

SHORT TITLE: Limited liability companies; allowing merger of domestic limited liability company with business entity formed in foreign country; effective date.

STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)

SENATE BILL NO. 547

By: Hendrick

AS INTRODUCED

An Act relating to limited liability companies;

amending Section 55, Chapter 148, O.S.L. 1992 (18 O.S. Supp. 1996, Section 2054), which relates to merger or consolidation; expanding authority of domestic limited liability company to merge or consolidate with one or more limited liability companies or other business entities; modifying and conforming language; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY Section 55, Chapter 148, O.S.L. 1992 (18 O.S. Supp. 1996, Section 2054), is amended to read as follows:

Section 2054. A. Pursuant to an agreement of merger or consolidation, a domestic limited liability company may merge or consolidate with or into one or more domestic or foreign limited liability companies or other business entities, ~~formed or organized under the laws of this state, any other state, or the District of Columbia, with such domestic limited liability company being the surviving or resulting domestic limited liability company or other business entity.~~ As used in this section, "other business entity" means a domestic or foreign corporation, a business trust, a common law trust, or ~~an~~ unincorporated business including a partnership,

whether general or limited, ~~but excluding a domestic limited liability company.~~

B. Unless otherwise provided in the articles of organization or the operating agreement, a merger or consolidation shall be approved by each domestic limited liability company which is to merge or consolidate by a majority of the members or, if there is more than one class or group of members, then by a majority of each class or group. Notwithstanding prior 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.

C. If a domestic limited liability company is merging or consolidating pursuant to this section, the domestic limited liability company or other business entity surviving or resulting in or from the merger or consolidation shall file articles of merger or consolidation with the Office of the Secretary of State. The articles of merger or consolidation shall state:

1. The name and jurisdiction of formation or organization of each of the ~~domestic~~ limited liability companies or other business entities which are to merge or consolidate;

2. That an agreement of merger or consolidation has been approved and executed by each of the domestic limited liability companies or other business entities which is to merge or consolidate;

3. The name of the surviving or resulting domestic limited liability company or other business entity;

4. 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 articles of merger or consolidation;

5. 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;

6. That a copy of the agreement of merger or consolidation shall be furnished by the surviving or resulting domestic limited liability company or other business entity, upon request and without cost, to any member of any domestic limited liability company or any person holding an interest in any other business entity which is to merge or consolidate;

7. In the case of a merger, any amendments or changes in the articles of organization of the surviving domestic limited liability company that are to be effected by the merger;

8. In the case of a consolidation, that the articles of organization of the resulting domestic limited liability company shall be as set forth in an attachment to the articles of consolidation; and

9. If the surviving or resulting entity is not a domestic limited liability company or business entity formed or organized pursuant to the laws of this state, a statement that ~~such~~ the surviving or resulting other business entity agrees ~~it may~~ to be served with process in this state in any action, suit, or proceeding for the enforcement of any obligation of any domestic limited liability company which is to merge or consolidate; irrevocably appoints the Secretary of State as its agent to accept service of process in any ~~such~~ action, suit, or proceeding; and specifies the address to which ~~a copy of such~~ process shall be mailed to the entity by the Secretary of State.

D. Any failure to file the articles of merger or consolidation in connection with a merger or consolidation which was effective prior to ~~the effective date of this act~~ September 1, 1992, shall not affect the validity or effectiveness of any such merger or consolidation.

E. A merger or consolidation shall be effective upon the filing with the Secretary of State of articles of merger or consolidation, unless a future effective date or time is provided in the articles of merger or consolidation.

F. Articles of merger or consolidation shall act as articles of dissolution for a domestic limited liability company which is not the surviving or resulting entity in the merger or consolidation.

G. Once any merger or consolidation is effective pursuant to this section, for all purposes of the laws of this state, all of the rights, privileges, and powers of each of the domestic limited liability companies and other business entities that have merged or consolidated and all property, real, personal, and mixed, and all debts due to ~~any of said each~~ domestic limited liability ~~companies~~ and company or other business ~~entities~~ entity, as well as all other things and causes of action belonging to each ~~of such~~ domestic limited liability ~~companies and company or~~ other business ~~entities~~ entity shall be vested in the surviving or resulting domestic limited liability company or other 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 company or~~ other business ~~entities~~ entity that ~~have~~ has merged or consolidated, and the title to any real property vested by deed or otherwise, under the laws of this state, in any ~~of such~~ domestic limited liability ~~companies and company or~~ other business ~~entities~~ entity shall not revert or be in any way impaired by reason of this section, but all rights of creditors and all liens upon any property of ~~any said each~~ domestic limited liability ~~companies and company or~~ other business ~~entities~~ entity shall be preserved unimpaired. All debts, liabilities and duties of each ~~of the~~ domestic limited liability ~~companies and company or~~ other business ~~entities~~ entity that ~~have~~ has merged or consolidated shall thereafter attach to the

surviving or resulting domestic limited liability company or other business entity, and may be enforced against the surviving or resulting limited liability company or other entity to the same extent as if the debts, liabilities, and duties had been incurred or contracted by the surviving or resulting limited liability company or other entity. Unless otherwise agreed, a merger or consolidation of a domestic limited liability company, including a domestic limited liability company which is not the surviving or resulting entity in the merger or consolidation, shall not require ~~such the~~ domestic limited liability company to wind up its affairs pursuant to Section ~~38~~ 2037 of this ~~act~~ title or pay its liabilities and distribute its assets pursuant to Section ~~41~~ 2040 of this ~~act~~ title.

SECTION 2. This act shall become effective November 1, 1997.

46-1-0539

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