

17-78-303. Approval of interest exchange. (a) An agreement of interest exchange is not effective unless it has been approved:

- (1) By a domestic acquired entity:
 - (A) In accordance with the requirements, if any, in its organic law and organic rules for approval of an interest exchange;
 - (B) except as otherwise provided in subsection (d), if neither its organic law nor organic rules provide for approval of an interest exchange, in accordance with the requirements, if any, in its organic law and organic rules for approval of:
 - (i) In the case of an entity that is not a corporation, a merger, as if the interest exchange were a merger; or
 - (ii) in the case of a corporation, a merger requiring approval by a vote of the interest holders of the corporation, as if the interest exchange were that type of merger; or
 - (C) if neither its organic law nor organic rules provide for approval of an interest exchange or a merger described in subparagraph (B), by all of the interest holders of the entity entitled to vote on or consent to any matter; and
- (2) in a record, by each interest holder of a domestic acquired entity that will have interest holder liability for liabilities that arise after the interest exchange becomes effective, unless, in the case of an entity that is not a corporation:
 - (A) The organic rules of the entity provide in a record for the approval of an interest exchange or a merger in which some or all of its interest holders become subject to interest holder liability by the vote or consent of fewer than all of the interest holders; and
 - (B) the interest holder voted for or consented in a record to that provision of the organic rules or became an interest holder after the adoption of that provision.
- (b) An interest exchange involving a foreign acquired entity is not effective unless it is approved by the foreign entity in accordance with the law of the foreign entity's jurisdiction of organization.
- (c) Except as otherwise provided in its organic law or organic rules, the interest holders of the acquiring entity are not required to approve the interest exchange.
- (d) A provision of the organic law of a domestic acquired entity that would permit a merger between the acquired entity and the acquiring entity to be approved without the vote or consent of the interest holders of the acquired entity because of the percentage of interests in the acquired entity held by the acquiring entity does not apply to approval of an interest exchange under subsection (a)(1)(B).

History: L. 2009, ch. 47, § 19; July 1, 2010.