

[Mass. Gen. Laws ch. 109, § 16A.]

§ 16A. Consolidation or merger: Limited Partnerships

Section 16A. (a) As used in this section, other business entity shall mean a corporation to which section 17.01 of chapter 156D applies, a foreign corporation, as defined in subsection (a) of section 1.40 of said chapter 156D, a professional corporation and a foreign professional corporation, each as defined in section 2 of chapter 156A, an association or trust as defined in section 1 of chapter 182, a limited liability company, whether domestic or foreign, as defined in section 2 of chapter 156C, and a partnership, whether general, registered limited liability or limited and whether domestic or foreign as defined, respectively, in sections 2 and 6 of chapter 108A and section 1 of chapter 109, but excluding a domestic limited partnership.

(b) Pursuant to an agreement of consolidation or merger, a domestic limited partnership may consolidate or merge with or into one or more domestic limited partnerships or other business entities with such domestic limited partnership or other business entity as the agreement shall provide being the resulting or surviving domestic limited partnership or other business entity.

(c) Unless otherwise provided in the partnership agreement, a consolidation or merger shall be approved by each domestic limited partnership which is to consolidate or merge (1) by all general partners, and (2) by the limited partners or, if there is more than one class or group of limited partners, then by each class or group of limited partners, in either case, by limited partners who own more than fifty percent of the then current percentage or other interest in the profits of the domestic limited partnership owned by all of the limited partners or by the limited partners in each class or group, as appropriate.

(d) In connection with a consolidation or merger hereunder, rights or securities of, or interests in, a domestic limited partnership or other business entity which is a constituent party to the consolidation or merger may be exchanged for or converted into cash, property, rights or securities of, or interests in, the surviving or resulting domestic limited partnership or other business entity or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights or securities of, or interests in, a limited partnership or other business entity which is not the surviving or resulting limited partnership or other business entity in the consolidation or merger. Notwithstanding prior approval, an agreement of consolidation or merger may be terminated or amended pursuant to a provision for such termination or amendment contained in the agreement of consolidation or merger.

(e) If a domestic limited partnership is consolidating or merging under this section, the domestic limited partnership or other business entity resulting or surviving from or in the consolidation or merger shall file in the manner described in section thirteen a certificate of consolidation or merger in the office of the state secretary. The certificate of consolidation or merger shall be executed in the manner described in section eleven and shall state:

(1) the name and jurisdiction of formation or organization of each of the domestic limited partnerships or other business entities which is to consolidate or merge;

- (2) that an agreement of consolidation or merger has been approved and executed by each of the domestic limited partnerships or other business entities which is to consolidate or merge;
- (3) the name of the resulting or surviving domestic limited partnership or other business entity;
- (4) the future effective date or time, which shall be a date or time certain, of the consolidation or merger if it is not to be effective upon the filing of the certificate of consolidation or merger;
- (5) that the agreement of consolidation or merger is on file at a place of business of the resulting or surviving domestic limited partnership or other business entity, and shall state the address thereof;
- (6) that a copy of the agreement of consolidation or merger will be furnished by the surviving or resulting domestic limited partnership or other business entity, on request and without cost, to any member of any domestic limited partnership or any person holding an interest in any other business entity which is to consolidate or merge; and
- (7) If the resulting or surviving entity is not an entity organized under the laws of the commonwealth, a statement that the resulting or surviving entity agrees that, if the entity does not continuously maintain an agent for service of process in the commonwealth, to appoint irrevocably the state secretary and his successor in office to be its true and lawful attorney upon whom all lawful process in any such action, suit or proceeding in the commonwealth may be served in the manner set forth in subsections (d), (e), and (g) of section 15.10 of Part 15 of chapter 156D relative to foreign corporations; except that the plaintiff in the action, suit or proceeding shall furnish the state secretary with the address specified in the certificate of consolidation or merger provided for in this section and the state secretary shall notify the surviving or resulting entity at that address.
- (f) Unless a future effective date or time is provided in a certificate of consolidation or merger, in which event a consolidation or merger shall be effective at any such future effective date or time, a consolidation or merger shall be effective upon the filing in the office of the state secretary of a certificate of consolidation or merger.
- (g) A certificate of consolidation or merger shall act (1) as a certificate of cancellation for a domestic limited partnership, and (2) as a certificate of withdrawal for a registered foreign partnership, which is not the resulting or surviving entity in the consolidation or merger.
- (i) Notwithstanding anything to the contrary contained in the partnership agreement, a partnership agreement containing a specific reference to this subsection may provide that an agreement of consolidation or merger approved in accordance with subsection (b) may (1) effect any amendment to the partnership agreement or (2) effect the adoption of a new partnership agreement, for a limited partnership if it is the resulting or surviving limited partnership in the consolidation or merger. Any amendment to a partnership agreement or adoption of a new partnership agreement made pursuant to the foregoing sentence shall be effective at the effective time or date of the consolidation or merger. The provisions of this subsection shall not be construed to limit the accomplishment of a merger or of any of the matters referred to herein by any other means provided for in a partnership agreement or other agreement or as otherwise permitted by law,

including that the partnership agreement of any constituent limited partnership to the consolidation or merger, including a limited partnership formed for the purpose of consummating a consolidation or merger, shall be the partnership agreement of the resulting or surviving limited partnership.

(ii) When any consolidation or merger shall have become effective under this section, for all purposes of the laws of the commonwealth, all of the rights, privileges and powers of each of the domestic limited partnerships and other business entities that have consolidated or merged and all property, real, personal and mixed, and all debts due to any of said domestic limited partnerships and other business entities, as well as all other things and causes of action belonging to each of such domestic limited partnerships and other business entities, shall be vested in the resulting or surviving domestic limited partnership or other business entity, and shall thereafter be the property of the resulting or surviving domestic limited partnership or other business entity as they were of each of the domestic limited partnerships and other business entities that have consolidated or merged, and the title to any real property vested by deed or otherwise under the laws of the commonwealth, in any of such domestic limited partnerships and other business entities shall not revert or be in anyway impaired by reason of this chapter; but all rights of creditors and all liens upon any property of any of said domestic limited partnerships and other business entities shall be preserved unimpaired, and all debts, liabilities and duties of each of the said domestic limited partnerships and other business entities that have consolidated or merged shall thenceforth attach to the resulting or surviving domestic limited partnership or other business entity, and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it. Unless otherwise agreed, a consolidation or merger of a domestic limited partnership, including a domestic limited partnership which is not the resulting or surviving entity in the consolidation or merger, shall not require such domestic limited partnership to wind up its affairs under section forty-six or pay its liabilities and distribute its assets under section forty-seven.