to contribute to the entity;

(23) "jurisdiction of organization" of an entity means the jurisdiction whose law includes the organic law of the entity;

(24) "liability" means a debt, obligation, or any other liability arising in any manner, regardless of whether it is secured or whether it is contingent;

(25) "merger" means a transaction in which two or more merging entities are combined into a surviving entity under a filing with the department;

(26) "merging entity" means an entity that is a party to a merger and exists immediately before the merger becomes effective;

(27) "nonprofit corporation" means a corporation whose internal affairs are governed by AS 10.20 (Alaska Nonprofit Corporation Act);

(28) "organic law" means the statutes, if any, other than this chapter, governing the internal affairs of an entity;

(29) "organic rules" means the public organic document and private organic rules of an entity;

(30) "person" means an individual, corporation, estate, trust, partnership, limited liability company, business or similar trust, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity;

(31) "plan" means a plan of merger, interest exchange, conversion, or domestication;

(32) "private organic rules" means the rules, whether or not in a record, that govern the internal affairs of an entity, are binding on all of its interest holders, and are not part of its public organic document, if any;

(33) "protected agreement" means

(A) a record evidencing indebtedness and any related agreement in effect on July 1, 2014;

(B) an agreement that is binding on an entity on July 1, 2014;

(C) the organic rules of an entity in effect on July 1, 2014; or

(D) an agreement that is binding on any of the governors or interest holders of an entity on July 1, 2014;

(34) "public organic document" means the public record, the filing of which creates an entity, and any amendment to or restatement of that record;

(35) "qualified foreign entity" means a foreign entity that is authorized to transact business in this state under a filing with the department;

(36) "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;

(37) "sign" means, with present intent to authenticate or adopt a record,

(A) to execute or adopt a tangible symbol; or

(B) to attach to or logically associate with the record an electronic sound, symbol, or process;

(38) "surviving entity" means the entity that continues in existence after or is created by a merger;

(39) "transferable interest" means the right under an entity's organic law to receive distributions from the entity;

(40) "type," with regard to an entity, means a generic form of entity

(A) recognized at common law; or

(B) organized under an organic law, whether or not some entities organized under that organic law are subject to provisions of that law that create different categories of the form of entity.

[§ 10.55.902. Short title.](#)

This chapter may be cited as the Alaska Entity Transactions Act.