

[Okla. Stat. tit. 18, §§ 1081 through 1091.]

§§ 1081 through 1091: Oklahoma General Corporation Act -- Merger or Consolidation

§18-1081. Merger or consolidation of domestic corporations.

A. Any two or more corporations existing under the laws of this state may merge into a single corporation, which may be any one of the constituent corporations or may consolidate into a new corporation formed by the consolidation, pursuant to an agreement of merger or consolidation, as the case may be, complying and approved in accordance with the provisions of this section.

B. The board of directors of each corporation which desires to merge or consolidate shall adopt a resolution approving an agreement of merger or consolidation and declaring its advisability. The agreement shall state:

1. The terms and conditions of the merger or consolidation;
2. The mode of carrying the same into effect;
3. In the case of a merger, the amendments or changes in the certificate of incorporation of the surviving corporation as are desired to be effected by the merger, which amendments or changes may amend and restate the certificate of incorporation of the surviving corporation in its entirety, or, if no amendments or changes are desired, a statement that the certificate of incorporation of the surviving corporation shall be its certificate of incorporation of the surviving or resulting corporation;
4. In the case of a consolidation, that the certificate of incorporation of the resulting corporation shall be as is set forth in an attachment to the agreement;
5. The manner, if any, of converting the shares of each of the constituent corporations into shares or other securities of the corporation surviving or resulting from the merger or consolidation, or of canceling some or all of the shares, and, if any shares of any of the constituent corporations are not to remain outstanding, to be converted solely into shares or other securities of the surviving or resulting corporation or to be canceled, the cash, property, rights, or securities of any other corporation or entity which the holders of the shares are to receive in exchange for or upon conversion of the shares and the surrender of any certificates evidencing them, which cash, property, rights, or securities of any other corporation or entity may be in addition to or in lieu of shares or other securities of the surviving or resulting corporation; and
6. Other details or provisions as are deemed desirable, including without limiting the generality of the foregoing, a provision for the payment of cash in lieu of the issuance or recognition of fractional shares, interests or rights, or for any other arrangement with respect thereto, consistent with the provisions of Section 1036 of this title. The agreement so adopted shall be executed and acknowledged in accordance with the provisions of Section 1007 of this title. Any of the terms of the agreement of merger or consolidation may be made dependent upon facts ascertainable outside of the agreement; provided, that the manner in which these facts shall operate upon the terms of the agreement is clearly and expressly set forth in the agreement of merger or consolidation. The term "facts" as used in this paragraph, includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body, including the corporation.

C. The agreement required by the provisions of subsection B of this section shall be submitted to the shareholders of each constituent corporation at an annual or special meeting thereof for the purpose of acting on the agreement. Due notice of the time, place, and purpose of the meeting shall be mailed to each holder of stock whether voting or nonvoting, of the corporation at the address which appears on the records of the corporation, at least twenty (20) days before the date of the meeting. The notice shall contain a copy of the agreement or a brief summary thereof; provided, however, the notice shall be effective only with respect to mergers or consolidations for which the notice of the shareholders meeting to vote thereon has been mailed after November 1, 1988. At the meeting the agreement shall be considered and a vote taken for its adoption or rejection. If a majority of the outstanding stock of the corporation entitled to vote thereon shall be voted for the adoption of the agreement, that fact shall be certified on the agreement by the secretary or the assistant secretary of the corporation; provided, that such certification on the agreement shall not be required if a certificate of merger or consolidation is filed in lieu of filing the agreement. If the agreement shall be so adopted and certified by each constituent corporation, it shall then be filed and shall become effective in accordance with the provisions of Section 1007 of this title. In lieu of filing an agreement of merger or consolidation required by this section, the surviving or resulting corporation may file a certificate of merger or consolidation executed in accordance with the provisions of Section 1007 of this title and which states:

1. The name and state of incorporation of each of the constituent corporations;
2. That an agreement of merger or consolidation has been approved, adopted, executed, and acknowledged by each of the constituent corporations in accordance with the provisions of this section;
3. The name of the surviving or resulting corporation;
4. In the case of a merger, the amendments or changes in the certificate of incorporation of the surviving corporation, which may be amended and restated, that are desired to be effected by the merger, which amendments or changes may amend and restate the certificate of incorporation of the surviving corporation in its entirety, or, if no amendments or changes are desired, a statement that the certificate of incorporation of the surviving corporation shall be its certificate of incorporation;
5. In the case of a consolidation, that the certificate of incorporation of the resulting corporation shall be as is set forth in an attachment to the certificate;
6. That the executed agreement of consolidation or merger is on file at the principal place of business of the surviving corporation, stating the address thereof; and
7. That a copy of the agreement of consolidation or merger will be furnished by the surviving corporation, on request and without cost, to any shareholder of any constituent corporation. For purposes of Sections 1084 and 1086 of this title, the term "shareholder" shall be deemed to include "member".

D. Any agreement of merger or consolidation may contain a provision that at any time prior to the time that the agreement, or a certificate filed with the Secretary of State in lieu thereof, becomes effective in accordance with Section 1007 of this title, the agreement may be terminated by the board of directors of any constituent corporation notwithstanding approval of the agreement by the shareholders of all or any of the constituent corporations; provided, if the agreement of merger or consolidation is terminated after the filing of the agreement, or a certificate filed with the Secretary of State in lieu thereof, but before the agreement or certificate has become effective, a certificate of termination of merger or consolidation shall be filed in accordance with Section 1007 of this title. Any agreement of merger or consolidation may contain a provision that the boards of directors of the constituent corporations may amend the agreement at any time prior to

the time that the agreement, or a certificate filed with the Secretary of State in lieu thereof, becomes effective in accordance with Section 1007 of this title; provided, that an amendment made subsequent to the adoption of the agreement by the shareholders of any constituent corporation shall not:

1. Alter or change the amount or kind of shares, securities, cash, property, or rights to be received in exchange for or on conversion of all or any of the shares of any class or series thereof of the constituent corporation;
2. Alter or change any term of the certificate of incorporation of the surviving corporation to be effected by the merger or consolidation; or
3. Alter or change any of the terms and conditions of the agreement if an alteration or change would adversely affect the holders of any class or series thereof of the constituent corporation.

If the agreement of merger or consolidation is amended after the filing of the agreement, or a certificate in lieu thereof, with the Secretary of State, but before the agreement or certificate has become effective, a certificate of amendment of merger or consolidation shall be filed in accordance with Section 1007 of this title.

E. In the case of a merger, the certificate of incorporation of the surviving corporation shall automatically be amended to the extent, if any, that changes in the certificate of incorporation are set forth in the certificate of merger.

F. Notwithstanding the requirements of subsection C of this section, unless required by its certificate of incorporation, no vote of shareholders of a constituent corporation surviving a merger shall be necessary to authorize a merger if:

1. The agreement of merger does not amend in any respect the certificate of incorporation of the constituent corporation;
2. Each share of stock of the constituent corporation outstanding immediately prior to the effective date of the merger is to be an identical outstanding or treasury share of the surviving corporation after the effective date of the merger; and
3. Either no shares of common stock of the surviving corporation and no shares, securities, or obligations convertible into such stock are to be issued or delivered under the plan of merger, or the authorized unissued shares or the treasury shares of common stock of the surviving corporation to be issued or delivered under the plan of merger plus those initially issuable upon conversion of any other shares, securities, or obligations to be issued or delivered under the plan do not exceed twenty percent (20%) of the shares of common stock of the constituent corporation outstanding immediately prior to the effective date of the merger. No vote of shareholders of a constituent corporation shall be necessary to authorize a merger or consolidation if no shares of the stock of the corporation shall have been issued prior to the adoption by the board of directors of the resolution approving the agreement of merger or consolidation. If an agreement of merger is adopted by the constituent corporation surviving the merger, by action of its board of directors and without any vote of its shareholders pursuant to the provisions of this subsection, the secretary or assistant secretary of that corporation shall certify on the agreement that the agreement has been adopted pursuant to the provisions of this subsection and:
 - a. if it has been adopted pursuant to paragraph 1 of this subsection, that the conditions specified have been satisfied, or

b. if it has been adopted pursuant to paragraph 2 of this subsection, that no shares of stock of the corporation were issued prior to the adoption by the board of directors of the resolution approving the agreement of merger or consolidation; provided, that such certification on the agreement shall not be required if a certificate of merger or consolidation is filed in lieu of filing the agreement.

The agreement so adopted and certified shall then be filed and shall become effective in accordance with the provisions of Section 1007 of this title. Filing shall constitute a representation by the person who executes the certificate that the facts stated in the certificate remain true immediately prior to filing.

G. 1. Notwithstanding the requirements of subsection C of this section, unless expressly required by its certificate of incorporation, no vote of shareholders of a constituent corporation shall be necessary to authorize a merger with or into a single direct or indirect wholly owned subsidiary of the constituent corporation if:

- a. the constituent corporation and the direct or indirect wholly owned subsidiary of the constituent corporation are the only constituent entities to the merger,
- b. each share or fraction of a share of the capital stock of the constituent corporation outstanding immediately before the effective time of the merger is converted in the merger into a share or equal fraction of share of capital stock of a holding company having the same designations, rights, powers, and preferences, and the qualifications, limitations, and restrictions thereof, as the share of stock of the constituent corporation being converted in the merger,
- c. the holding company and the constituent corporation are corporations of this state and the direct or indirect wholly owned subsidiary that is the other constituent entity to the merger is a corporation or limited liability company of this state,
- d. the certificate of incorporation and bylaws of the holding company immediately following the effective time of the merger contain provisions identical to the certificate of incorporation and bylaws of the constituent corporation immediately before the effective time of the merger, other than provisions, if any, regarding the incorporator or incorporators, the corporate name, the registered office and agent, the initial board of directors, and the initial subscribers of shares and provisions contained in any amendment to the certificate of incorporation as were necessary to effect a change, exchange, reclassification, subdivision, combination or cancellation of stock, if a change, exchange, reclassification, or cancellation has become effective,
- e. as a result of the merger, the constituent corporation or its successor corporation becomes or remains a direct or indirect wholly owned subsidiary of the holding company,
- f. the directors of the constituent corporation become or remain the directors of the holding company upon the effective time of the merger,
- g. the organizational documents of the surviving entity immediately following the effective time of the merger contain provisions identical to the certificate of incorporation of the constituent corporation immediately before the effective time of the merger, other than provisions, if any, regarding the incorporator or incorporators, the corporate or entity name, the registered office and agent, the initial board of directors and the initial subscribers for shares, references to members rather than shareholders, references to interests, units or the like rather than stock or shares, references to managers, managing members or other members of the governing body rather than directors and such provisions contained in any amendment to the certificate

of incorporation as were necessary to effect a change, exchange, reclassification, subdivision, combination or cancellation of stock, if such change, exchange, reclassification, subdivision, combination or cancellation has become effective; provided, however, that:

(1) if the organizational documents of the surviving entity do not contain the following provisions, they shall be amended in the merger to contain provisions requiring that:

(a) any act or transaction by or involving the surviving entity, other than the election or removal of directors or managers, managing members or other members of the governing body of the surviving entity, that requires for its adoption under this act or its organizational documents the approval of the shareholders or members of the surviving entity shall, by specific reference to this subsection, require, in addition, the approval of the shareholders of the holding company (or any successor by merger), by the same vote as is required by this act and/or by the organizational documents of the surviving entity; provided, however, that for purposes of this subdivision, any surviving entity that is not a corporation shall include in such amendment a requirement that the approval of the shareholders of the holding company be obtained for any act or transaction by or involving the surviving entity, other than the election or removal of directors or managers, managing members or other members of the governing body of the surviving entity, which would require the approval of the shareholders of the surviving entity if the surviving entity were a corporation subject to this act,

(b) any amendment of the organizational documents of a surviving entity that is not a corporation, which amendment would, if adopted by a corporation subject to this act, be required to be included in the certificate of incorporation of such corporation, shall, by specific reference to this subsection, require, in addition, the approval of the shareholders of the holding company, or any successor by merger, by the same vote as is required by this act and/or by the organizational documents of the surviving entity, and

(c) the business and affairs of a surviving entity that is not a corporation shall be managed by or under the direction of a board of directors, board of managers or other governing body consisting of individuals who are subject to the same fiduciary duties applicable to, and who are liable for breach of such duties to the same extent as, directors of a corporation subject to this act, and

(2) the organizational documents of the surviving entity may be amended in the merger:

(a) to reduce the number of classes and shares of capital stock or other equity interests or units that the surviving entity is authorized to issue, and

(b) to eliminate any provision authorized by subsection D of Section 1027 of this title; and

h. the shareholders of the constituent corporation do not recognize gain or loss for federal income tax purposes as determined by the board of directors of the constituent corporation.

Neither division (1) of subparagraph g of paragraph 1 of this subsection nor any provision of a surviving entity's organizational documents required by division (1) of subparagraph g of paragraph 1 of this subsection shall be deemed or construed to require approval of the shareholders of the holding company to elect or remove directors or managers, managing members or other members of the governing body of the surviving entity.

2. As used in this subsection, the term "holding company" means a corporation which, from its incorporation until consummation of a merger governed by this subsection, was at all times a direct or indirect wholly owned subsidiary of the constituent corporation and whose capital stock is issued in a merger.

3. As used in this subsection, the term "organizational documents" means, when used in reference to a corporation, the certificate of incorporation of the corporation and, when used in reference to a limited liability company, the articles of organization and the operating agreement of the limited liability company.
4. From and after the effective time of a merger adopted by a constituent corporation by action of its board of directors and without any vote of shareholders pursuant to this subsection:
- a. to the extent the restriction of Section 1090.3 of this title applied to the constituent corporation and its shareholders at the effective time of the merger, restrictions shall apply to the holding company and its shareholders immediately after the effective time of the merger as though it were the constituent corporation, and all shareholders of stock of the holding company acquired in the merger shall for purposes of Section 1090.3 of this title be deemed to have been acquired at the time that the shares of stock of the constituent corporation converted in the merger were acquired; provided, that any shareholder who immediately before the effective time of the merger was not an interested shareholder within the meaning of Section 1090.3 of this title shall not solely by reason of the merger become an interested shareholder of the holding company,
 - b. if the corporate name of the holding company immediately following the effective time of the merger is the same as the corporate name of the constituent corporation immediately before the effective time of the merger, the shares of capital stock of the holding company into which the shares of capital stock of the constituent corporation are converted in the merger shall be represented by the stock certificates that previously represented the shares of capital stock of the constituent corporation, and
 - c. to the extent a shareholder of the constituent corporation immediately before the merger had standing to institute or maintain derivative litigation on behalf of the constituent corporation, nothing in this section shall be deemed to limit or extinguish such standing.
5. If any agreement of merger is adopted by a constituent corporation by action of its board of directors and without any vote of shareholders pursuant to this subsection, the secretary or assistant secretary of the constituent corporation shall certify on the agreement that the agreement has been adopted pursuant to this subsection and that the conditions specified in paragraph 1 of this subsection have been satisfied; provided, that such certification on the agreement shall not be required if a certificate of merger or consolidation is filed in lieu of filing the agreement. The agreement so adopted and certified shall then be filed and become effective in accordance with Section 1007 of this title. Filing shall constitute a representation by the person who executes the agreement that the facts stated in the certificate remain true immediately before the filing.
- H. Notwithstanding the requirements of subsection C of this section, unless expressly required by its certificate of incorporation, no vote of shareholders of a constituent corporation that has a class or series of stock that is listed on a national securities exchange or held of record by more than two thousand holders immediately prior to the execution of the agreement of merger by such constituent corporation shall be necessary to authorize a merger if:
- 1. The agreement of merger expressly (a) permits or requires such merger to be effected under this subsection and (b) provides that such merger shall be effected as soon as practicable following the consummation of the offer referred to in paragraph 2 of this subsection if such merger is effected under this subsection;
 - 2. A corporation consummates an offer for all of the outstanding stock of such constituent corporation on the terms provided in such agreement of merger that, absent this subsection, would be entitled to vote on the

adoption or rejection of the agreement of merger; provided, however, that such offer may be conditioned on the tender of a minimum number or percentage of shares of the stock of such constituent corporation, or of any class or series thereof, and such offer may exclude any excluded stock; and provided further, that the corporation may consummate separate offers for separate classes or series of the stock of such constituent corporation;

3. Immediately following the consummation of the offer referred to in paragraph 2 of this subsection, the stock irrevocably accepted for purchase or exchange pursuant to such offer and received by the depository prior to expiration of such offer, together with the stock otherwise owned by the consummating corporation or its affiliates and any rollover stock, equals at least such percentage of the shares of stock of such constituent corporation, and of each class or series thereof, that, absent this subsection, would be required to adopt the agreement of merger by this chapter and by the certificate of incorporation of such constituent corporation;

4. The corporation consummating the offer referred to in paragraph 2 of this subsection merges with or into such constituent corporation pursuant to such agreement;

5. Each outstanding share, other than shares of excluded stock, of each class or series of stock of the constituent corporation that is the subject of and not irrevocably accepted for purchase or exchange in the offer referred to in paragraph 2 of this subsection is to be converted in such merger into, or into the right to receive, the same amount and kind of cash, property, rights or securities paid for shares of such class or series of stock of such constituent corporation irrevocably accepted for purchase or exchange in such offer; and

6. As used in this subsection only, the term:

a. "affiliate" means, in respect of the corporation making the offer referred to in paragraph 2 of this subsection, any person that (1) owns, directly or indirectly, all of the outstanding stock of such corporation or (2) is a direct or indirect wholly owned subsidiary of such corporation or of any person referred to in proviso (1) of this subparagraph,

b. "consummates", and with correlative meaning, "consummation" and "consummating", means irrevocably accepts for purchase or exchange stock tendered pursuant to an offer,

c. "depository" means an agent, including a depository, appointed to facilitate consummation of the offer referred to in paragraph 2 of this subsection,

d. "excluded stock" means (1) stock of such constituent corporation that is owned at the commencement of the offer referred to in paragraph 2 of this subsection by such constituent corporation, the corporation making the offer referred to in paragraph 2 of this subsection, any person that owns, directly or indirectly, all of the outstanding stock of the corporation making such offer, or any direct or indirect wholly owned subsidiary of any of the foregoing and (2) rollover stock,

e. "person" means any individual, corporation, partnership, limited liability company, unincorporated association or other entity,

f. "received" solely for purposes of paragraph 3 of this subsection means (1) with respect to certificated shares, physical receipt of a stock certificate accompanied by an executed letter of transmittal, (2) with respect to uncertificated shares held of record by a clearing corporation as nominee, transfer into the depository's account by means of an agent's message, and (3) with respect to uncertificated shares held of record by a person other than a clearing corporation as nominee, physical receipt of an executed letter of

transmittal by the depository; provided, however, that shares shall cease to be "received" (4) with respect to certificated shares, if the certificate representing such shares was canceled prior to consummation of the offer referred to in paragraph 2 of this subsection, or (5) with respect to uncertificated shares, to the extent such uncertificated shares have been reduced or eliminated due to any sale of such shares prior to consummation of the offer referred to in paragraph 2 of this subsection, and

g. "rollover stock" means any shares of stock of such constituent corporation that are the subject of a written agreement requiring such shares to be transferred, contributed or delivered to the consummating corporation or any of its affiliates in exchange for stock or other equity interests in such consummating corporation or an affiliate thereof; provided, however, that such shares of stock shall cease to be rollover stock for purposes of paragraph 3 of this subsection if, immediately prior to the time the merger becomes effective under this chapter, such shares have not been transferred, contributed or delivered to the consummating corporation or any of its affiliates pursuant to such written agreement.

If an agreement of merger is adopted without the vote of shareholders of a corporation pursuant to this subsection, the secretary or assistant secretary of the surviving corporation shall certify on the agreement that the agreement has been adopted pursuant to this subsection and that the conditions specified in this subsection, other than the condition listed in paragraph 4 of this subsection, have been satisfied; provided, that such certification on the agreement shall not be required if a certificate of merger is filed in lieu of filing the agreement. The agreement so adopted and certified shall then be filed and shall become effective, in accordance with Section 1007 of this title. Such filing shall constitute a representation by the person who executes the agreement that the facts stated in the certificate remain true immediately prior to such filing.

§18-1082. Merger or consolidation of domestic and foreign corporations - Service of process upon surviving or resulting corporation.

A. Any one or more corporations of this state may merge or consolidate with one or more other corporations of any other state or states of the United States, or of the District of Columbia, if the laws of the other state or states or of the District permit a corporation of the jurisdiction to merge or consolidate with a corporation of another jurisdiction. The constituent corporations may merge into a single corporation, which may be any one of the constituent corporations, or they may consolidate into a new corporation formed by the consolidation, which may be a corporation of the state of incorporation of any one of the constituent corporations, pursuant to an agreement of merger or consolidation, as the case may be, complying and approved in accordance with the provisions of this section. In addition, any one or more corporations organized under the laws of any jurisdiction other than one of the United States may merge or consolidate with one or more corporations existing under the laws of this state if the surviving or resulting corporation will be a corporation of this state, and if the laws under which the other corporation or corporations are formed permit a corporation of that jurisdiction to merge or consolidate with a corporation of another jurisdiction.

B. All the constituent corporations shall enter into an agreement of merger or consolidation. The agreement shall state:

1. The terms and conditions of the merger or consolidation;
2. The mode of carrying the same into effect;

3. The manner, if any, of converting the shares of each of the constituent corporations into shares or other securities of the corporation surviving or resulting from the merger or consolidation, or of canceling some or all of the shares, and, if any shares of any of the constituent corporations are not to remain outstanding, to be converted solely into shares or other securities of the surviving or resulting corporation or to be canceled, the cash, property, rights, or securities of any other corporation or entity which the holder of the shares is to receive in exchange for, or upon conversion of, the shares and the surrender of any certificates evidencing them, which cash, property, rights, or securities of any other corporation or entity may be in addition to or in lieu of the shares or other securities of the surviving or resulting corporation;
 4. Other details or provisions as are deemed desirable, including, without limiting the generality of the foregoing, a provision for the payment of cash in lieu of the issuance or recognition of fractional shares of the surviving or resulting corporation or of any other corporation the securities of which are to be received in the merger or consolidation, or for some other arrangement with respect thereto consistent with the provisions of Section 1036 of this title; and
 5. Other provisions or facts as shall be required to be set forth in the certificate of incorporation by the laws of the state which are stated in the agreement to be the laws that shall govern the surviving or resulting corporation and that can be stated in the case of a merger or consolidation. Any of the terms of the agreement of merger or consolidation may be made dependent upon facts ascertainable outside of the agreement; provided, that the manner in which the facts shall operate upon the terms of the agreement is clearly and expressly set forth in the agreement of merger or consolidation. The term "facts" as used in this paragraph, includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body, including the corporation.
- C. The agreement shall be adopted, approved, executed, and acknowledged by each of the constituent corporations in accordance with the laws under which it is formed, and, in the case of an Oklahoma corporation, in the same manner as is provided for in Section 1081 of this title. The agreement shall be filed and shall become effective for all purposes of the laws of this state when and as provided for in Section 1081 of this title with respect to the merger or consolidation of corporations of this state. In lieu of filing the agreement of merger or consolidation, the surviving or resulting corporation may file a certificate of merger or consolidation executed in accordance with the provisions of Section 1007 of this title, which states:
1. The name and state of incorporation of each of the constituent corporations;
 2. That an agreement of merger or consolidation has been approved, adopted, executed, and acknowledged by each of the constituent corporations in accordance with the provisions of this subsection;
 3. The name of the surviving or resulting corporation;
 4. In the case of a merger, the amendments or changes in the certificate of incorporation of the surviving corporation, which may be amended and restated, that are effected by the merger, which amendments or changes may amend and restate the certificate of incorporation of the surviving corporation in its entirety, or, if no amendments or changes are desired, a statement that the certificate of incorporation of the surviving corporation shall be its certificate of incorporation;
 5. In the case of a consolidation, that the certificate of incorporation of the resulting corporation shall be as is set forth in an attachment to the certificate;

6. That the executed agreement of consolidation or merger is on file at the principal place of business of the surviving corporation, and the address thereof;
 7. That a copy of the agreement of consolidation or merger will be furnished by the surviving corporation, on request and without cost, to any shareholder of any constituent corporation;
 8. If the corporation surviving or resulting from the merger or consolidation is to be a domestic corporation, the authorized capital stock of each constituent corporation which is not a domestic corporation; and
 9. The agreement, if any, required by the provisions of subsection D of this section. For purposes of Section 1085 of this title, the term "shareholder" in subsection D of this section shall be deemed to include "member".
- D. If the corporation surviving or resulting from the merger or consolidation is to be governed by the laws of the District of Columbia or any state other than this state, it shall agree that it may be served with process in this state in any proceeding for enforcement of any obligation of any constituent corporation of this state, as well as for enforcement of any obligation of the surviving or resulting corporation arising from the merger or consolidation, including any suit or other proceeding to enforce the right of any shareholders as determined in appraisal proceedings pursuant to the provisions of Section 1091 of this title, and shall irrevocably appoint the Secretary of State as its agent to accept service of process in any suit or other proceedings and shall specify the address to which a copy of process shall be mailed by the Secretary of State. In the event of service upon the Secretary of State in accordance with the provisions of Section 2004 of Title 12 of the Oklahoma Statutes, the Secretary of State shall immediately notify the surviving or resulting corporation thereof by letter, certified mail, return receipt requested, directed to the surviving or resulting corporation at the address specified unless the surviving or resulting corporation shall have designated in writing to the Secretary of State a different address for this purpose, in which case it shall be mailed to the last address so designated. The notice shall include a copy of the process and any other papers served on the Secretary of State pursuant to the provisions of this subsection. It shall be the duty of the plaintiff in the event of such service to serve process and any other papers in duplicate, to notify the Secretary of State that service is being effected pursuant to the provisions of this subsection, and to pay the Secretary of State the fee provided for in paragraph 7 of subsection A of Section 1142 of this title, which fee shall be taxed as part of the costs in the proceeding. The Secretary of State shall maintain an alphabetical record of any such service setting forth the name of the plaintiff and the defendant, the title, docket number, and nature of the proceeding in which process has been served upon the Secretary of State, the fact that service has been effected pursuant to the provisions of this subsection, the return date thereof, and the date service was made. The Secretary of State shall not be required to retain such information longer than five (5) years from receipt of the service of process by the Secretary of State.
- E. The provisions of subsection D of Section 1081 of this title shall apply to any merger or consolidation pursuant to the provisions of this section. The provisions of subsection E of Section 1081 of this title shall apply to a merger pursuant to the provisions of this section in which the surviving corporation is a corporation of this state. The provisions of subsections F and H of Section 1081 of this title shall apply to any merger pursuant to the provisions of this section.

§18-1083. Merger of parent corporation and subsidiary corporation or corporations.

- A. In any case in which at least ninety percent (90%) of the outstanding shares of each class of stock of a corporation or corporations, other than a corporation which has in its certificate of incorporation the provision

required by division (1) of subparagraph g of paragraph 1 of subsection G of Section 1081 of this title of which class there are outstanding shares that, absent this subsection, would be entitled to vote on such merger, is owned by a domestic corporation or a foreign corporation, and one or more of such corporations is a domestic corporation, unless the laws of the jurisdiction or jurisdictions under which the foreign corporation or corporations are organized prohibit such merger, the parent corporation may either merge the subsidiary corporation or corporations into itself and assume all of its or their obligations, or merge itself, or itself and one or more of the other subsidiary corporations, into one of the other subsidiary corporations by executing, acknowledging, and filing, in accordance with the provisions of Section 1007 of this title, a certificate of ownership and merger setting forth a copy of the resolution of its board of directors to merge and the date of its adoption; provided, however, that in case the parent corporation shall not own all the outstanding stock of all the subsidiary corporations which are parties to the merger, the resolution of the board of directors of the parent corporation shall state the terms and conditions of the merger, including the securities, cash, property, or rights to be issued, paid, delivered, or granted by the surviving corporation upon surrender of each share of the subsidiary corporation or corporations not owned by the parent corporation or the cancellation of some or all of the shares. Any of the terms of the resolution of the board of directors to so merge may be made dependent upon facts ascertainable outside of such resolution, provided that the manner in which such facts shall operate upon the terms of the resolution is clearly and expressly set forth in the resolution. The term "facts", as used in the preceding sentence includes, but is not limited to, the occurrence of any event including a determination or action by any person or body, including the corporation. If the parent corporation is not the surviving corporation, the resolution shall include provision for the pro rata issuance of stock of the surviving corporation to the holders of the stock of the parent corporation on surrender of any certificates therefor, and the certificate of ownership and merger shall state that the proposed merger has been approved by a majority of the outstanding stock of the parent corporation entitled to vote thereon at a meeting thereof duly called and held after twenty (20) days' notice of the purpose of the meeting is mailed to each shareholder at the shareholder's address as it appears on the records of the corporation if the parent corporation is a domestic corporation or shall state that the proposed merger has been adopted, approved, certified, executed, and acknowledged by the parent corporation in accordance with the laws under which it is organized if the parent corporation is a foreign corporation. If the surviving corporation is a foreign corporation, the provisions of subsection D of Section 1082 of this title or subsection C of Section 1087 of this title, as applicable, shall also apply to a merger pursuant to the provisions of this section, and the terms and conditions of the merger shall obligate the surviving corporation to provide the agreement, and take the actions, required by subsection D of Section 1082 of this title or subsection C of Section 1087 of this title, as applicable.

B. Subject to the provisions of paragraph 1 of subsection A of Section 1006 of this title, if the surviving corporation is an Oklahoma corporation, it may change its corporate name by the inclusion of a provision to that effect in the resolution of merger adopted by the directors of the parent corporation and set forth in the certificate of ownership and merger, and upon the effective date of the merger, the name of the corporation shall be changed.

C. The provisions of subsection D of Section 1081 of this title shall apply to a merger pursuant to the provisions of this section, and the provisions of subsection E of Section 1081 of this title shall apply to a merger pursuant to the provisions of this section in which the surviving corporation is the subsidiary corporation and is a domestic corporation. For purposes of this subsection, references to "agreement of merger" in subsections D and E of Section 1081 of this title shall mean the resolution of merger adopted by

the board of directors of the parent corporation. Any merger which effects any changes other than those authorized by the provisions of this section or made applicable by this subsection shall be accomplished in accordance with the provisions of Section 1081, 1082, 1083.1, 1085 or 1087 of this title. The provisions of Section 1091 of this title shall not apply to any merger effected pursuant to the provisions of this section, except as provided for in subsection D of this section.

D. In the event all of the stock of a subsidiary Oklahoma corporation party to a merger effected pursuant to the provisions of this section is not owned by the parent corporation immediately prior to the merger, the shareholders of the subsidiary Oklahoma corporation party to the merger shall have appraisal rights as set forth in Section 1091 of this title.

E. This section shall apply to nonstock corporations if the parent corporation is such a corporation and is the surviving corporation of the merger; provided, however, that references to the directors of the parent corporation shall be deemed to be references to members of the governing body of the parent corporation, and references to the board of directors of the parent corporation shall be deemed to be references to the governing body of the parent corporation.

F. Nothing in this section shall be deemed to authorize the merger of a corporation with a charitable nonstock corporation, if the charitable status of such charitable nonstock corporation would thereby be lost or impaired.

§18-1083.1. Merger of parent entity and subsidiary corporation or corporations.

A. In any case in which:

1. At least ninety percent (90%) of the outstanding shares of each class of the stock of a corporation or corporations, other than a corporation which has in its certificate of incorporation the provision required by division (1) of subparagraph g of paragraph 1 of subsection G of Section 1081 of Title 18 of the Oklahoma Statutes, of which class there are outstanding shares that, absent this subsection, would be entitled to vote on such merger, is owned by an entity;

2. One or more of such corporations is a corporation of this state; and

3. Any entity or corporation that is not an entity or corporation of this state is an entity or corporation of any other state or the District of Columbia, the laws of which do not forbid such merger, the entity having such stock ownership may either merge the corporation or corporations into itself and assume all of its or their obligations, or merge itself, or itself and one or more of such corporations, into one of the other corporations by:

a. authorizing such merger in accordance with such entity's governing documents and the laws of the jurisdiction under which such entity is formed or organized, and

b. acknowledging and filing with the Secretary of State, in accordance with Section 1007 of Title 18 of the Oklahoma Statutes, a certificate of such ownership and merger certifying:

(1) that such merger was authorized in accordance with such entity's governing documents and the laws of the jurisdiction under which such entity is formed or organized, such certificate executed in accordance with such entity's governing documents and in accordance with the laws of the jurisdiction under which such entity is formed or organized, and

(2) the type of entity of each constituent entity to the merger; provided, however, that in case the entity shall not own all the outstanding stock of all the corporations, parties to a merger as aforesaid:

(a) the certificate of ownership and merger shall state the terms and conditions of the merger, including the securities, cash, property, or rights to be issued, paid, delivered or granted by the surviving constituent party upon surrender of each share of the corporation or corporations not owned by the entity, or the cancellation of some or all of such shares, and

(b) such terms and conditions of the merger may not result in a holder of stock in a corporation becoming a general partner in a surviving entity that is a partnership, other than a limited liability partnership or a limited liability limited partnership.

Any of the terms of the merger may be made dependent upon facts ascertainable outside of the certificate of ownership and merger, provided that the manner in which such facts shall operate upon the terms of the merger is clearly and expressly set forth in the certificate of ownership and merger. The term "facts", as used in the preceding sentence, includes, but is not limited to, the occurrence of any event including a determination or action by any person or body, including the entity. If the surviving constituent party exists under the laws of the District of Columbia or any state or jurisdiction other than this state, subsection D of Section 1082 of Title 18 of the Oklahoma Statutes shall also apply to a merger under this section; if the surviving constituent party is the entity, the word "corporation" where applicable, as used in subsection D of Section 1082 of Title 18 of the Oklahoma Statutes, shall be deemed to include an entity as defined herein; and the terms and conditions of the merger shall obligate the surviving constituent party to provide the agreement, and take the actions required by subsection D of Section 1082 of Title 18 of the Oklahoma Statutes.

B. Sections 1088, 1090 and 1127 of Title 18 of the Oklahoma Statutes shall, insofar as they are applicable, apply to a merger under this section, and Section 1089 and subsection E of Section 1081 of Title 18 of the Oklahoma Statutes shall apply to a merger under this section in which the surviving constituent party is a corporation of this state. For purposes of this subsection, references to "agreement of merger" in subsection F of Section 1081 of Title 18 of the Oklahoma Statutes shall mean the terms and condition of the merger set forth in the certificate of ownership and merger, and references to "corporation" in Sections 1088, 1089, and 1090 of Title 18 of the Oklahoma Statutes and Section 1127 of Title 18 of the Oklahoma Statutes shall be deemed to include the entity, as applicable. Section 1091 of Title 18 of the Oklahoma Statutes shall not apply to any merger effected under this section, except as provided in subsection C of this section.

C. In the event all of the stock of an Oklahoma corporation party to a merger effected under this section is not owned by the entity immediately prior to the merger, the shareholders of such Oklahoma corporation party to the merger shall have appraisal rights as set forth in Section 1091 of Title 18 of the Oklahoma Statutes.

D. A merger may be effected under this section although one or more of the constituent parties is a corporation organized under the laws of a jurisdiction other than one of the United States, provided that the laws of such jurisdiction do not forbid such merger.

E. As used in this section only, the term:

1. "Constituent party" means an entity or corporation to be merged pursuant to this section;
2. "Entity" means a partnership, whether general or limited, and including a limited liability partnership and a limited liability limited partnership, a limited liability company, and any unincorporated nonprofit or for-profit

association, trust or enterprise having members or having outstanding shares of stock or other evidences of financial, beneficial or membership interest therein, whether formed by agreement or under statutory authority or otherwise; and

3. "Governing documents" means a partnership agreement, operating agreement, articles of association or any other instrument containing the provisions by which an entity is formed or organized.

§18-1084. Merger or consolidation of domestic nonstock not for profit corporations.

A. Any two or more nonstock domestic corporations, whether or not organized for profit, may merge into a single corporation, which may be any one of the constituent corporations, or they may consolidate into a new nonstock corporation, whether or not organized for profit, formed by the consolidation, pursuant to an agreement of merger or consolidation, as the case may be, complying and approved in accordance with the provisions of this section.

B. Subject to subsection D of this section:

1. The governing body of each corporation which desires to merge or consolidate shall adopt a resolution approving an agreement of merger or consolidation. The agreement shall state:

- a. the terms and conditions of the merger or consolidation,
- b. the mode of carrying the same into effect,
- c. in the case of a merger, such amendments or changes in the certificate of incorporation of the surviving corporation as are desired to be effected by the merger, which amendments or changes may amend and restate the certificate of incorporation of the surviving corporation in its entirety, or, if no such amendments or changes are desired, a statement that the certificate of incorporation of the surviving corporation shall be its certificate of incorporation,
- d. in the case of a consolidation, that the certificate of incorporation of the resulting corporation shall be as is set forth in an attachment to the agreement,
- e. the manner, if any, of converting the memberships or membership interests of each of the constituent corporations into memberships or membership interests of the corporation surviving or resulting from the merger or consolidation, or of canceling some or all of the memberships or membership interests if any memberships or membership interests of any of the constituent corporations are not to remain outstanding, to be converted solely into memberships or membership interests of the surviving or resulting corporation or to be cancelled, the cash, property, rights or securities of any other corporation or entity which the holders of such memberships or membership interests are to receive in exchange for, or upon conversion of, such memberships or membership interests, which cash, property, rights or securities of any other corporation or entity may be in addition to or in lieu of memberships or membership interests to the surviving or resulting corporation, and
- f. other details or provisions as are deemed desirable including, without limiting the generality of the foregoing, a provision for the payment of cash in lieu of the issuance or recognition of fractional shares, rights or other securities of any other corporation or entity the shares, rights or other securities of which are to be received in the merger or consolidation or for some other arrangement with respect thereto, consistent with Section 1036 of this title; and

2. The agreement so adopted shall be executed and acknowledged in accordance with Section 1007 of this title. Any of the terms of the agreement of merger or consolidation may be made dependent upon facts ascertainable outside of the agreement; provided, that the manner in which the facts shall operate upon the terms of the agreement is clearly and expressly set forth in the agreement of merger or consolidation. The term "facts" as used in this paragraph, includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body, including the corporation.

C. Subject to subsection D of this section, the agreement shall be submitted to the members of each constituent corporation at an annual or special meeting for the purpose of acting on the agreement. Due notice of the time, place, and purpose of the meeting shall be mailed to each member of each corporation who has the right to vote for the election of the members of the governing body of the corporation and to each other member who is entitled to vote on the merger under the certificate of incorporation or the bylaws of such corporation, at the member's address as it appears on the records of the corporation at least twenty (20) days prior to the date of the meeting. The notice shall contain a copy of the agreement or a brief summary thereof, as the governing body shall deem advisable. At the meeting, the agreement shall be considered and a vote, in person or by proxy, taken for the adoption or rejection of the agreement. If the agreement is adopted by a majority of the members of each corporation entitled to vote for the election of the members of the governing body of the corporation and any other members entitled to vote on the merger under the certificate of incorporation or the bylaws of such corporation, then that fact shall be certified on the agreement by the officer of each corporation performing the duties ordinarily performed by the secretary or assistant secretary of a corporation; provided that such certification on the agreement shall not be required if a certificate of merger or consolidation is filed in lieu of filing the agreement. The agreement shall be adopted and certified by each constituent corporation in accordance with this section, and it shall be filed and shall become effective in accordance with the provisions of Section 1007 of this title. The provisions of paragraphs 1 through 6 of subsection C of Section 1081 of this title shall apply to a merger or consolidation under this section, and the reference therein to "shareholder" shall be deemed to include "member" hereunder.

D. Notwithstanding subsection B or C of this section, if, under the provisions of the certificate of incorporation or the bylaws of any one or more of the constituent corporations, there shall be no members who have the right to vote for the election of the members of the governing body of the corporation, or for the merger, other than the members of the governing body themselves, no further action by the governing body or the members of such corporation shall be necessary if the resolution approving an agreement of merger or consolidation has been adopted by a majority of all the members of the governing body thereof, and that fact shall be certified on the agreement in the same manner as is provided in the case of the adoption of the agreement by the vote of the members of a corporation; provided that such certification on the agreement shall not be required if a certificate of merger or consolidation is filed in lieu of filing the agreement, and thereafter the same procedure shall be followed to consummate the merger or consolidation.

E. The provisions of subsection D of Section 1081 of this title shall apply to a merger under this section; provided, however, that references to the board of directors, to shareholders, and to shares of a constituent corporation shall be deemed to be references to the governing body of the corporation, to members of the corporation, and to memberships or membership interests, as applicable, respectively.

F. The provisions of subsection E of Section 1081 of this title shall apply to a merger pursuant to the provisions of this section.

G. Nothing in this section shall be construed to authorize the merger of a charitable nonstock corporation into a nonstock corporation if the charitable nonstock corporation would thereby have its charitable status lost or impaired; but a nonstock corporation may be merged into a charitable nonstock corporation which shall continue as the surviving corporation.

§18-1085. Merger or consolidation of domestic and foreign nonstock corporations - Service of process upon surviving or resulting corporation.

A. Any one or more nonstock domestic corporations may merge or consolidate with one or more other foreign nonstock corporations, unless the laws of the jurisdiction or jurisdictions under which such foreign nonstock corporation or corporations are organized prohibit such merger or consolidation. The constituent corporations may merge into a single surviving corporation, which may be any one of the constituent corporations, or they may consolidate into a new resulting nonstock corporation formed by the consolidation, which may be a corporation of the jurisdiction of organization of any one of the constituent corporations, pursuant to an agreement of merger or consolidation, as the case may be, complying and approved in accordance with the provisions of this section. The term "foreign nonstock corporation" means a nonstock corporation organized under the laws of any jurisdiction other than this state.

B. 1. All the constituent corporations shall enter into an agreement of merger or consolidation. The agreement shall state:

- a. the terms and conditions of the merger or consolidation,
- b. the mode of carrying the same into effect,
- c. in the case of a merger in which the surviving corporation is a domestic corporation, such amendments or changes in the certificate of incorporation of the surviving corporation as are desired to be effected by the merger, which amendments or changes may amend and restate the certificate of incorporation of the surviving corporation in its entirety, or, if no such amendments or changes are desired, a statement that the certificate of incorporation of the surviving corporation shall be its certificate of incorporation,
- d. in the case of a consolidation in which the resulting corporation is a domestic corporation, that the certificate of incorporation of the resulting corporation shall be as is set forth in an attachment to the agreement,
- e. the manner, if any, of converting the memberships or membership interests of each of the constituent corporations into memberships or membership interests of the corporation surviving or resulting from such merger or consolidation, or of canceling some or all of the memberships or membership interests, and if any memberships or membership interests of any of the constituent corporations are not to remain outstanding, to be converted solely into memberships or membership interests of the surviving or resulting corporation or to be cancelled, the cash, property, rights or securities of any other corporation or entity which the holders of such memberships or membership interests are to receive in exchange for, or upon conversion of, such memberships or membership interests, which cash, property, rights or securities of any other corporation or entity may be in addition to or in lieu of memberships or membership interests of the surviving or resulting corporation,
- f. such other details and provisions as shall be deemed desirable including, without limiting the generality of the foregoing, a provision for the payment of cash in lieu of the issuance or recognition of

fractional shares, rights or other securities of any other corporation or entity the shares, rights or other securities of which are to be received in the merger or consolidation, or for some other arrangement with respect thereto, consistent with Section 1036 of this title, and

g. such other provisions or facts as required to set forth in an agreement of merger or consolidation, including any provision for amendment of the certificate of incorporation or equivalent document, or a surviving foreign nonstock corporation by the laws of each jurisdiction under which any of the foreign nonstock corporation are organized.

2. Any of the terms of the agreement of merger or consolidation may be made dependent upon facts ascertainable outside of such agreement, provided that the manner in which such facts shall operate upon the terms of the agreement is clearly and expressly set forth in the agreement of merger or consolidation. The term "facts," as used in the preceding sentence includes, but is not limited to, the occurrence of any event including a determination or action by any person or body, including the corporation.

C. The agreement shall be adopted, approved, certified, executed and acknowledged by each of the constituent corporations in accordance with the laws under which it is organized and, in the case of domestic corporation, in the same manner as is provided for in Section 1084 of this title. The agreement shall be filed and shall become effective for all purposes of the laws of this state when and as provided for in Section 1084 of this title with respect to the merger of nonstock domestic corporations. Insofar as they may be applicable, the provisions of paragraphs 1 through 9 of subsection C of Section 1082 of this title shall apply to a merger under this section, and the reference therein to "shareholder" shall be deemed to include "member" hereunder.

D. If the corporation surviving or resulting from the merger or consolidation is a foreign nonstock corporation, it shall agree that it may be served with process in this state in any proceeding for enforcement of any obligation of any constituent domestic corporation, as well as for enforcement of any obligation of the surviving or resulting corporation arising from the merger or consolidation and shall irrevocably appoint the Secretary of State as its agent to accept service of process in any suit or other proceedings and shall specify the address to which a copy of such process shall be mailed by the Secretary of State. In the event of such service upon the Secretary of State in accordance with the provisions of Section 2004 of Title 12 of the Oklahoma Statutes, the Secretary of State shall immediately notify such surviving or resulting corporation thereof by letter, certified mail, return receipt requested, directed to such corporation at its address so specified, unless such surviving or resulting corporation shall have designated in writing to the Secretary of State a different address for such purpose, in which case it shall be mailed to the last address so designated. Such letter shall enclose a copy of the process and any other papers served upon the Secretary of State. It shall be the duty of the plaintiff in the event of such service to serve process and any other papers in duplicate, to notify the Secretary of State that service is being made pursuant to the provisions of this subsection, and to pay the Secretary of State the fee prescribed by paragraph 7 of Section 1142 of this title, which fee shall be taxed as part of the costs in the proceeding if the plaintiff shall prevail therein. The Secretary of State shall maintain an alphabetical record of any such service setting forth the name of the plaintiff and defendant, the title, docket number and nature of the proceeding in which process has been served upon him, the fact that service has been effected pursuant to the provisions of this subsection, the return date thereof, and the date when the service was made. The Secretary of State shall not be required to retain such information for a period longer than five (5) years from his receipt of service of process.

E. The provisions of subsection E of Section 1081 of this title shall apply to a merger pursuant to the provisions of this section if the corporation surviving the merger is a domestic corporation.

F. The provisions of subsection D of Section 1081 of this title shall apply to a merger under this section; provided, however, that references to the board of directors, to shareholders, and to shares of a constituent corporation shall be deemed to be references to the governing body of the corporation, to members of the corporation, and to memberships or membership interests, as applicable, respectively.

G. Nothing in this section shall be construed to authorize the merger of a charitable nonstock corporation into a nonstock corporation if the charitable nonstock corporation would thereby have its charitable status lost or impaired; but a nonstock corporation may be merged into a charitable nonstock corporation which shall continue as the surviving corporation.

§18-1086. Merger or consolidation of domestic stock and nonstock corporations.

A. Any one or more domestic nonstock corporations, whether or not organized for profit, may merge or consolidate with one or more domestic stock corporations, whether or not organized for profit. The constituent corporations may merge into a single surviving corporation, which may be any one of the constituent corporations, or they may consolidate into a new resulting corporation formed by the consolidation, pursuant to an agreement of merger or consolidation, as the case may be, complying and approved in accordance with the provisions of this section. The surviving constituent corporation or the resulting corporation may be organized for profit or not organized for profit and may be a stock corporation or a nonstock corporation.

B. The board of directors of each stock corporation which desires to merge or consolidate and the governing body of each nonstock corporation which desires to merge or consolidate shall adopt a resolution approving an agreement of merger or consolidation. The agreement shall state:

1. The terms and conditions of the merger or consolidation;
2. The mode carrying the same into effect;
3. In the case of a merger, such amendments or changes in the certificate of incorporation of the surviving corporation as are desired to be effected by the merger, which amendments or changes may amend and restate the certificate of incorporation of the surviving corporation in its entirety, or, if no such amendments or changes are desired, a statement that the certificate of incorporation of the surviving corporation shall be its certificate of incorporation;
4. In the case of a consolidation, that the certificate of incorporation of the resulting corporation shall be as is set forth in an attachment to the agreement;
5. The manner, if any, of converting the shares of stock of a stock corporation and the memberships or membership interests of a nonstock corporation into shares or other securities of a stock corporation or memberships or membership interests of a nonstock corporation surviving or resulting from such merger or consolidation, or of canceling some or all of the shares or memberships or membership interests, and if any shares of any such stock corporation or memberships or membership interests of any such nonstock corporation are not to remain outstanding, to be converted solely into shares or other securities of the stock corporation or memberships or membership interests of the nonstock corporation surviving or resulting from

such merger or consolidation, or to be canceled, the cash, property, rights or securities of any other corporation or entity which the holders of shares of any such stock corporation or memberships or membership interests of any such nonstock corporation are to receive in exchange for, or upon conversion of such shares or memberships or membership interests, and the surrender of any certificates evidencing them, which cash, property, rights or securities of any other corporation or entity may be in addition to or in lieu of shares or other securities of any stock corporation or memberships or membership interests of any nonstock corporation surviving or resulting from such merger or consolidation; and

6. Such other details or provisions as are deemed desirable including, without limiting the generality of the foregoing, a provision for the payment of cash in lieu of the issuance or recognition of fractional shares, rights or other securities of any other corporation or entity the shares, rights or other securities of which are to be received in the merger or consolidation, or for some other arrangement with respect thereto, consistent with Section 1036 of this title.

C. Any of the terms of the agreement of merger or consolidation may be made dependent upon facts ascertainable outside of such agreement, provided that the manner in which such facts shall operate upon the terms of the agreement is clearly and expressly set forth in the agreement of merger or consolidation. The term "facts", as used in the preceding sentence includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body, including the corporation.

D. The agreement, required by subsection B of this section in the case of each constituent stock corporation, shall be adopted, approved, certified, executed and acknowledged by each constituent corporation in the same manner as is provided for in Section 1081 of this title and, in the case of each constituent nonstock corporation, shall be adopted, approved, certified, executed and acknowledged by each of said constituent corporations in the same manner as is provided for in Section 1084 of this title. The agreement shall be filed and shall become effective for all purposes of the laws of this state when and as provided for in Section 1081 of this title with respect to the merger of stock corporations of this state. Insofar as they may be applicable, the provisions of paragraphs 1 through 7 of subsection C of Section 1081 of this title shall apply to a merger under this section, and the reference therein to "shareholder" shall be deemed to include "member" hereunder.

E. The provisions of subsection E of Section 1081 of this title shall apply to a merger pursuant to the provisions of this section. The provisions of subsection D of Section 1081 of this title shall apply to any constituent stock corporation participating in a merger or consolidation pursuant to the provisions of this section. The provisions of subsection F of Section 1081 of this title shall apply to any constituent stock corporation participating in a merger pursuant to the provisions of this section.

F. The provisions of subsection D of Section 1081 of this title shall apply to a merger pursuant to the provisions of this section; provided, however, that for purposes of a constituent nonstock corporation, references to the board of directors, to shareholders, and to shares of a constituent corporation shall be deemed to be references to the governing body of the corporation, to members of the corporation, and to memberships or membership interests, as applicable, respectively.

G. Nothing in this section shall be construed to authorize the merger of a charitable nonstock corporation into a stock corporation, if the charitable status of such nonstock corporation would thereby be lost or impaired; but a stock corporation may be merged into a charitable nonstock corporation which shall continue as the surviving corporation.

§18-1087. Merger or consolidation of domestic and foreign stock and nonstock corporations.

A. Any one or more domestic corporations, whether stock or nonstock corporations and whether or not organized for profit, may merge or consolidate with one or more foreign corporations, unless the laws of the jurisdiction or jurisdictions under which such foreign corporation or corporations are organized prohibit such merger or consolidation. The constituent corporations may merge into a single surviving corporation, which may be any one of the constituent corporations, or they may consolidate into a new resulting corporation formed by the consolidation, which may be a corporation of the jurisdiction of organization of any one of the constituent corporations, pursuant to an agreement of merger or consolidation, as the case may be, complying and approved in accordance with the provisions of this section. The surviving or resulting corporation may be either a domestic or foreign stock corporation or a domestic or foreign nonstock corporation, as shall be specified in the agreement of merger or consolidation required by the provisions of subsection B of this section. For purposes of this section, the term "foreign corporation" includes a nonstock corporation organized under the laws of any jurisdiction other than this state.

B. The method and procedure to be followed by the constituent corporations so merging or consolidating shall be as prescribed in Section 1086 of this title in the case of domestic corporations. The agreement of merger or consolidation shall be as provided in Section 1086 of this title and also set forth such other provisions or facts as required to be set forth in an agreement of merger or consolidation, including any provision for amendment of the certificate of incorporation or equivalent document of a surviving foreign corporation, by the laws of the jurisdiction or jurisdictions which are stated in the agreement to be the laws under which the foreign corporation or corporations are organized. The agreement, in the case of foreign corporations, shall be adopted, approved, certified, executed and acknowledged by each of the constituent foreign corporations in accordance with the laws under which each is organized.

C. The requirements of the provisions of subsection D of Section 1082 of this title as to the appointment of the Secretary of State to receive process and the manner of serving the same in the event the surviving or resulting corporation is a foreign corporation shall also apply to mergers or consolidations effected under this section and such appointment, if any, shall be included in the certificate of merger or consolidation, if any, filed pursuant to subsection B of this section. The provisions of subsection E of Section 1081 of this title shall apply to mergers effected pursuant to the provisions of this section if the surviving corporation is a domestic corporation. The provisions of subsection D of Section 1081 of this title shall apply to any constituent stock corporation participating in a merger or consolidation pursuant to the provisions of this section; provided, however, that for purposes of a constituent nonstock corporation, references to the board of directors, to shareholders, and to shares shall be deemed to be references to the governing body of the corporation, to members of the corporation, and to memberships or membership interests of the corporation, as applicable, respectively. The provisions of subsection F of Section 1081 of this title shall apply to any constituent stock corporation participating in a merger pursuant to the provisions of this section.

D. Nothing in this section shall be construed to authorize the merger of a charitable nonstock corporation into a stock corporation, if the charitable status of such nonstock corporation would thereby be lost or impaired but a stock corporation may be merged into a charitable nonstock corporation which shall continue as the surviving corporation.

§18-1088. Status, Rights, Liabilities, etc. of Constituent and Surviving or Resulting Corporations Following Merger or Consolidation.

When any merger or consolidation shall have become effective pursuant to the provisions of the Oklahoma General Corporation Act, for all purposes of the laws of this state the separate existence of all the constituent corporations, or of all such constituent corporations except the one into which the other or others of such constituent corporations have been merged, as the case may be, shall cease and the constituent corporations shall become a new corporation, or be merged into one of such corporations, as the case may be, possessing all the rights, privileges, powers and franchises as well of public as of a private nature, and being subject to all the restrictions, disabilities and duties of each of such corporations so merged or consolidated; and all and singular, the rights, privileges, powers and franchises of each of said corporations, and all property, real, personal and mixed, and all debts due to any of said constituent corporations on whatever account, as well for stock subscriptions as all other things in action or belonging to each of such corporations shall be vested in the corporation surviving or resulting from such merger or consolidation; and all property, rights, privileges, powers and franchises, and all and every other interest shall be thereafter as effectually the property of the surviving or resulting corporation as they were of the several and respective constituent corporations, and the title to any real estate vested by deed or otherwise, under the laws of this state, in any of such constituent corporations, shall not revert or be in any way impaired by reason of the provisions of the Oklahoma General Corporation Act; but all rights of creditors and all liens upon any property of any of said constituent corporations shall be preserved unimpaired, and all debts, liabilities and duties of the respective constituent corporations, from that time forward, shall attach to said surviving or resulting corporation, and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it.

§18-1089. Powers of Corporation Surviving or Resulting from Merger or Consolidation - Issuance of Stock, Bonds or Other Indebtedness.

When two or more corporations are merged or consolidated, the corporation surviving or resulting from the merger may issue bonds or other obligations, negotiable or otherwise, and with or without coupons or interest certificates thereto attached, to an amount sufficient with its capital stock to provide for all payments it will be required to make, or obligations it will be required to assume, in order to effect the merger or consolidation. For the purpose of securing the payment of any such bonds and obligations, it shall be lawful for the surviving or resulting corporation to mortgage its corporate franchise, rights, privileges and property, real, personal or mixed. The surviving or resulting corporation may issue certificates of its capital stock or uncertificated stock if authorized to do so and other securities to the shareholders of the constituent corporations in exchange or payment for the original shares, in such amount as shall be necessary in accordance with the terms of the agreement of merger or consolidation in order to effect such merger or consolidation in the manner and on the terms specified in the agreement.

§18-1090. Effect of Merger Upon Pending Actions.

Any action or proceeding, whether civil, criminal or administrative, pending by or against any corporation which is a party to a merger or consolidation shall be prosecuted as if such merger or consolidation had not

taken place, or the corporation surviving or resulting from such merger or consolidation may be substituted in such action or proceeding.

§18-1090.1. Share acquisitions.

A. One or more corporations may acquire all or part of the outstanding shares of one or more other corporations, if the board of directors of each corporation adopts and its shareholders approve, if required by subsection C of this section, the agreement of acquisition.

B. The agreement of acquisition shall set forth:

1. the name or names of the corporation or corporations whose shares will be acquired and the name or names of the acquiring corporation or corporations;
2. the terms and conditions of the acquisitions;
3. the manner and basis of exchanging the shares to be acquired for the consideration proffered;
4. any amendments or changes in the certificate of incorporation of a corporation which is a party to the agreement; and
5. such other provisions as the directors shall deem advisable.

C. After adopting an agreement of acquisition, the board of directors of each corporation whose shares are to be acquired, in whole or in part, or whose certificate of incorporation is to be amended, shall submit the agreement of acquisition for approval by the shareholders entitled to vote thereon. Due notice of the meeting shall be mailed to each holder of stock, whether voting or nonvoting, of the corporation at his address as it appears on the records of the corporation, at least twenty (20) days prior to the meeting. The notice shall contain a copy of the agreement or a brief summary thereof, as the directors shall deem advisable. At the meeting, the agreement shall be considered and a vote taken for its adoption or rejection. If a majority of the outstanding stock of the corporation entitled to vote thereon shall be voted for the adoption of the agreement, that fact shall be certified on the agreement by the secretary or assistant secretary of the corporation. If the agreement shall be adopted and approved in accordance with the provisions of this section, it shall then be filed and shall become effective in accordance with the provisions of Section 1007 of this title. In lieu of filing an agreement of acquisition required by this section, the acquiring corporation may file a certificate of acquisition, executed in accordance with the provisions of Section 1007 of this title, which states:

1. the name and jurisdiction of incorporation of each corporation which is a party to the agreement;
2. that the agreement of acquisition has been adopted, approved, certified, executed, and acknowledged in accordance with the provisions of this section;
3. whether the corporation is an acquiring corporation or a corporation whose shares are to be acquired;
4. the amendments or changes, if any, in the certificate of incorporation that are to be effected by the agreement of acquisition;
5. that the executed agreement of acquisition is on file at the principal place of business of each corporation, stating the address thereof; and

6. that a copy of the agreement of acquisition will be furnished by each corporation, on request and without cost, to any of its shareholders.

D. Any agreement of acquisition may contain a provision that at any time prior to the filing of the agreement with the Secretary of State, the agreement may be terminated by the board of directors of any affected corporation notwithstanding approval of the agreement by the shareholders of one or more of the affected corporations. Any agreement of acquisition may contain a provision that the board of directors of the affected corporations may amend the agreement at any time prior to the filing of the agreement, or a certificate in lieu thereof, with the Secretary of State, provided that an amendment made subsequent to the adoption of the agreement by the shareholders of any affected corporation shall not:

- a. alter or change the amount or kind of consideration to be received in exchange for or on conversion of all or part of the shares to be acquired;
- b. alter or change any term of the certificate of incorporation of the affected corporations; or
- c. alter or change any of the terms and consideration of the agreement if such alteration or change would adversely affect the holders of any class or series of a corporation whose shares are to be acquired.

E. The holders of the outstanding shares of a class shall be entitled to vote as a class upon an agreement of acquisition, whether or not entitled to vote thereon by the provisions of the certificate of incorporation, if the agreement provides for the acquisition of all or part of the shares of the class.

F. This section shall not limit the power of a corporation to acquire all or part of the shares of one or more classes or series of another corporation through a voluntary exchange or otherwise.

G. Any shareholder whose shares are to be acquired pursuant to an agreement of acquisition adopted and approved in accordance with this section and who has complied with the procedural steps specified in subsection D of Section 1091 of this title for mergers and consolidations and who has neither voted in favor of the share acquisition nor consented thereto in writing shall be entitled to an appraisal by the district court of the fair value of his shares in compliance with the same provisions and procedures and with the same rights and limitations as set out in subsections E through K of Section 1091 of this title.

H. If the entity acquiring shares pursuant to this section is governed by the laws of the District of Columbia or any state other than this state, the entity shall agree that it may be served with process in this state in any proceeding for enforcement of any obligation of the acquiring corporation arising from the share acquisition, including any suit or other proceeding to enforce the right of any shareholders as determined in appraisal proceedings pursuant to the provisions of Section 1091 of this title, and shall irrevocably appoint the Secretary of State as its agent to accept service of process in any such suit or other proceedings and shall specify the address to which a copy of such process shall be mailed by the Secretary of State. In the event of such service upon the Secretary of State in accordance with this subsection, the Secretary of State shall forthwith notify such acquiring corporation thereof by letter sent by certified mail, with return receipt requested, directed to such acquiring corporation at its address so specified, unless such acquiring corporation shall have designated in writing to the Secretary of State a different address for such purpose, in which case it shall be mailed to the last address so designated. Such letter shall enclose a copy of the process and any other papers served on the Secretary of State pursuant to this subsection. It shall be the duty of the plaintiff in the event of such service to serve process and any other papers in duplicate, to notify the Secretary of State that service is being effected pursuant to this subsection and to pay the Secretary of State the fee provided for in paragraph 7 of Section 1142 of this title, which fee shall be taxed as part of the costs in the proceeding, if the plaintiff shall

prevail therein. The Secretary of State shall maintain an alphabetical record of any such service setting forth the name of the plaintiff and the defendant, the title, docket number and nature of the proceeding in which process has been served upon the Secretary of State, the fact that service has been served upon the Secretary of State, the fact that service has been effected pursuant to this subsection, the return date thereof, and the date service was made. The Secretary of State shall not be required to retain such information longer than five (5) years from receipt of the service of process by the Secretary of State.