

CHAPTER 10-MERGERS

1001. MERGER OR CONSOLIDATION

- (a) As used in this Code, "merger" means a procedure in which two or more limited liability companies or other business entities merge into a single limited liability company or other business entity that shall be one of the constituent limited liability companies or other business entities, and "consolidation" means a procedure in which two or more limited liability companies or other business entities consolidate into a single limited liability company or other business entity that shall be a new limited liability company or other business entity to be formed pursuant to the consolidation.
- (b) Pursuant to an agreement of merger or consolidation and to the extent not expressly prohibited by law, a domestic limited liability company may merge or consolidate with or into one or more domestic limited liability companies or other business entities formed or organized under the laws of the Nation, any other state or the United States or any foreign country or other foreign jurisdiction, with such domestic limited liability company or other business entity as the agreement shall provide being the surviving or resulting domestic limited liability company or other business entity.

1002. PROCEDURES FOR MERGER OR CONSOLIDATION

- (a) In connection with a merger or consolidation under this Code, rights or securities of, or interests in, a limited liability company or other business entity that 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 limited liability company or other business entity or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights or securities of, or interests in, a limited liability company or other business entity that is not the surviving or resulting limited liability company or other business entity in the merger or consolidation.
- (b) The members of each domestic limited liability company or other business entity shall adopt (with respect to a domestic limited liability company, in the manner provided in subdivision (c) of this section) an agreement of merger or consolidation, setting forth the terms and conditions of the conversion of the membership interests of the members of the domestic limited liability company into interests in the surviving or resulting limited liability company or other business entity or the cash or other consideration to be paid or delivered in exchange for membership interests in each domestic limited liability company, or a combination thereof.
- (c) The agreement of merger or consolidation shall be submitted to the members of each domestic limited liability company who are entitled to vote with respect to a merger or consolidation at a meeting called on twenty days' notice or such greater notice as the operating agreement may provide. Subject to any requirement in the operating agreement requiring approval by any

greater or lesser percentage in interest of the members who are entitled to vote with respect to a merger or consolidation, which shall not be less than a majority in interest of those members who are so entitled to vote, the agreement shall be approved on behalf of each domestic limited liability company (i) by such voting interests of the members as shall be required by the operating agreement, or (ii) if no provision is made, by the members representing at least two-thirds in interest of the members.

- (d) Notwithstanding authorization by the members, the agreement of merger or consolidation may be terminated or amended pursuant to a provision for such termination or amendment, if any, contained in the agreement of merger or consolidation.
- (e) Any member that is a party to a proposed merger or consolidation who is entitled to vote with respect to such proposed merger or consolidation may, prior to that time of the meeting at which such merger or consolidation is to be voted on, file with the domestic limited liability company written notice of dissent from the proposed merger or consolidation. Such notice of dissent may be withdrawn by the dissenting member at any time prior to the effective date of the merger or consolidation and shall be deemed to be withdrawn if the member casts a vote in favor of the proposed merger or consolidation.
- (f) Upon the effectiveness of the merger or consolidation, the dissenting member (referred to in subdivision (e) of this section) of any domestic limited liability company shall not become or continue to be a member of or hold an interest in the surviving or resulting limited liability company or other business entity but shall be entitled to receive cash from the surviving or resulting domestic limited liability company or other business entity the fair value of his or her membership interest in the domestic limited liability company as of the close of business of the day prior to the effective date of the merger or consolidation in accordance with section five hundred nine of this Code but without taking account of the effect of the merger or consolidation.
- (g) A member of a domestic limited liability company who has a right under this Code to demand payment for his or her membership interest shall not have any right at law or in equity under this Code to attack the validity of the merger or consolidation or to have the merger or consolidation set aside or rescinded, except in an action or contest with respect to compliance with the provisions of the operating agreement or subdivision (c) of this section.

1003. CERTIFICATE OF MERGER OR CONSOLIDATION; CONTENTS

(a) After approval of the agreement of merger or consolidation by each domestic limited liability company or other business entity merging or consolidating under this Code, unless the merger or consolidation is terminated in accordance with subdivision (d) of section ten hundred two of this Code, a certificate of merger or consolidation, entitled "Certificate of merger (or consolidation) of... and into...(names of domestic limited liability companies or other business entities) under section one thousand three of the Limited Liability Company Code," shall be signed and verified or affirmed under penalties of perjury on behalf of each domestic limited liability company and other business entity and delivered to the Nation Clerk. The certificate of merger or consolidation shall set forth:

- (1) the name and jurisdiction of formation or organization of each of the domestic limited liability companies or other business entities that is¹ to merge or consolidate;
- (2) for each domestic limited liability company that is to merge or consolidate, the date when its initial articles of organization were filed with the Nation Clerk under this Code;
- (3) that an agreement of merger or consolidation has been approved and executed by each of the domestic limited liability companies or other business entities that is to merge or consolidate;
- (4) the name of the surviving or resulting domestic limited liability company or other business entity;
- (5) the future effective date or time (which shall be a date or time certain) of the merger or consolidation in accordance with subdivision (b) of this section, if it is not to be effective upon the filing of the certificate of merger or consolidation;
- (6) if a domestic limited liability company is the surviving limited liability company, such charges in its articles of organization as shall be necessary by reason of the merger;
- (7) if a domestic limited liability company is the resulting limited liability company in a consolidation, the matters required to be set forth under section two hundred six of this Code;
- (8) if a constituent entity is a foreign limited liability company, the jurisdiction and date of filing of its initial articles of organization and the date when its application for authority was filed by the Nation Clerk or if no such application has been filed, a statement to such effect and (if the constituent foreign limited liability company is the surviving entity) that it is not to do business in the Nation until an application for such authority shall have been filed with the Nation Clerk;

- (9) if the surviving or resulting entity is not a domestic limited liability company, an agreement that such surviving or resulting other business entity may be served with the process in the Nation in any action or special proceeding for the enforcement of any liability or obligation of any domestic limited liability company previously amenable to suit in the Nation that is to merge or consolidate, and for the enforcement as provided in this Code, of the right of members of any domestic limited liability company to receive payment for their interest against the surviving or consolidated other business entity;
 - (10) a designation of the Nation Clerk as its agent upon whom process against it may be served in the manner set forth in this Code in any action or special proceeding, and post office address, within or without the Nation, to which the Nation Clerk shall mail a copy of any process served upon him or her. Such post office address shall supersede any prior address designated as the address to which process shall be mailed;
 - (11) that the agreement of merger or consolidation is on file at a place of business of the surviving or resulting domestic limited liability company or other business entity, and shall state the address thereof; and
 - (12) that a copy of the agreement of merger or consolidation will be furnished by the surviving or resulting domestic limited liability company or other business entity, on request and without cost, to any member of any domestic limited liability company or any person holding interest in any other business entity that is to merge or consolidate.
- (b) The merger or consolidation shall be effective upon the filing thereof by the Nation Clerk of the certificate, or at such later date not more than thirty days after the date of such filing as the certificate filed may provide.

1004. EFFECT OF MERGER OR CONSOLIDATION

- (a) When any merger or consolidation shall have become effective under this Code, for all purposes of the laws of the Nation, all of the rights, privileges, immunities, powers and purposes of each of the domestic limited liability companies and other business entities that have merged or consolidated, and all property, real, personal and mixed, tangible and intangible, and all debts, obligations, liabilities, penalties and duties of such domestic limited liability companies and other business entities, as well as all other things belonging to each of such domestic limited liability companies and other business entities, shall be vested in the surviving or resulting domestic limited liability company or business entity, and shall thereafter be the property of the surviving or resulting domestic limited liability company or other business entity as they were of each of the domestic limited liability companies and other business entities that have merged or consolidated, and the title to any real property vested by deed or otherwise, under the laws of the Nation, in any of such domestic limited liability companies and other business entities, shall not revert or be in any way impaired by reason of this Code; but all rights of creditors and all liens upon any property of any such domestic limited liability companies and other business entities shall be preserved unimpaired, and all debts, obligations, liabilities, penalties and duties of each of such domestic limited liability companies and other business entities that have merged or consolidated shall thenceforth attach to the surviving or resulting domestic limited liability company or other business entity and may be enforced against it to the same extent as if such debts, obligations, liabilities, penalties and duties had been incurred or contracted by it.
- (b) When any merger or consolidation shall have become effective under this Code, no action, suit or proceeding, civil or criminal, then pending by or against any constituent limited liability company or other business entity in its common name shall abate or be discontinued by reason of such merger or consolidation, but may be prosecuted by or may proceed against such surviving or resulting domestic limited liability company or other business entity.
- (c) Unless otherwise agreed, a merger or consolidation of a domestic limited liability company, including a domestic limited liability company that is not the surviving or resulting entity in the merger or consolidation, shall not require such domestic limited liability company to wind up its affairs under section seven hundred three of this Code or pay its liabilities and distribute its assets under section seven hundred four of this Code.
- (d) A certificate of merger or consolidation shall act as articles of dissolution for a domestic limited liability company that is not the surviving or resulting entity in the merger or consolidation.
- (e) Notwithstanding anything to the contrary contained in an operating agreement, an operating agreement containing a specific reference to this subdivision may provide that an agreement of merger or consolidation approved in accordance with subdivision (c) of section ten hundred two of this Code may (i) effect any amendment to the operating agreement or (ii) effect the adoption of a new operating agreement for a domestic limited liability company if it is the surviving or resulting domestic limited liability company in the merger or consolidation. Any amendment to an operating agreement or adoption of a new operating agreement made pursuant to the

foregoing sentence shall be effective at the effective time or date of the merger or consolidation. The provisions of this subdivision 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 of any domestic limited liability company to the merger or consolidation (including a domestic limited liability company formed for the purpose of consummating a merger or consolidation) shall be the operating agreement of the surviving or resulting domestic limited liability company.

1005. PAYMENT OF INTEREST OF DISSENTING MEMBERS

- (a) Within ten days after the occurrence of an event described in section ten hundred two of this Code, the surviving or resulting domestic limited liability company or other business entity shall send to each dissenting former member a written offer to pay in cash the fair value of such former member's membership interest. Payment in cash shall be made to each former member accepting such offer within ten days after such notice of such acceptance is received by the surviving or resulting domestic limited liability company or other business entity.
- (b) If a former member and the surviving or resulting limited liability company or other business entity fail to agree on the price to be paid for the former member's membership interest within ninety days after the surviving or resulting domestic limited liability company or other business entity shall have made the offer provided for in subdivision (a) of this section, or if the domestic limited liability company or surviving domestic limited liability company or other business entity shall fail to make such an offer within the period provided for in subdivision (a) of this section, the procedure provided for in paragraphs (h), (i), (j), and (k) of section six hundred twenty-three of the business corporation law (or any successor provisions or statute) shall apply, as such paragraphs may be amended from time to time.
- (c) A payment under this section shall constitute a return of a member's contribution for the purposes of section five hundred eight of this Code.

1006. CONVERSION OF PARTNERSHIP OR LIMITED PARTNERSHIP TO LIMITED LIABILITY COMPANY

- (a) As used in this Code, unless the context otherwise requires, the term, "limited partnership" means a limited partnership formed under the laws of the Nation; and the terms "general partner," "limited partner," "majority in interest of the limited partners" and "two-thirds in interest of the limited partners" shall have the meanings assigned to such terms in the Oneida Indian Nation partnership law; and the term "partnership" shall have the meaning assigned to such term in the Oneida Indian Nation Partnership Code.
- (b) A partnership or limited partnership may be converted to a limited liability company pursuant to this section.

- (c) Subject to any requirements in the partnership agreement requiring approval by any lesser percentage in interest of partners, an agreement of conversion setting forth the terms and conditions of a conversion of a partnership to a limited liability company must be approved by all of the partners of the partnership. Subject to any requirement in the partnership agreement requiring approval by any greater or lesser percentage in interest of limited partners, which shall not be less than a majority in interest, the terms and conditions of a conversion of a limited partnership to a limited liability company must be approved (i) by such vote of general partners as shall be required by the partnership agreement, or, if no provision is made, by all general partners, and (ii) by limited partners representing at least two-thirds in interest of each class of limited partners. The agreement of conversion shall be submitted to the general partners and limited partners of a limited partnership at a regular or special meeting called on twenty days notice or such other notice as the partnership agreement may provide. A dissenting limited partner shall have the rights provided in the Oneida Indian Nation partnership law and shall not be a member of the converted limited liability company. Notwithstanding authorization by the partners of a partnership or general partners or limited partners of a limited partnership, the conversion to a limited liability company may be abandoned pursuant to a provision for such abandonment, if any, contained in the agreement of conversion.
- (d) The agreement of conversion shall set forth the terms and conditions of the conversion of the interests of partners of a partnership or general partners and limited partners of a limited partnership, as the case may be, into membership interests in the converted limited liability company or the cash or other consideration to be paid or delivered as a result of the conversion of the interests of such partners, or a combination thereof.
- (e) After the conversion is approved under subdivision (c) of this section, the partnership or limited partnership shall satisfy all the requirements of section two hundred six of this Code and the articles of organization filed with the Nation Clerk shall include:
- (i) a statement that the partnership or limited partnership was, in accordance with the provisions of this Code, duly converted to a limited liability company from a partnership or limited partnership, as the case may be; and
 - (ii) its former name.
- (f) If the limited partnership is a domestic limited partnership, such domestic limited partnership shall cancel its certificate of limited partnership pursuant to the Oneida Indian Nation partnership law. The certificate of cancellation shall include the name of the limited liability company and a statement that the limited partnership will be converted into a limited liability company upon the filing of such certificate.
- (g) The conversion takes effect, in the case of a partnership, when the articles of organization are filed with the Nation Clerk or at any later date specified in the articles of organization or, in the case of a limited partnership, when the certificate of limited partnership is canceled.

- (h) A partner or, in the case of a limited partnership, a general partner who becomes a member of a limited liability company as a result of a conversion, remains liable as a partner or general partner, as the case may be, for any debt, obligation, liability and penalty incurred by the partnership or limited partnership before the conversion takes effect. A limited partner who becomes a member as a result of a conversion remains liable only as a limited partner for a debt, obligation, liability or penalty incurred by the limited partnership before the conversion takes effect. The partner's, general partner's or limited partner's liability, if any, for a debt, obligation, liability or penalty incurred by the limited liability company after the conversion takes effect is that of a member as provided in this Code.

1007. EFFECT OF CONVERSION

- (a) A partnership or limited partnership that has been converted pursuant to this Code is for all purposes the same entity that existed before the conversion;
- (b) When a conversion takes effect:
- (i) all property, real and personal, tangible and intangible, of the converting partnership or limited partnership remains vested in the converted limited liability company;
 - (ii) all debts, obligations, liabilities and penalties of the converting partnership or limited partnership continue as debts, obligations, liabilities and penalties of the converted limited liability company;
 - (iii) any action, suit or proceeding, civil or criminal, then pending by or against the converting partnership or limited partnership may be continued as if the conversion had not occurred; and
 - (iv) to the extent provided in the agreement of conversion and in this Code, the partners of a partnership or the general partners and limited partners of a limited partnership shall continue as members in the converted limited liability company.