



Ohio Revised Code

Section 1701.78 Merger or consolidation into domestic 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 or foreign corporation and, if so provided, one or more additional domestic or foreign corporations may be merged into a domestic surviving corporation, or a domestic corporation together with one or more additional domestic or foreign corporations may be consolidated into a new domestic corporation formed by such consolidation, provided the provisions of Chapter 1704. of the Revised Code do not prevent the merger or consolidation from being effected. If any constituent corporation is a foreign corporation, the merger or consolidation must also 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:

(1) The state under the laws of which each constituent corporation exists;

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

(3) All statements and matters required to be set forth in an agreement of merger or consolidation by the laws of each state under the laws of which any foreign constituent corporation exists;

(4) In the case of a consolidation, the articles of the new corporation or a provision that the articles of a specified domestic constituent corporation with such amendments as may be set forth in the agreement shall be the articles of the new corporation;

(5) In the case of a consolidation, the name and address of the statutory agent upon whom any process, notice, or demand against any constituent corporation or the new corporation may be



served;

(6) The terms of the merger or consolidation; the mode of carrying them into effect; and the manner and basis of converting the shares of the constituent corporations into, or substituting the shares of the constituent corporations for, shares, evidences of indebtedness, other securities, cash, rights, or any other property, or any combination of shares, evidences of indebtedness, securities, cash, rights, or any other property of the surviving corporation, of the new corporation, or of any other corporation, including the parent of any constituent corporation, or any other person. No such conversion or substitution shall be effected if there are reasonable grounds to believe that the surviving or new corporation would be rendered insolvent by the conversion or substitution.

(C) The agreement of merger or consolidation may also set forth:

(1) The effective date of the merger or consolidation, which may be on or after the date of filing the certificate;

(2) A provision authorizing the directors of one or more of the constituent corporations to abandon the proposed merger or consolidation prior to filing the certificate;

(3) In the case of a merger, any amendments to the articles of the surviving corporation or a provision that the articles of a specified domestic constituent corporation other than the surviving corporation with such amendments as may be set forth in the agreement shall be the articles of the surviving corporation;

(4) A statement of, or a statement of the method of determining, the fair value of the assets to be owned by the surviving or new corporation;

(5) The regulations of the surviving or new corporation or a provision that the regulations of a specified domestic constituent corporation with such amendments as may be set forth in the agreement shall be the regulations of the surviving or new corporation;

(6) In the case of a consolidation, the initial directors of the new corporation or a provision that all the directors of one or more specified constituent corporations shall constitute the initial directors of



the new corporation, and, in the case of a merger, any changes in the directors of the surviving corporation;

(7) The parties to the agreement in addition to the constituent corporations;

(8) The stated capital of each class of shares of the surviving or new corporation to be outstanding at the time the merger or consolidation becomes effective;

(9) Any additional provision necessary or desirable with respect to the proposed merger or consolidation.

(D) To effect the merger or consolidation, the agreement shall be approved by the directors of each domestic constituent corporation, adopted by the shareholders of each domestic constituent corporation, other than the surviving corporation in the case of a merger, at a meeting of the shareholders of each such corporation held for the purpose, and 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. In the case of a merger, the agreement shall also be adopted by the shareholders of the surviving corporation at a meeting held for the purpose, if one or more of the following conditions exist:

(1) The articles or regulations of the surviving corporation then in effect require that the agreement be adopted by the shareholders or by the holders of a particular class of shares of that corporation;

(2) The agreement conflicts with the articles or regulations of the surviving corporation then in effect, or changes the articles or regulations, or authorizes any action that, if it were being made or authorized apart from the merger, would otherwise require adoption by the shareholders or by the holders of a particular class of shares of that corporation;

(3) The merger involves the issuance or transfer by the surviving corporation to the shareholders of the other constituent corporation or corporations of such number of shares of the surviving corporation as will entitle the holders of the shares immediately after the consummation of the merger to exercise one-sixth or more of the voting power of that corporation in the election of directors;



(4) The agreement of merger makes such change in the directors of the surviving corporation as would otherwise require action by the shareholders or by the holders of a particular class of shares of that corporation.

(E) Notice of each meeting of shareholders of a domestic constituent corporation at which an agreement of merger or consolidation is to be submitted shall be given to all shareholders of that corporation, whether or not they are entitled to vote, and shall be accompanied by a copy or a summary of the material provisions of the agreement.

(F) The vote required to adopt an agreement of merger or consolidation at a meeting of the shareholders of a domestic constituent corporation is the affirmative vote of the holders of shares of that corporation entitling them to exercise at least two-thirds of the voting power of the corporation on such proposal or such different proportion as the articles may provide, but not less than a majority, and such affirmative vote of the holders of shares of any particular class as is required by the articles of that corporation. If the agreement would have an effect that, if accomplished through an amendment to the articles, would entitle the holders of shares of any particular class of a domestic constituent corporation to vote as a class on the adoption of such amendment as provided in division (B) of section 1701.71 of the Revised Code, the agreement must also be adopted by the affirmative vote of the holders of at least two-thirds of the shares of such class, or such different proportion as the articles may provide, but not less than a majority. However, if the agreement would have an effect that, if accomplished through an amendment to the articles, would entitle the holders of shares of any particular class of a domestic constituent corporation to vote as a class on the adoption of such amendment pursuant to division (B)(2) or (4) of section 1701.71 of the Revised Code solely because those shares are to be converted into or substituted for the same number of shares of a class of a different corporation that have express terms identical in all material respects to those of the class of shares so converted or substituted, the agreement need not be adopted by the affirmative vote of the holders of shares of that particular class voting as a class. If the agreement would authorize any particular corporate action that under any applicable provision of law or the articles could be authorized only by or pursuant to a specified vote of shareholders, the agreement must also be adopted by the same affirmative vote as would be required for such action.

(G) At any time prior to the filing of 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 or by the same vote of shareholders as is required to adopt the agreement. The agreement of merger or consolidation 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 domestic corporation, except for alterations or changes that could otherwise be adopted by the directors of the surviving or new domestic 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.
- (H) If division (D) of this section does not require adoption of the agreement of merger by the shareholders of the surviving corporation, the approval of the agreement by the directors of that corporation constitutes adoption by that corporation.