

The New Jersey Business Corporation Act to Permit Corporate Conversions/ Domestications

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Effective November 4, 2023, the New Jersey Business Corporation Act (the Act) will be amended to permit conversions and domestications across all business entity types, including foreign and domestic corporations. The delay in effectiveness is to allow the New Jersey Division of Revenue Services in the Department of the Treasury (the Filing Office) time to implement changes to accommodate these actions.

Conversion is the process of converting from one type of business entity to another (e.g., from a corporation to a limited liability company), and domestication is the process of migrating an entity from its present place of formation to a different jurisdiction (e.g., changing the state of incorporation from Delaware to New Jersey). Conversions and domestications can, in some circumstances, allow for greater flexibility than mergers in effecting a change in corporate form.

Prior to the effectiveness of this amendment to the Act (the Amendment), a New Jersey corporation cannot convert to a different type of business entity, nor can another business entity convert to a New Jersey corporation. Similarly, a New Jersey corporation cannot yet domesticate to a different jurisdiction, nor can a corporation formed in another jurisdiction domesticate and become a New Jersey corporation. Pursuant to the Amendment, conversions and domestications are both referred to as conversions.

Legislation to permit conversions and domestications under the Act was proposed soon after the Revised Uniform Limited Liability Company Act (RULLCA) was adopted in 2012, but unfortunately took time to pass the New

Jersey Legislature. RULLCA already permits conversions and domestications of limited liability companies. The Amendment was proposed by the New Jersey Corporate and Business Law Study Commission and was based on sections 265 and 266 of the Delaware General Corporation Law as those sections then existed. The Amendment includes the creation of new sections 11A-1, 11A-2 and 13-6.1 to the Act and amends Section 15-2 of the Act. Separate legislation is pending to permit conversions and domestications of partnerships and limited partnerships (see Senate Bill S134 and Assembly Bill A3831).

In the absence of the ability to convert from a corporation to a different type of business entity, New Jersey corporations have needed to rely on statutory mergers to change form or state of incorporation. Among the considerations in a merger are the need to create a new entity, the existence of contractual obligations that might necessitate third-party consent and the possibility of tax consequences. Mergers may also involve greater cost and time than conversions or domestications.

With conversions and domestications, the continuing entity is deemed the same entity for all purposes, including with respect to its date of formation, assets, liabilities and contractual obligations. The continuation of all those attributes may not be available with mergers. The date of formation of a converted corporation is the date on which the corporation was first created, formed or incorporated, or otherwise came into being, an outcome that is different from that of statutory mergers. In connection with a conversion, the ownership of the continuing entity will need to be addressed.

Converting to a New Jersey Corporation

To convert from any other business type, except a sole proprietorship, to a New Jersey corporation or to domesticate a foreign corporation to a New Jersey corporation, the entity must:

1. Approve a plan of conversion in accordance with the entity's governing documents;
2. Execute and file a certificate of conversion and a certificate of incorporation with the Filing Office; and
3. Pay a \$75.00 filing fee.

Converting From a New Jersey Corporation to a Different Type of Business Entity or Domesticating a New Jersey Corporation

To convert from a New Jersey corporation to any other type of business entity, except a sole proprietorship, or to domesticate a New Jersey corporation in a different jurisdiction:

1. The board of directors must adopt a resolution approving a plan of conversion specifying the type of entity into which the corporation will convert and direct that the conversion be submitted to a vote at a meeting of shareholders (unanimous written

consent of the shareholders is an acceptable alternative);

2. Unless no shares of stock have been issued prior to the adoption by the board of directors of the resolution approving the conversion, a shareholder meeting must be held at which all holders of common stock, **whether voting or nonvoting**, approve the conversion (notice of not less than 20 days nor more than 60 days is required), or shareholders must approve the conversion by unanimous written consent;
3. The entity must approve the conversion in any other manner provided for in the corporation's governing documents;
4. The entity must execute and file a certificate of conversion with the Filing Office; and
5. The entity must pay a \$75.00 filing fee.

Reflecting the Conversion of a Foreign Entity

Entities that are authorized to transact business in New Jersey may now file an application with the Filing Office to reflect a statutory conversion or domestication effectuated in another jurisdiction. To do so, the entity must file an application with the Filing Office, with a certificate attached setting forth that the entity is in good standing under the laws of the jurisdiction in which it is incorporated.

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