

## CHAPTER 158

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

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

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

### Definitions.

#### 14A:1-2.1. Definitions.

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

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

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

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

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

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

(f) "Certificate of incorporation" includes:

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

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

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

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

(i) "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.

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

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

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

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

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

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

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

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

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

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

C.14A:10-14 Merger or consolidation of domestic corporation with other entities; manner.

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

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

(b) The certificate of merger or consolidation required by N.J.S.14A:10-4.1 shall be executed on behalf of each domestic corporation and each other business entity and, in addition to the information required by subsection (1) of N.J.S.14A:10-4.1, shall set forth that the applicable provisions of the laws of the jurisdiction under which each other business entity was organized have been, or upon compliance with filing and recording requirements will have been, complied with.

(c) If the surviving business entity or new business entity meets the definition of "other business entity" pursuant to subsection (q) of N.J.S.14A:1-2.1, and is organized under the laws of another jurisdiction and is to transact business in this State, it shall comply with the laws of this State applicable to that other business entity, and, whether or not it is to transact business in this State, the certificate of merger or consolidation required by N.J.S.14A:10-4.1 shall, in addition to other required information, set forth:

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

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

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

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

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

3. This act shall take effect immediately.

Approved November 20, 2009.