

P.L. 2009, CHAPTER 158, *approved November 20, 2009*

Assembly, No. 2884

(Corrected Copy)

1 AN ACT concerning mergers or consolidation of certain domestic
2 corporations and amending N.J.S.14A:1-2.1 and P.L.1995, c.279.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

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7 1. N.J.S.14A:1-2.1 is amended to read as follows:

8 14A:1-2.1. Definitions.

9 As used in this act, unless the context otherwise requires, the
10 term:

11 (a) "Act" or "this act" means the "New Jersey Business
12 Corporation Act" and includes all amendments and supplements
13 thereto.

14 (b) "Attorney General" means the Attorney General of New
15 Jersey.

16 (c) "Authorized shares" means the shares of all classes and
17 series which the corporation is authorized to issue.

18 (d) "Board" means board of directors. "Entire board" means the
19 total number of directors which the corporation would have if there
20 were no vacancies.

21 (e) "Bonds" includes secured and unsecured bonds, debentures,
22 notes and other written obligations for the payment of money.

23 (f) "Certificate of incorporation" includes:

24 (i) the original certificate of incorporation or any other
25 instrument filed or issued under any statute to form a domestic or
26 foreign corporation, as amended, supplemented or restated by
27 certificates of amendment, merger or consolidation or by other
28 certificates or instruments filed or issued under any statute; and

29 (ii) a special act or charter creating a domestic or foreign
30 corporation, as amended, supplemented or restated.

31 (g) "Corporation" or "domestic corporation" means a
32 corporation for profit organized under this act, or existing on its
33 effective date and theretofore organized under any other law of this
34 State for a purpose or purposes for which a corporation may be
35 organized under this act.

36 (h) "Director" means any member of the governing board of a
37 corporation, whether designated as director, trustee, manager,
38 governor, or by any other title.

39 (i) "Foreign corporation" means a corporation for profit
40 organized under the laws of a jurisdiction other than this State [for
41 a purpose or purposes for which a corporation may be organized

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 under this act] , including any state or territory of the United States
2 or the District of Columbia, the United States or any foreign
3 country or other foreign jurisdiction.

4 (j) "Resolution" means any action taken or authority granted by
5 the shareholders, the board, or a committee of the board, regardless
6 of whether evidenced by a formal resolution.

7 (k) "Secretary of State" means the Secretary of State of New
8 Jersey.

9 (l) "Shareholder" means one who is a holder of record of shares
10 in a corporation.

11 (m) "Shares" means the units into which the proprietary interests
12 in a corporation are divided.

13 (n) "Subscriber" means one who subscribes for shares in a
14 corporation, whether before or after incorporation.

15 (o) "Subsidiary" means a domestic or foreign corporation whose
16 outstanding shares are owned directly or indirectly by another
17 domestic or foreign corporation in such number as to entitle the
18 holder at the time to elect a majority of its directors without regard
19 to voting power which may thereafter exist upon a default, failure
20 or other contingency.

21 (p) "Treasury shares" means shares of a corporation which have
22 been issued, and have been subsequently acquired by the
23 corporation under circumstances which do not result in cancellation.
24 Treasury shares are issued shares, but not outstanding shares.

25 (q) "Other business entity" means a partnership [or] , limited
26 liability company, statutory trust, business trust or association, real
27 estate investment trust, common-law trust, national association, or
28 any other unincorporated business, whether organized under the
29 laws of this State or under the laws of any other state or territory of
30 the United States or the District of Columbia, the United States or
31 any foreign country or other foreign jurisdiction.

32 (r) "Votes cast" means all votes cast in favor of and against a
33 particular proposition, but shall not include abstentions.

34 (cf: P.L.1995, c.279, s.1)

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36 2. Section 30 of P.L.1995, c.279 (C.14A:10-14) is amended to
37 read as follows:

38 30. (1) A domestic corporation may merge or consolidate with
39 one or more other business entities in the following manner:

40 (a) Each domestic corporation shall comply with the provisions
41 of chapter 10 of Title 14A of the New Jersey Statutes with respect
42 to the merger or consolidation of domestic corporations and each
43 other business entity shall comply with the applicable provisions of
44 the laws of the jurisdiction under which it is organized.

45 (b) The certificate of merger or consolidation required by
46 [section] N.J.S.14A:10-4.1 shall be executed on behalf of each
47 domestic corporation and each other business entity and, in addition
48 to the information required by subsection (1) of N.J.S.14A:10-

1 4.1[(1)], shall set forth that the applicable provisions of the laws of
2 the jurisdiction under which each other business entity was
3 organized have been, or upon compliance with filing and recording
4 requirements will have been, complied with.

5 (c) If the surviving business entity or new business entity meets
6 the definition of "other business entity" pursuant to subsection (q)
7 of N.J.S.14A:1-2.1 , and is organized under the laws of another
8 [state or foreign] jurisdiction and is to transact business in this
9 State, it shall comply with the [provisions of the] laws of this State
10 [with respect to foreign partnerships or foreign limited liability
11 companies, as appropriate] applicable to that other business entity,
12 and, whether or not it is to transact business in this State, the
13 certificate of merger or consolidation required by [section]
14 N.J.S.14A:10-4.1 shall, in addition to other required information,
15 set forth:

16 (i) an agreement by [such foreign] that other business entity
17 that it may be served with process in this State in any proceeding
18 for the enforcement of any obligation of any domestic corporation
19 or any other business entity, previously amenable to suit in this
20 State, which is a party to such merger or consolidation, and in any
21 proceeding for the enforcement of the rights of a dissenting
22 shareholder of any such domestic corporation against the surviving
23 or new corporation; [and]

24 (ii) an irrevocable appointment by [such foreign] that other
25 business entity of the Secretary of State of this State as its agent to
26 accept service of process in any such proceeding, and the post
27 office address, within or without this State, to which the Secretary
28 of State shall mail a copy of the process in such proceeding; and

29 (iii) an agreement by [such foreign] that other business entity
30 that it will promptly pay to the dissenting shareholders of any such
31 domestic corporation the amount, if any, to which they shall be
32 entitled under the provisions of chapter 11 of Title 14A of the New
33 Jersey Statutes with respect to the rights of dissenting shareholders.

34 (2) The provisions of subsection (4) of N.J.S.14A:10-3[(4)]
35 shall apply to a merger in which the surviving corporation is a
36 domestic corporation.

37 (3) If the surviving or new corporation is a domestic
38 corporation, the effect of such merger or consolidation shall be the
39 same as in the case of the merger or consolidation of domestic
40 corporations. If the surviving or new corporation is any other
41 business entity, the effect of such merger or consolidation shall be
42 the same as in the case of the merger or consolidation of domestic
43 corporations except insofar as provided otherwise in the laws under
44 which such other business entity is organized.

45 (cf: P.L.1995, c.279, s.30)

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47 3. This act shall take effect immediately.

STATEMENT

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This bill amends the definition of “foreign corporation” to provide that a foreign corporation means a corporation for profit organized under the laws of a jurisdiction other than this State, including any state or territory of the United States or the District of Columbia, the United States or any foreign country or other foreign jurisdiction. Additionally, the requirement under the current definition that a foreign corporation’s purpose coincide with the purpose or purposes for which a corporation may be organized under the corporation law has been eliminated to reflect the analogous definitions of “foreign limited partnership” under the Uniform Limited Partnership Law (*see* N.J.S.A.42:2A-5) and “foreign limited liability company” under the New Jersey Limited Liability Company Act (*see* N.J.S.A.42:2B-2).

The bill also amends the definition of “other business entity” to include in the broadest sense, all unincorporated entities formed under any domestic or foreign jurisdiction. That definition is based generally upon analogous provisions of Section 252 of the Delaware General Corporation Law and the definition of “other business entity” under the New Jersey Limited Liability Company Act (*see* N.J.S.A.42:2B-2).

The bill expands the scope of unincorporated entities that may be permitted to merge or consolidate with a domestic corporation beyond the traditional partnerships and limited liability companies previously allowed. Specifically, the bill provides greater flexibility in the types of entities with which a domestic corporation may merge, including traditional partnerships and limited liability companies, as well as statutory trusts, business trusts or associations, real estate investment trusts, common-law trusts, national associations, or any other unincorporated business, subject to the requirement that the other entity comply with the laws of this State. These changes are generally based on Sections 254, 263, and 264 of the Delaware General Corporation Law.

This bill modernizes New Jersey law to reflect the expanded scope of business combinations by and among corporations and other unincorporated business entities.

Expands scope of unincorporated entities permitted to merge or consolidate with domestic corporations.