

[Kan. Stat. Ann. §§ 17-78-101 through 17-78-110.]

§§ 17-78-101 through 17-78-110: Business Entity Transactions Act – General Provisions

§ 17-78-101. Short title.

This act may be cited as the business entity transactions act.

§ 17-78-102. Definitions.

As used in this act:

- (a) "Acquired entity" means the entity, all of one or more classes or series of interests in which are acquired in an interest exchange.
- (b) "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.
- (c) "Agreement" means a plan or agreement of merger, interest exchange, conversion or domestication.
- (d) "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:
 - (1) Propose a transaction subject to this act;
 - (2) adopt and approve the terms and conditions of the transaction; and
 - (3) conduct any required proceedings or otherwise obtain any required votes or consents of the governors or interest holders.
- (e) "Conversion" means a transaction authorized by K.S.A. 2019 Supp. 17-78-401 through 17-78-406, and amendments thereto.
- (f) "Converted entity" means the converting entity as it continues in existence after a conversion.
- (g) "Converting entity" means the domestic entity that approves an agreement of conversion pursuant to K.S.A. 2019 Supp. 17-78-403, and amendments thereto, or the foreign entity that approves a conversion pursuant to the law of its jurisdiction of organization.
- (h) "Domestic entity" means an entity whose internal affairs are governed by the law of this state.
- (i) "Domesticated entity" means the domesticating entity as it continues in existence after a domestication.

(j) "Domesticating entity" means the domestic entity that approves an agreement of domestication pursuant to K.S.A. 2019 Supp. 17-78-503, and amendments thereto, or the foreign entity that approves a domestication pursuant to the law of its jurisdiction of organization.

(k) "Domestication" means a transaction authorized by K.S.A. 2019 Supp. 17-78-501 through 17-78-506, and amendments thereto.

(l) "Entity" means:

(1) A corporation;

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

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

(4) a limited liability company;

(5) a business trust or statutory trust entity;

(6) a cooperative; or

(7) 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:

(A) An individual;

(B) a testamentary, inter vivos, or charitable trust, with the exception of a business trust, statutory trust entity or similar trust;

(C) an association or relationship that is not a partnership solely by reason of subsection (c) of K.S.A. 56a-202, and amendments thereto, or a similar provision of the law of any other jurisdiction;

(D) a decedent's estate; or

(E) a government, a governmental subdivision, agency, or instrumentality or a quasi-governmental instrumentality.

(m) "Filing entity" means an entity that is created by the filing of a public organic document.

(n) "Foreign entity" means an entity whose internal affairs are governed by the laws of a jurisdiction other than this state.

(o) "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:

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

- (2) vote for the election of the governors of the entity; or
- (3) receive notice of or vote on any or all issues involving the internal affairs of the entity.
- (p) "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 pursuant to the organic law and organic rules of the entity.
- (q) "Interest" means:
 - (1) A governance interest in an unincorporated entity;
 - (2) a transferable interest in an unincorporated entity; or
 - (3) a share or membership in a corporation.
- (r) "Interest exchange" means a transaction authorized by K.S.A. 2019 Supp. 17-78-301 through 17-78-306, and amendments thereto.
- (s) "Interest holder" means a direct holder of an interest.
- (t) "Interest holder liability" means:
 - (1) Personal liability for a liability of an entity that is imposed on a person:
 - (A) Solely by reason of the status of the person as an interest holder; or
 - (B) by the organic rules of the entity pursuant to 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
 - (2) an obligation of an interest holder under the organic rules of an entity to contribute to the entity.
- (u) "Jurisdiction of organization" of an entity means the jurisdiction whose law includes the organic law of the entity.
- (v) "Liability" means a debt, obligation or any other liability arising in any manner, regardless of whether it is secured or whether it is contingent.
- (w) "Merger" means a transaction in which two or more merging entities are combined into a surviving entity pursuant to a filing with the secretary of state.
- (x) "Merging entity" means an entity that is a party to a merger and exists immediately before the merger becomes effective.
- (y) "Organic law" means the statutes, if any, other than this act, governing the internal affairs of an entity.

- (z) "Organic rules" means the public organic document and private organic rules of an entity.
- (aa) "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.
- (bb) "Private organic rules" mean 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.
- (cc) "Protected agreement" means:
- (1) A record evidencing indebtedness and any related agreement in effect on the effective date of this act;
 - (2) an agreement that is binding on an entity on the effective date of this act;
 - (3) the organic rules of an entity in effect on the effective date of this act; or
 - (4) an agreement that is binding on any of the governors or interest holders of an entity on the effective date of this act.
- (dd) "Public organic document" means the public record the filing of which creates an entity and any amendment to or restatement of that record.
- (ee) "Qualified foreign entity" means a foreign entity that is authorized to transact business in this state pursuant to a filing with the secretary of state.
- (ff) "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.
- (gg) "Sign" means, with present intent to authenticate or adopt a record:
- (1) To execute or adopt a tangible symbol; or
 - (2) to attach to or logically associate with the record an electronic sound, symbol or process.
- (hh) "Surviving entity" means the entity that continues in existence after or is created by a merger.
- (ii) "Transferable interest" means the right under an entity's organic law to receive distributions from the entity.
- (jj) "Type," with regard to an entity, means a generic form of entity:
- (1) Recognized at common law; or
 - (2) 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.

§ 17-78-103. Relationship of act to other laws.

- (a) Unless displaced by particular provisions of this act, the principles of law and equity supplement this act.
- (b) This act does not authorize an act prohibited by, and does not affect the application or requirements of, law other than this act.
- (c) A transaction effected under this act may not create or impair any right or obligation on the part of a person under a provision of the law of this state other than this act relating to a change in control, takeover, business combination, control-share acquisition or similar transaction involving a domestic merging, acquired, converting or domesticating corporation unless:
- (1) If the corporation does not survive the transaction, the transaction satisfies any requirements of the provision; or
 - (2) if the corporation survives the transaction, the approval of the agreement is by a vote of the shareholders or directors which would be sufficient to create or impair the right or obligation directly under the provision.
- (d) Any entity subject to special regulation pursuant to chapter 66 of the Kansas Statutes Annotated shall be subject to the special provisions and requirements applicable to such entities including K.S.A. 66-127 and 66-136, and amendments thereto. Where the provisions of this act are not inconsistent, they shall be construed as supplemental to chapter 66 of the Kansas Statutes Annotated and not in derogation or limitation thereof.

§ 17-78-104. Required notice or approval.

- (a) A domestic or foreign entity that is required to give notice to, or obtain the approval of, a governmental agency or officer in order to be a party to a merger shall give the notice or obtain the approval in order to be a party to an interest exchange, conversion or domestication.
- (b) A domestic or foreign entity subject to chapter 66 of the Kansas Statutes Annotated shall obtain approval in accordance with the special requirements applicable thereto, including K.S.A. 66-127 and 66-136, and amendments thereto, prior to effecting a transaction under this act.
- (c) Property held for a charitable purpose under the law of this state by a domestic or foreign entity immediately before a transaction under this act becomes effective may not, as a result of the transaction, be diverted from the objects for which it was donated, granted, or devised unless, to the extent required by or pursuant to the law of this state concerning cypres or other law dealing with nondiversion of charitable assets, the entity obtains an appropriate order of the district court specifying the disposition of the property.

§ 17-78-105. Status of filings.

A filing under this act signed by a domestic entity becomes part of the public organic document of the entity if the entity's organic law provides that similar filings under that law become part of the public organic document of the entity.

§ 17-78-106. Nonexclusivity.

The fact that a transaction under this act produces a certain result does not preclude the same result from being accomplished in any other manner permitted by law other than this act.

§ 17-78-107. Reference to external facts.

An agreement may refer to facts ascertainable outside of the agreement if the manner in which the facts will operate upon the agreement is specified in the agreement. The facts may include the occurrence of an event or a determination or action by a person, whether or not the event, determination, or action is within the control of a party to the transaction.

§ 17-78-108. Alternative means of approval of transactions.

Except as otherwise provided in the organic law or organic rules of a domestic entity, approval of a transaction under this act by the unanimous vote or consent of its interest holders satisfies the requirements of this act for approval of the transaction.

§ 17-78-109. Appraisal rights.

(a) An interest holder of a domestic merging, acquired, converting or domesticating entity is entitled to appraisal rights in connection with the transaction if the interest holder would have been entitled to appraisal rights under the entity's organic law in connection with a merger in which the interest of the interest holder was changed, converted or exchanged unless:

- (1) The organic law permits the organic rules to limit the availability of appraisal rights; and
- (2) the organic rules provide such a limit.

(b) An interest holder of a domestic merging, acquired, converting or domesticating entity is entitled to contractual appraisal rights in connection with a transaction under this act to the extent provided:

- (1) In the entity's organic rules;
- (2) in the agreement; or
- (3) in the case of a corporation, by action of its governors.

(c) If an interest holder is entitled to contractual appraisal rights under subsection (b) and the entity's organic law does not provide procedures for the conduct of an appraisal rights proceeding, the general corporate code applies to the extent practicable or as otherwise provided in the entity's organic rules or the agreement.

§ 17-78-110. Excluded entities and transactions.

The following entities may not participate in a transaction under this act:

- (a) Entities regulated under chapter 40 of the Kansas Statutes Annotated;

- (b) banks and trust companies organized under chapter 9 of the Kansas Statutes Annotated;
- (c) credit unions organized under K.S.A. 17-2201 et seq., and amendments thereto; and
- (d) professional corporations formed under the Kansas professional corporation law or limited liability companies organized under the Kansas revised limited liability company act to render a professional service, as defined at K.S.A. 17-2707, and amendments thereto.