

53-14-7. Merger, consolidation or exchange of shares between domestic and foreign corporations.

A. One or more foreign corporations and one or more domestic corporations may be merged or consolidated or participate in an exchange, in the following manner, if the merger, consolidation or exchange is permitted by the laws of the state under which each foreign corporation is organized:

(1) each domestic corporation shall comply with the provisions of the Business Corporation Act [53-11-1 to 53-18-12 NMSA 1978] with respect to the merger, consolidation or exchange, as the case may be, of domestic corporations, and each foreign corporation shall comply with the applicable provisions of the laws of the state under which it is organized; and

(2) if the surviving or new corporation in a merger or consolidation is to be governed by the laws of any state other than this state, it shall comply with the provisions of the Business Corporation Act with respect to foreign corporations if it is to transact business in this state, and in every case it shall file with the commission:

(a) an agreement that it may be served with process in this state in any proceeding for the enforcement of any obligation of any domestic corporation which is a party to the merger or consolidation and in any proceeding for the enforcement of the rights of a dissenting shareholder of any such domestic corporation against the surviving or new corporation;

(b) an irrevocable appointment of the secretary of state as its agent to accept service of process in any such proceeding; and

(c) an agreement that it will promptly pay to the dissenting shareholders of any such domestic corporation the amount, if any, to which they shall be entitled under the provisions of the Business Corporation Act with respect to the rights of dissenting shareholders.

B. The effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations, if the surviving or new corporation is to be governed by the laws of this state. If the surviving or new corporation is to be governed by the laws of any state other than this state, the effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations except insofar as the laws of such other state provide otherwise. At any time prior to the filing of the articles of merger or consolidation, the merger or consolidation may be abandoned pursuant to provisions therefor, if any, set forth in the plan of merger or consolidation.

History: 1953 Comp., § 51-27-7, enacted by Laws 1967, ch. 81, § 74; 1983, ch. 304, § 58.

Cross references. - For definition of "commission," see 53-11-2L NMSA 1978.

The 1983 amendment inserted "or exchange" and "shares between" in the catchline, in the introductory language of Subsection A inserted "or participate in an exchange" and "or exchange," inserted "or exchange" in Paragraph (1) of Subsection A, substituted "in a merger or consolidation" for "as the case may be" in the introductory language of Paragraph (2) of Subsection A, and substituted "shall be" for "are" in Subparagraph (c) of Paragraph (2) of Subsection A.

Compiler's notes. - This section is derived from Section 77 of the ABA Model Business Corporation Act.

Am. Jur. 2d, A.L.R. and C.J.S. references. - Merger or consolidation as creating multi-state corporation for purposes of federal diversity jurisdiction, 27 A.L.R.2d 777.

Standing of private party under § 16 of Clayton Act (15 U.S.C.S. § 26) to seek injunction to prevent merger or acquisition allegedly prohibited under § 7 of the act (15 U.S.C.S. § 18), 78 A.L.R. Fed. 159.

19 C.J.S. Corporations §§ 931 to 935.