WEST VIRGINIA CODE: §31e-11-1102

§31E-11-1102. Action on plan of merger.

(a) After adopting a plan of merger, the board of directors of each corporation party to the merger shall submit the plan of merger, except as provided in subsection (h) of this section, for approval by those members who are entitled to vote on a plan of merger, if any.

(b) For a plan of merger to be approved: (1) The board of directors must approve the plan of merger; (2) the board of directors must recommend the plan of merger to the members entitled to vote on the plan of merger, if any, unless the board of directors determines that because of conflicts of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the members entitled to vote on the plan of merger with the submission of the plan; and (3) the members entitled to vote on the plan must approve the plan, either before or after the actions required in subdivisions (1) and (2) of this subsection, as provided in subsection (e) of this section.

(c) The board of directors may condition its submission of the proposed merger on any basis.

(d) The corporation shall notify each member, entitled to vote on the plan, if any, of the proposed members' meeting in accordance with section seven hundred five, article seven of this chapter. The notice is also to state that the purpose, or one of the purposes, of the meeting is to consider the plan of merger and contain or be accompanied by a copy or summary of the plan.

(e) Unless this chapter, the articles of incorporation or the board of directors acting pursuant to subsection (c) of this section requires a greater vote or a vote by class of members, the plan of merger to be adopted must be approved by: (1) If no class of members is entitled to vote separately on the plan as a class, at least two thirds of the votes cast by the members entitled to vote; and (2) if any class of members is entitled to vote on the plan separately as a class, at least two thirds of the votes cast by the members of each class whose members are entitled to vote.

(f) Separate voting by class of members is required on a plan of merger if the plan contains a provision that, if contained in a proposed amendment to articles of incorporation, would require action by one or more separate classes of members on the proposed amendment under the articles of incorporation of the corporation.

(g) Approval of the plan of merger by the corporation requires a greater or additional vote if:

(1) In the case of the surviving corporation, a plan of merger contains any provision which, if contained in a proposed amendment to its articles of incorporation would require a greater vote than, or additional vote to, that otherwise required to approve the plan of merger; or

WV Legislature

(2) In the case of any terminating corporation, a sale of all or substantially all assets, or dissolution, would under the circumstances require a greater vote than, or additional vote to, that otherwise required to approve the plan of merger.

(h) Action by the members of the surviving corporation on a plan of merger is not required if:

(1) The articles of incorporation of the surviving corporation will not differ, except for amendments enumerated in section one thousand two, article ten of this chapter from its articles of incorporation before the merger; and

(2) Each member of the surviving corporation immediately before the effective date of the merger will be a member with identical designations, qualifications, privileges and rights immediately after the merger.

(i) After a merger is authorized, and at any time before the articles of merger is filed, the planned merger may be abandoned, subject to any contractual rights, without further member action, in accordance with the procedure set forth in the plan of merger or, if none is set forth, in the manner determined by the board of directors.

(j) If any merging corporation has no members, or no members entitled to vote on the merger, a plan of merger is to be adopted by the board of directors.

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