

2023 Kansas Statutes

17-76,143a. Merger or consolidation of one or more series. (a) Pursuant to an agreement of merger or consolidation, one or more series may merge or consolidate with or into one or more other series of the same limited liability company with such series as the agreement shall provide being the surviving or resulting series. Unless otherwise provided in the operating agreement, an agreement of merger or consolidation shall be consented to or approved by each series that is to merge or consolidate by members of such series who own more than 50% of the then-current percentage or other interest in the profits of such series owned by all of the members of such series. In connection with a merger or consolidation hereunder, rights or securities of, or interests in, a series which is a constituent party to the merger or consolidation may be exchanged for or converted into cash, property, rights, or securities of, or interests in, the surviving or resulting series or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights, or securities of, or interests in, an entity as defined in K.S.A. 17-78-102, and amendments thereto, that is not the surviving or resulting series in the merger or consolidation, may remain outstanding or may be canceled. Notwithstanding prior consent or approval, an agreement of merger or consolidation may be terminated or amended pursuant to a provision for such termination or amendment contained in the agreement of merger or consolidation.

(b) If a series is merging or consolidating under this section, the series surviving or resulting in or from the merger or consolidation shall file a certificate of merger or consolidation executed by one or more authorized persons on behalf of the series when it is the surviving or resulting series in the office of the secretary of state. The certificate of merger or consolidation shall state:

- (1) The name of each series that is to merge or consolidate and the name of the limited liability company that formed such series;
- (2) that an agreement of merger or consolidation has been consented to or approved and executed by or on behalf of each series that is to merge or consolidate;
- (3) the name of the surviving or resulting series;
- (4) such amendment, if any, to the certificate of designation of the series that is the surviving or resulting series to change the name of the surviving series, as is desired to be effected by the merger;
- (5) the future effective date or time, which shall be a date or time certain, of the merger or consolidation if it is not to be effective upon the filing of the certificate of merger or consolidation;
- (6) that the agreement of merger or consolidation is on file at a place of business of the surviving or resulting series or the limited liability company that formed such series and shall state the address thereof; and
- (7) that a copy of the agreement of merger or consolidation will be furnished by the surviving or resulting series, upon request and without cost, to any member of any series that is to merge or consolidate.

(c) Unless a future effective date or time is provided in a certificate of merger or consolidation, a merger or consolidation pursuant to this section shall be effective upon the filing of a certificate of merger or consolidation in the office of the secretary of state.

(d) A certificate of merger or consolidation shall act as a certificate of cancellation of the certificate of designation of the series that is not the surviving or resulting series in the merger or consolidation. A certificate of merger or consolidation that sets forth any amendment in accordance with subsection (b)(4) shall be deemed to be an amendment to the certificate of designation of the surviving or resulting series, and no further action shall be required to amend the certificate of designation of the surviving or resulting series under K.S.A. 17-76,143, and amendments thereto, with respect to such amendments set forth in the certificate of merger or consolidation. Whenever this section requires the filing of a certificate of merger or consolidation, such requirement shall be deemed satisfied by the filing of an agreement of merger or consolidation containing the information required by this section to be set forth in the certificate of merger or consolidation.

(e) An agreement of merger or consolidation consented to or approved in accordance with subsection (a) may effect any amendment to the operating agreement relating solely to the series that are constituent parties to the merger or consolidation. Any amendment to an operating agreement relating solely to the series that are constituent parties to the merger or consolidation made pursuant to the foregoing sentence shall be effective at the effective time or date of the merger or consolidation and shall be effective notwithstanding any provision of the operating agreement relating to amendment of the operating agreement, other than a provision that by its terms applies to an amendment to the operating agreement in connection with a merger or consolidation. The provisions of this subsection shall not be construed to limit the accomplishment of a merger or of any of the matters referred to herein by any other means provided for in an operating agreement or other agreement or as otherwise permitted by law, including that the operating agreement relating to any constituent series to the merger or consolidation, including a series formed for the purpose of consummating a merger or consolidation, shall be the operating agreement of the surviving or resulting series.

(f) (1) (A) When any merger or consolidation shall have become effective under this section, for all purposes of the laws of the state of Kansas, all of the rights, privileges and powers of each of the series that have merged or consolidated, and all property, real, personal and mixed, and all debts due to any of such series, as well as all other things and causes of action belonging to each of such series, shall be vested in the surviving or resulting series, and shall thereafter be the property of the surviving or resulting series as they were of each of the series that have merged or consolidated, and the title to any real property vested by deed or otherwise, under the laws of the state of Kansas, in any of such series, shall not revert or be in any way impaired by reason of the Kansas revised limited liability company act.

(B) All rights of creditors and all liens upon any property of any of the series that have merged or consolidated shall be preserved unimpaired, and all debts, liabilities and duties of each of such series that have merged or consolidated shall thereafter attach to the surviving or resulting series, and may be enforced against it to the same extent as if such debts, liabilities and duties had been incurred or contracted by it.

(2) Unless otherwise agreed, a merger or consolidation of a series that is not the surviving or resulting series in the merger or consolidation, shall not require such series to wind up its affairs under K.S.A. 17-76,143, and amendments thereto, or pay its liabilities and distribute its assets under K.S.A. 17-76,143, and amendments thereto, and the merger or consolidation shall not constitute a dissolution of such series.

(g) An operating agreement may provide that a series of such limited liability company shall not have the power to merge or consolidate as set forth in this section.

(h) This section shall take effect on and after July 1, 2020.

History: L. 2019, ch. 47, § 3; July 1.