



Ohio Revised Code

Section 1701.79 Merger or consolidation into foreign corporation.

Effective: April 11, 1990

Legislation: Senate Bill 321 - 118th General Assembly

(A) Pursuant to an agreement of merger or consolidation between the constituent corporations as provided in this section, a domestic corporation and, if so provided, one or more additional domestic or foreign corporations may be merged into a foreign surviving corporation, or a domestic corporation together with one or more additional domestic or foreign corporations may be consolidated into a new foreign corporation to be formed by such consolidation in a state under the laws of which a foreign constituent corporation exists, provided the provisions of Chapter 1704. of the Revised Code do not prevent the merger or consolidation from being effected. The merger or consolidation must be permitted by the laws of each state under the laws of which any foreign constituent corporation exists.

(B) The agreement of merger or consolidation shall set forth the following:

(1) The states under the laws of which each constituent corporation exists and, in the case of a consolidation, the state under the laws of which the new corporation is to exist;

(2) In the case of a merger, that one or more specified constituent corporations shall be merged into a specified foreign surviving corporation and, in the case of a consolidation, that the constituent corporations shall be consolidated into a new foreign corporation. The name of the surviving or new corporation may be the same as or similar to that of any constituent corporation.

(3) All additional statements and matters, other than the name and address of the statutory agent, that would be required by section 1701.78 of the Revised Code if the surviving or new corporation were a domestic corporation;

(4) The location of the principal office of the surviving or new corporation in the state under the laws of which the surviving corporation exists or the new corporation is to exist;

(5) All additional statements and matters required to be set forth in such an agreement of merger or



consolidation by the laws of each state under the laws of which any foreign constituent corporation exists and, in the case of a consolidation, the new corporation is to exist;

(6) The consent of the surviving or the new corporation to be sued and served with process in this state and the irrevocable appointment of the secretary of state as its agent to accept service of process in any proceeding in this state to enforce against the surviving or new corporation any obligation of any domestic constituent corporation or to enforce the rights of a dissenting shareholder of any domestic constituent corporation;

(7) If it is desired that the surviving or new corporation transact business in this state as a foreign corporation, a statement to that effect, together with a statement on the appointment of a statutory agent and with respect to service of any process, notice, or demand upon such statutory agent or the secretary of state, as required when a foreign corporation applies for a license to transact business in this state.

(C) The agreement of merger or consolidation may also set forth any additional provision permitted by the laws of any state under the laws of which any constituent corporation exists, consistent with the laws of the state under the laws of which the surviving corporation exists or the new corporation is to exist.

(D) To effect the merger or consolidation, the agreement shall be approved by the directors of each domestic constituent corporation, and adopted by the shareholders of each domestic constituent corporation, in the same manner and with the same notice to and vote of shareholders or of holders of a particular class of shares as is required by section 1701.78 of the Revised Code. The agreement shall also be approved or otherwise authorized by or on behalf of each foreign constituent corporation in accordance with the laws of the state under which it exists.

(E) At any time prior to filing the certificate of merger or consolidation, the merger or consolidation may be abandoned by the directors of any of the constituent corporations if the directors are authorized to do so by the agreement of merger or consolidation. The agreement may contain a provision authorizing the directors of the constituent corporations to amend the agreement at any time prior to the filing of the certificate of merger or consolidation, except that, after the adoption of the agreement by the shareholders of any domestic constituent corporation, the directors shall not be



authorized to amend the agreement to do any of the following:

(1) Alter or change the amount or kind of shares, evidences of indebtedness, other securities, cash, rights, or any other property to be received by shareholders of the domestic constituent corporation in conversion of or in substitution for their shares;

(2) Alter or change any term of the articles of the surviving or new foreign corporation, except for alterations or changes that otherwise could be adopted by the directors of the surviving or new foreign corporation;

(3) Alter or change any other terms and conditions of the agreement if any of the alterations or changes, alone or in the aggregate, would materially adversely affect the holders of any class or series of shares of the domestic constituent corporation.

(F) If the surviving or new corporation does not desire to be licensed to transact business in this state, the agreement shall be accompanied by the affidavits, receipts, certificates, or other evidence required by division (H) of section 1701.86 of the Revised Code with respect to each domestic constituent corporation and, with respect to each foreign constituent corporation licensed to transact business in this state, the affidavits, receipts, certificates, or other evidence required by division (C) or (D) of section 1703.17 of the Revised Code.