Chapter 23B.11A RCW
MERGERS AND SHARE EXCHANGES

Sections

RCW 23B.11A.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Acquired entity" means the domestic corporation that will have all of one or more classes or series of its shares acquired in a share exchange.

(2) "Acquiring entity" means the domestic corporation that will acquire all of one or more classes or series of shares of the acquired entity in a share exchange.

(3) "New owner liability" means owner liability of a person, resulting from a merger or share exchange, that is (a) in respect of an entity which is different from the entity in which the person held shares or interests immediately before the merger or share exchange became effective; or (b) in respect of the same entity as the one in which the person held shares or interests immediately before the merger or share exchange became effective if (i) the person did not have owner liability immediately before the merger or share exchange became effective, or (ii) the person had owner liability immediately before the merger or share exchange became effective, the terms and conditions of which were changed when the merger or share exchange became effective.

(4) "Party to a merger" means any domestic corporation or other entity that will merge under a plan of merger.

(5) "Surviving entity" in a merger means the domestic corporation or other entity into which one or more other domestic corporations or other entities are merged. [2024 c 22 s 1.]

RCW 23B.11A.020 Merger. (1) By complying with this chapter, one or more domestic corporations may merge with one or more domestic corporations or other entities in accordance with a plan of merger, resulting in a surviving entity.

(2) By complying with the provisions of this chapter applicable to other entities, an other entity may be a party to a merger with a

domestic corporation, but only if the merger is permitted by the organic law of the other entity.

(3) If the organic law or organic rules of a domestic other entity do not provide procedures for the approval of a merger, a plan of merger may nonetheless be approved by the unanimous consent of all of the interest holders of that other entity, and the merger may thereafter be effected as provided in the other provisions of this chapter. For the purposes of applying this chapter in such a case:

(a) The other entity, its interest holders, interests, and organic rules taken together will be deemed to be a domestic corporation, shareholders, shares, and articles of incorporation, respectively, and vice versa as the context may require; and

(b) If the business and affairs of the other entity are managed by a person or persons that are not identical to the interest holders, that group will be deemed to be the board of directors.

(4) The plan of merger must include:

(a) As to each party to the merger, its name, jurisdiction of organization, and type of entity;

(b) The surviving entity's name, jurisdiction of organization, and type of entity;

(c) The manner and basis of converting the shares of each merging domestic corporation and interests of each merging other entity into shares or other securities, interests, obligations, rights to acquire shares, other securities or interests, cash, or other property, or of canceling some or all of such shares or interests, or any combination of the foregoing; and

(d) Any other provisions required by the laws under which any party to the merger is organized or by which it is governed, or by the articles of incorporation or organic rules of any such party.

(5) In addition to the requirements of subsection (4) of this section, a plan of merger may contain amendments to the articles of incorporation or public organic record of any party to the merger that will be the surviving entity, a restatement that includes one or more amendments to the surviving entity's articles of incorporation or public organic record, and any other provision not prohibited by law.

(6) Terms of a plan of merger may be made dependent on facts objectively ascertainable outside the plan in accordance with RCW 23B.01.200(3).

(7) A plan of merger may be amended only with the consent of each party to the merger, except as provided in the plan of merger. An amendment to a plan of merger that has previously been approved by a party's shareholders or interest holders must be approved:

(a) In the same manner as the plan was approved, if the plan of merger does not provide for the manner in which it may be amended; or

(b) In the manner provided in the plan of merger, except that shareholders or interest holders that were entitled to vote on or consent to approval of the plan of merger are entitled to vote on or consent to any amendment of the plan of merger that will change:

(i) The amount or kind of shares or other securities, interests, obligations, rights to acquire shares, other securities or interests, cash, or other property to be received under the plan of merger by the shareholders or interest holders of any party to the merger;

(ii) The articles of incorporation of any domestic corporation, or the organic rules of any other entity, that will be the surviving entity of the merger, unless (A) the change constitutes an amendment to the articles of incorporation or organic rules of the surviving entity that would be permitted without approval of shareholders or

interest holders by RCW 23B.10.020 or by comparable provisions of the organic law of any such other entity, or (B) the shareholders or interest holders that were entitled to vote on or consent to approval of the plan of merger will not continue as or become shareholders or interest holders of the surviving entity; or

(iii) Any of the other terms or conditions of the plan of merger if the change would adversely affect such shareholders or interest holders in any material respect. [2024 c 22 s 2.]

RCW 23B.11A.030 Share exchange. (1) By complying with this chapter:

(a) A domestic corporation may acquire all of the shares of one or more classes or series of shares of another domestic corporation in exchange for shares or other securities, obligations, rights to acquire shares or other securities, cash, other property, or any combination of the foregoing, pursuant to a plan of share exchange; or

(b) All of the shares of one or more classes or series of shares of a domestic corporation may be acquired by another domestic corporation in exchange for shares or other securities, obligations, rights to acquire shares or other securities, cash, other property, or any combination of the foregoing, pursuant to a plan of share exchange.

(2) The plan of share exchange must include:

(a) The name of each domestic corporation the shares of which will be acquired and the name of the domestic corporation that will acquire those shares; and

(b) The manner and basis of exchanging shares of a domestic corporation that is the acquired entity for shares or other securities, obligations, rights to acquire shares, other securities, cash, other property, or any combination of the foregoing.

(3) In addition to the requirements of subsection (2) of this section, a plan of share exchange may contain any other provision not prohibited by law.

(4) Terms of a plan of share exchange may be made dependent on facts objectively ascertainable outside the plan in accordance with RCW 23B.01.200(3).

(5) A plan of share exchange may be amended only with the consent of each party to the share exchange, except as provided in the plan of share exchange. A domestic corporation may approve an amendment to a plan of share exchange:

(a) In the same manner as the plan of share exchange was approved, if the plan of share exchange does not provide for the manner in which it may be amended; or

(b) In the manner provided in the plan of share exchange, except that shareholders that were entitled to vote on or consent to approval of the plan of share exchange are entitled to vote on or consent to any amendment of the plan of share exchange that will change:

(i) The amount or kind of shares or other securities, obligations, rights to acquire shares, other securities, cash, or other property to be received under the plan by the shareholders of the acquired entity; or

(ii) Any of the other terms or conditions of the plan of share exchange if the change would adversely affect such shareholders in any material respect. [2024 c 22 s 3.]

RCW 23B.11A.040 Approval of plan of merger or share exchange. In the case of a domestic corporation that is a party to a merger or the acquired entity in a share exchange, the plan of merger or share exchange must be approved in the following manner:

(1) The plan of merger or share exchange must first be approved by the board of directors.

(2) Except as provided in subsection (6) of this section, and in RCW 23B.11A.045, 23B.11A.050, and 23B.11A.090, the plan of merger or share exchange must then be approved by the shareholders. In submitting the plan of merger or share exchange to the shareholders for approval, the board of directors must recommend that the shareholders approve the plan or, in the case of an offer referred to in RCW 23B.11A.045(1)(b), that the shareholders tender their shares to the offeror in response to the offer, unless (a) the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation, or (b) RCW 23B.08.245 applies. If either (a) or (b) of this subsection applies, the board of directors must inform the shareholders of the basis for so proceeding.

(3) The board of directors may set conditions for the approval of the plan of merger or share exchange by the shareholders or the effectiveness of the plan.

(4) If the plan of merger or share exchange is required to be approved by the shareholders, and if the approval is to be given at a meeting, the corporation must notify each shareholder, regardless of whether entitled to vote, of the meeting of shareholders at which the plan is to be submitted for approval. The notice must state that the purpose, or one of the purposes, of the meeting is to consider the plan and must contain or be accompanied by a copy of the plan or a summary of the material terms and conditions of the proposed merger or share exchange and the consideration to be received by shareholders. If the corporation is to be merged into a domestic corporation or other entity, the notice must also include or be accompanied by a copy or summary of the articles of incorporation and bylaws of that domestic corporation or the organic rules of that other entity.

(5)(a) With respect to a domestic corporation formed before August 1, 2024:

(i) Unless the articles of incorporation, or the board of directors acting in accordance with subsection (3) of this section, require a different vote, shareholder approval of the plan of merger or share exchange requires (A) the approval of two-thirds of the voting group comprising all the votes entitled to be cast on the plan, and (B) the approval of two-thirds of the votes entitled to be cast on the plan by each other voting group entitled under RCW 23B.11A.041 or the articles of incorporation to vote separately on the plan; and

(ii) The articles of incorporation may require a different vote than that provided in this subsection, or a different vote by separate voting groups, so long as the required vote is not less than a majority of all the votes entitled to be cast on the plan and of each other voting group entitled to vote separately on the plan.

(b) With respect to a domestic corporation formed on or after August 1, 2024, unless the articles of incorporation, or the board of directors acting in accordance with subsection (3) of this section, require a greater vote, shareholder approval of the plan of merger or share exchange requires (i) the approval of a majority of the voting group comprising all the votes entitled to be cast on the plan, and (ii) the approval of a majority of the votes entitled to be cast on

the plan by each other voting group entitled under RCW 23B.11A.041 or the articles of incorporation to vote separately on the plan.

(6) Unless the articles of incorporation provide otherwise, approval of a plan of merger by the shareholders of a domestic corporation that is a party to the merger is not required if:

(a) Such corporation will survive the merger;

(b) Except for amendments permitted by RCW 23B.10.020, its articles of incorporation will not be changed; and

(c) Each shareholder of such corporation whose shares were outstanding immediately before the merger becomes effective will hold the same number of shares, with identical preferences, rights, and limitations, immediately after the merger becomes effective.

(7) If as a result of a merger or share exchange one or more shareholders of a domestic corporation would become subject to new owner liability, approval of the plan of merger or share exchange requires the express written consent of each such shareholder to become subject to that new owner liability in connection with the merger or share exchange, unless in the case of a shareholder that already has owner liability with respect to that domestic corporation, (a) the new owner liability is with respect to a domestic corporation (which may be a different or the same domestic corporation in which the person is a shareholder) or other entity, and (b) the terms and conditions of the new owner liability are substantially identical to those of the existing owner liability (other than for changes that eliminate or reduce that owner liability). [2024 c 22 s 4.]

RCW 23B.11A.041 Voting on plan of merger or share exchange—Separate voting groups. (1) Subject to subsection (2) of this section, separate voting by voting groups is required:

(a) On a plan of merger, by each class or series of shares of a domestic corporation that is a party to the merger that:

(i) Is to be converted under the plan into shares, other securities, interests, obligations, rights to acquire shares, other securities or interests, cash, other property, or any combination of the foregoing, or is to be canceled under the plan; or

(ii) Is entitled to vote as a separate group on a provision in the plan that constitutes a proposed amendment to the articles of incorporation of such corporation that requires action by separate voting groups under RCW 23B.10.040 if such corporation is the surviving entity in the merger and the holders of such class or series will continue as shareholders of the surviving entity;

(b) On a plan of share exchange, by each class or series of shares of a domestic corporation included in the exchange, with each class or series constituting a separate voting group; and

(c) On a plan of merger or share exchange, if the voting group is entitled under the articles of incorporation to vote as a separate voting group on the plan of merger or share exchange, respectively.

(2) The articles of incorporation may expressly limit or eliminate the separate voting rights provided in subsection (1)(a)(i) and (b) of this section as to any class or series of shares. A provision in the articles of incorporation of a domestic corporation formed before August 1, 2024, limiting or eliminating the separate voting rights provided under RCW 23B.11.035 in effect prior to June 6, 2024, will be deemed to limit or eliminate the separate voting rights

provided in subsection (1)(a)(i) and (b) of this section to the same extent.

(3) If a proposed plan of merger or share exchange that entitles the holders of two or more classes or series of shares to vote as separate voting groups under this section would affect those two or more classes or series in the same or a substantially similar way, then instead of voting as separate voting groups, the holders of shares of the classes or series so affected are to vote together as a single voting group on the proposed plan of merger or share exchange, unless otherwise provided in the articles of incorporation or by the board of directors in accordance with RCW 23B.11A.040(3).

(4) Holders of shares of two or more classes or series of shares of a domestic corporation that is a party to the merger or the acquired entity in a share exchange who would, under a proposed plan, receive the same type of consideration in the form of shares or other securities, interests, obligations, rights to acquire shares, other securities or interests of the surviving or acquiring entity or of any parent entity of the surviving entity, cash or other form of consideration, or the same combination thereof, but in differing amounts resulting solely from application of provisions in the corporation's articles of incorporation governing distribution of consideration received in a merger or share exchange, are deemed to be affected in the same or a substantially similar way and are not, by reason of receiving the same types or differing amounts of consideration, entitled to vote as separate voting groups on the proposed plan, unless the articles of incorporation of such corporation expressly require otherwise or the board of directors conditions its submission of the proposed plan on a separate vote by one or more classes or series. [2024 c 22 s 5.]

RCW 23B.11A.045 Without approval of plan of merger or share exchange—Tender offer—Definitions. (1) Unless the articles of incorporation provide otherwise, approval by a corporation's shareholders of a plan of merger or share exchange is not required if:

(a) The plan of merger or share exchange expressly (i) permits or requires the merger or share exchange to be effected under this section, and (ii) provides that, if the merger or share exchange is to be effected under this section, the merger or share exchange will be effected as soon as practicable following the satisfaction of the requirements of (f) of this subsection;

(b) Another party to the merger, the acquiring entity in the share exchange, or a parent of another party to the merger or the acquiring entity in the share exchange, makes an offer to purchase, on the terms stated in the plan of merger or share exchange, any and all of the outstanding shares of the corporation that, absent this section, would be entitled to vote on the plan of merger or share exchange, except that the offer may exclude shares of the corporation that are owned at the commencement of the offer by the corporation, the offeror, or any parent of the offeror, or by any wholly owned subsidiary of any of the foregoing;

(c) The offer discloses that the plan of merger or share exchange provides that the merger or share exchange will be effected as soon as practicable following the satisfaction of the requirements of (f) of this subsection and that the shares of the corporation that are not

tendered in response to the offer will be treated as provided in (h) of this subsection;

(d) The offer remains open for at least 10 days;

(e) The offeror purchases all shares properly tendered in response to the offer and not properly withdrawn;

(f) The (i) shares purchased by the offeror in accordance with the offer; (ii) shares otherwise owned by the offeror or by any parent of the offeror or any wholly owned subsidiary of any of the foregoing; and (iii) shares subject to an agreement that they are to be transferred, contributed, or delivered to the offeror, any parent of the offeror, or any wholly owned subsidiary of any of the foregoing in exchange for shares or interests in that offeror, parent, or subsidiary, are collectively entitled to cast at least the minimum number of votes on the merger or share exchange that, absent this section, would be required by this chapter and the articles of incorporation for the approval of the merger or share exchange by the shareholders and by any other voting group entitled to vote on the merger or share exchange at a meeting at which all shares entitled to vote on the merger or share exchange were present and voted;

(g) The offeror or a wholly owned subsidiary of the offeror merges with or into, or effects a share exchange in which it acquires shares of, the corporation; and

(h) Each outstanding share of each class or series of shares of the corporation that the offeror is offering to purchase in accordance with the offer, and which is not purchased in accordance with the offer, is to be converted in the merger into, or into the right to receive, or is to be exchanged in the share exchange for, or for the right to receive, the same amount and kind of securities, interests, obligations, rights, cash, or other property to be paid or exchanged in accordance with the offer for each share of that class or series of shares that is tendered in response to the offer, except that shares of the corporation that are owned by the corporation or that are described in (f)(ii) or (iii) of this subsection need not be converted into or exchanged for the consideration described in this subsection.

(2) As used in this section:

(a) "Offer" means the offer referred to in subsection (1)(b) of this section.

(b) "Offeror" means the person making the offer.

(c) "Parent" of an entity means a person that owns, directly or indirectly, through one or more wholly owned subsidiaries, all of the outstanding shares of or interests in that entity.

(d) Shares tendered in response to the offer will be deemed to have been "purchased" in accordance with the offer at the earliest time as of which:

(i) The offeror has irrevocably accepted those shares for payment; and

(ii) Either: (A) In the case of shares represented by certificates, the offeror, or the offeror's designated depository or other agent, has physically received the certificates representing those shares; or (B) in the case of shares without certificates, those shares have been transferred into the account of the offeror or its designated depository or other agent, or an agent's message relating to those shares has been received by the offeror or its designated depository or other agent.

(e) "Wholly owned subsidiary" of a person means an entity of or in which that person owns, directly or indirectly, through one or more

wholly owned subsidiaries, all of the outstanding shares or interests. [2024 c 22 s 6.]

RCW 23B.11A.050 Merger between parent and subsidiary or between subsidiaries. (1) A domestic corporation or other entity that owns shares of a domestic corporation that are entitled to cast votes comprising at least 90 percent of the voting power of each class and series of the outstanding voting shares of that subsidiary corporation may: (a) Merge the subsidiary corporation into itself or into (i) another domestic corporation in which the parent entity owns shares that are entitled to cast votes comprising at least 90 percent of the voting power of each class and series of the outstanding voting shares of that other domestic corporation or (ii) an other entity in which the parent entity owns interests that are entitled to cast votes comprising at least 90 percent of the total number of votes entitled to be cast by all outstanding interests of that other entity, or (b) merge itself into that subsidiary corporation, in either case without the approval of the board of directors or shareholders of the subsidiary corporation, unless the articles of incorporation or organic rules of the parent entity or the articles of incorporation of the subsidiary corporation provide otherwise. RCW 23B.11A.040(7) applies to a merger under this section. The articles of merger relating to a merger under this section do not need to be executed by the subsidiary corporation.

(2) A parent entity must, within 10 days after a merger under subsection (1) of this section becomes effective, notify each of the subsidiary corporation's other shareholders that the merger has become effective. The notice must contain or be accompanied by a copy of the plan of merger or a summary of the material terms and conditions of the merger and the consideration to be received by shareholders.

(3) Except as provided in subsections (1) and (2) of this section, a merger under this section will be governed by the provisions of this chapter applicable to mergers generally. [2024 c 22 s 7.]

RCW 23B.11A.060 Articles of merger or share exchange. (1)(a) After a plan of merger has been approved (i) as required by this title, and (ii) in the case of each other entity, if any, that is party to the merger, as required by the organic law or organic rules governing such other entity or by RCW 23B.11A.020(3), as applicable, then articles of merger must be executed by each party to the merger except as provided in RCW 23B.11A.050(1).

(b) The articles of merger must state:

(i) The name, jurisdiction of organization, and type of entity of each party to the merger;

(ii) The name, jurisdiction of organization, and type of entity of the surviving entity;

(iii) If the surviving entity of the merger is a domestic corporation and its articles of incorporation are amended or amended and restated, the amendments to or the amendment and restatement of the surviving entity's articles of incorporation;

(iv) If the surviving entity of the merger is a domestic other entity and its public organic record is amended or amended and restated, the amendments or the amendment and restatement of the surviving entity's public organic record;

(v) If the plan of merger required approval by the shareholders of a domestic corporation that is a party to the merger, a statement that the plan was duly approved by the shareholders and, if voting by any separate voting group was required, by each such separate voting group, in the manner required by this title and the articles of incorporation;

(vi) If the plan of merger did not require approval by the shareholders of a domestic corporation that is a party to the merger, a statement to that effect; and

(vii) As to each other entity that is a party to the merger, a statement that the merger was approved in accordance with its organic law or RCW 23B.11A.020(3).

(2) After a plan of share exchange has been approved as required by this title, then articles of share exchange must be executed by the acquired entity and the acquiring entity. The articles of share exchange must state:

(a) The name of the acquired entity;

(b) The name of the acquiring entity; and

(c) A statement that the plan of share exchange was duly approved by the acquired entity by:

(i) The required vote or consent of each class or series of shares included in the exchange; and

(ii) The required vote or consent of each other class or series of shares entitled to vote on approval of the exchange by the articles of incorporation of the acquired entity.

(3) In addition to the requirements of subsection (1) or (2) of this section, articles of merger or share exchange may contain any other provision not prohibited by law.

(4) The articles of merger or share exchange must be delivered to the secretary of state for filing and, subject to subsection (5) of this section, the merger or share exchange will become effective at the effective date and time of the articles of merger or share exchange as determined in accordance with RCW 23B.01.230.

(5) With respect to a merger in which one or more other entities is a party, the merger will become effective at the later of:

(a) The date and time when all documents required to be filed in foreign jurisdictions to effect the merger have become effective; and

(b) The effective date and time of the articles of merger as determined in accordance with RCW 23B.01.230.

(6) Articles of merger filed under this section may be combined with any filing required under the organic law governing any other entity involved in the transaction if the combined filing satisfies the requirements of both this section and the other organic law. [2024 c 22 s 8.]

RCW 23B.11A.070 Effect of merger or share exchange. (1) When a merger becomes effective:

(a) The domestic corporation or other entity that is designated in the plan of merger as the surviving entity continues;

(b) The separate existence of every domestic corporation or other entity that is merged into the surviving entity ceases;

(c) All property owned by, and every contract right possessed by, each domestic corporation or other entity that is merged into the surviving entity are the property and contract rights of the surviving entity without transfer, reversion, or impairment;

(d) All debts, obligations, and other liabilities of each domestic corporation or other entity that is merged into the surviving entity are debts, obligations, or liabilities of the surviving entity;

(e) The name of the surviving entity may, but need not be, substituted in any pending proceeding for the name of any party to the merger whose separate existence ceased in the merger;

(f) If the surviving entity is a domestic entity, the articles of incorporation and bylaws or the organic rules of the surviving entity are amended, or amended and restated, to the extent provided in the plan of merger;

(g) The shares of or interests in each entity that is a party to the merger that are to be converted in accordance with the terms of the merger into shares or other securities, interests, obligations, rights to acquire shares, other securities, or interests, cash, other property, or any combination of the foregoing, are converted, and the former holders of such shares or interests are entitled only to the rights provided to them by those terms or to any rights they may have under chapter 23B.13 RCW or the organic law governing the other entity;

(h) Except as provided by law or the plan of merger, all the rights, privileges, franchises, and immunities of each entity that is merged into the surviving entity, are the rights, privileges, franchises, and immunities of the surviving entity;

(i) All the property and contract rights of the surviving entity remain its property and contract rights without transfer, reversion, or impairment;

(j) The surviving entity remains subject to all its debts, obligations, and other liabilities; and

(k) Except as provided by law or the plan of merger, the surviving entity continues to hold all of its rights, privileges, franchises, and immunities.

(2) When a share exchange becomes effective, the shares in the acquired entity that are to be exchanged for shares or other securities, obligations, rights to acquire shares, other securities, cash, other property, or any combination of the foregoing, are entitled only to the rights provided to them in the plan of share exchange or to any rights they may have under chapter 23B.13 RCW.

(3) Except as provided otherwise in the articles of incorporation of a domestic corporation or the organic law governing or organic rules of an other entity, the effect of a merger or share exchange on owner liability is as follows:

(a) A person who becomes subject to new owner liability in respect of an entity as a result of a merger or share exchange will have that new owner liability only in respect of owner liabilities that arise after the merger or share exchange becomes effective;

(b) If a person had owner liability with respect to a party to the merger or the acquired entity before the merger or share exchange becomes effective with respect to shares or interests of such party or acquired entity which were exchanged in the merger or share exchange, which were canceled in the merger, or the terms and conditions of which relating to owner liability were amended under the terms of the merger:

(i) The merger or share exchange does not discharge that prior owner liability with respect to any owner liabilities that arose before the merger or share exchange becomes effective;

(ii) The provisions of the organic law governing any entity for which the person had that prior owner liability will continue to apply

to the collection or discharge of any owner liabilities preserved by (b)(i) of this subsection (3), as if the merger or share exchange had not occurred;

(iii) The person will have such rights of contribution from other persons as are provided by the organic law governing the entity for which the person had that prior owner liability with respect to any owner liabilities preserved by (b)(i) of this subsection (3), as if the merger or share exchange had not occurred; and

(iv) The person will not, by reason of such prior owner liability, have owner liability with respect to any owner liabilities that arise after the merger or share exchange becomes effective;

(c) If a person has owner liability both before and after a merger becomes effective with unchanged terms and conditions with respect to the entity that is the surviving entity by reason of owning the same shares or interests before and after the merger becomes effective, the merger has no effect on such owner liability; and

(d) A share exchange has no effect on owner liability related to shares of the acquired entity that were not exchanged in the share exchange.

(4) Upon a merger becoming effective, a foreign other entity that is the surviving entity of the merger is deemed to:

(a) Appoint the secretary of state as its agent for service of process in a proceeding to enforce the rights of shareholders of each domestic corporation that is a party to the merger who are entitled to and exercise dissenters' rights under chapter 23B.13 RCW; and

(b) Agree that it will promptly pay the amount, if any, to which such shareholders are entitled under chapter 23B.13 RCW.

(5) Except as provided in the organic law governing a party to a merger or in its articles of incorporation or organic rules, the merger does not give rise to any rights that a shareholder, interest holder, governor, or third party would have upon a dissolution, liquidation, or winding up of that party. The merger does not require a party to the merger to wind up its affairs and does not constitute or cause its dissolution or termination. [2024 c 22 s 9.]

RCW 23B.11A.080 Abandonment of merger or share exchange. (1) After a plan of merger or share exchange has been approved as required by this chapter, and before articles of merger or share exchange have become effective, the plan of merger or share exchange may be abandoned by a domestic corporation that is a party to the plan of merger or share exchange without action by its shareholders in accordance with any procedures provided in the plan of merger or share exchange or, if no such procedures are provided in the plan of merger or share exchange, in the manner determined by the board of directors.

(2) If a merger or share exchange is abandoned under subsection (1) of this section after articles of merger or share exchange have been delivered to the secretary of state for filing but before the merger or share exchange has become effective, a statement of withdrawal executed by all the parties that executed the articles of merger or share exchange must be delivered to the secretary of state for filing before the articles of merger or share exchange become effective in accordance with RCW 23.95.215.

(3) The statement of withdrawal will become effective at the effective date and time as determined in accordance with RCW 23.95.210 and the merger or share exchange will be deemed abandoned and will not become effective. [2024 c 22 s 10.]

RCW 23B.11A.090 Merger to effect a holding company reorganization—Definitions. (1) As used in this section:

(a) "Holding company" means the corporation that is or becomes the direct parent of the surviving corporation of a merger accomplished under this section and whose capital stock is issued in that merger;

(b) "Parent constituent corporation" means the parent corporation that merges with or into the subsidiary constituent corporation in the merger; and

(c) "Subsidiary constituent corporation" means the subsidiary corporation with or into which the parent constituent corporation merges in the merger.

(2) Unless the articles of incorporation provide otherwise, a parent constituent corporation may merge with or into a single indirect wholly owned subsidiary of the parent constituent corporation without the approval of the plan of merger by the shareholders of the parent constituent corporation if:

(a) The plan expressly permits or requires the merger to be effected under this subsection;

(b) The holding company and the constituent corporations to the merger are each organized under this title;

(c) At all times from its incorporation until consummation of a merger under this section, the holding company was a direct wholly owned subsidiary of the parent constituent corporation;

(d) Immediately before consummation of a merger under this section, the subsidiary constituent corporation is a direct wholly owned subsidiary of the holding company and an indirect wholly owned subsidiary of the parent constituent corporation;

(e) The parent constituent corporation and the subsidiary constituent corporation are the only constituent entities to the merger;

(f) Immediately after the merger becomes effective, the surviving corporation of the merger becomes or remains a direct wholly owned subsidiary of the holding company;

(g) Each share or fraction of a share of the parent constituent corporation outstanding immediately before the merger becomes effective is converted in the merger into a share or equal fraction of a share of the holding company having the same designations and relative preferences, rights, and limitations as the share or fraction of a share of the parent constituent corporation being converted in the merger;

(h) The articles of incorporation and bylaws of the holding company immediately after the merger becomes effective contain provisions identical to the articles of incorporation and bylaws of the parent constituent corporation immediately before the merger becomes effective, other than any provisions regarding the incorporator or incorporators, the corporate name, the registered office and agent, the initial board of directors and the initial subscribers for shares, and the provisions contained in any amendment to the articles of incorporation of the parent constituent corporation that were necessary to effect an exchange, reclassification, or cancellation of shares if the exchange, reclassification, or cancellation has become effective;

(i) The articles of incorporation and bylaws of the surviving corporation immediately after the merger becomes effective contain provisions by specific reference to this subsection requiring that any

corporate action by or involving the surviving corporation, other than the election or removal of directors of the surviving corporation, must be approved by the shareholders of the holding company (or any successor by merger) by the same vote as is required by this title or under the articles of incorporation or bylaws of the parent constituent corporation immediately before the merger becomes effective, if that corporate action would have required the approval of the shareholders of the parent constituent corporation under this title or under the articles of incorporation or bylaws of the parent constituent corporation immediately before the merger becomes effective;

(j) The directors of the parent constituent corporation immediately before the merger becomes effective become or remain the directors of the holding company immediately after the merger becomes effective; and

(k) The board of directors of the parent constituent corporation determines that the shareholders of the parent constituent corporation will not recognize gain or loss for United States federal income tax purposes as a result of the merger.

(3) The holding company must, within 10 days after the effective date of a merger effected under subsection (2) of this section, notify each person who was a shareholder of the parent constituent corporation immediately before the merger became effective that the merger has become effective. The notice must contain or be accompanied by a copy of the plan of merger or a summary of the material terms and conditions of the merger and the consideration to be received by those shareholders.

(4) To the extent restrictions under chapter 23B.19 RCW applied to the parent constituent corporation or any of its shareholders at the effective time of the merger, those restrictions apply to the holding company and its shareholders immediately after the merger becomes effective as though the holding company were the parent constituent corporation, and all shares of stock of the holding company acquired in the merger will, for the purposes of chapter 23B.19 RCW, be deemed to have been acquired at the time that the corresponding shares of stock of the parent constituent corporation were acquired. No shareholder who, immediately before the merger becomes effective, was not an acquiring person of the parent constituent corporation under chapter 23B.19 RCW will, solely by reason of the merger, become an acquiring person of the holding company under chapter 23B.19 RCW.

(5) To the extent a shareholder of the parent constituent corporation immediately before the merger was eligible to commence a proceeding in the right of the parent constituent corporation in accordance with RCW 23B.07.400, nothing in this section is deemed to limit or extinguish that eligibility.

(6) Except as provided in subsections (2), (3), (4), and (5) of this section, a merger between a parent constituent corporation and a subsidiary constituent corporation will be governed by the provisions of this chapter applicable to mergers generally. [2024 c 22 s 11.]