§ 17-211. Merger and consolidation.

(b) Pursuant to an agreement of merger or consolidation, ***1 or more domestic limited partnerships may merge or consolidate with or into 1 or more domestic limited partnerships*** or 1 or more other business entities formed or organized under the laws of the State of Delaware or any other state or the United States or any foreign country or other foreign jurisdiction, or any combination thereof, with such domestic limited partnership or other business entity as the agreement shall provide being the surviving or resulting domestic limited partnership or other business entity. ***Unless otherwise provided in the partnership agreement, an agreement of merger or*** consolidation or a plan of merger ***shall be approved by each domestic limited partnership which is to merge*** or consolidate (1) by all general partners, ***and (2) by the limited partners*** or, if there is more than 1 class or group of limited partners, then by each class or group of limited partners, in either case, by limited partners ***who own more than 50 percent of the then current percentage or other interest in the profits of the domestic limited partnership*** owned by all of the limited partners or by the limited partners in each class or group, as appropriate.

***In connection with a merger*** or consolidation hereunder, rights or ***securities of,*** or interests in, ***a limited partnership*** or other business entity which 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 partnership*** 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 partnership or other business entity which is not the surviving or resulting limited partnership or other business entity in the merger or consolidation or may be cancelled. Notwithstanding prior approval, an agreement of merger or consolidation or a plan of merger may be terminated or amended pursuant to a provision for such termination or amendment contained in the agreement of merger or consolidation or plan of merger.

(c) Except in the case of a merger under subsection (l) of this section, if a domestic limited partnership is merging or consolidating under this section, the domestic limited partnership or other business entity surviving or resulting in or from the merger or consolidation ***shall file a certificate of merger*** or consolidation executed by at least 1 general partner on behalf of the domestic limited partnership when it is the surviving or resulting entity in the office of the Secretary of State. The certificate of merger or consolidation shall state:

(1) The name and jurisdiction of formation or organization of each of the domestic limited partnerships and other business entities which is to merge or consolidate;

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

(3) The name of the surviving or resulting domestic limited partnership or other business entity;

(4) **In the case of a merger in which a domestic limited partnership is the surviving entity,** such **amendments**, if any, **to the certificate of limited partnership of the surviving domestic limited partnership** (and in the case of a surviving domestic limited partnership that is a limited liability limited partnership, to the statement of qualification of such surviving domestic limited partnership filed under § 15-1001 of this title) to change its name, registered office or registered agent as are desired **to be effected by the merger**;

(5) 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 certificate of merger or consolidation;

(6) That the agreement of merger or consolidation is on file at a place of business of the surviving or resulting domestic limited partnership or other business entity, and shall state the address thereof;

(7) That a copy of the **agreement of merger** or consolidation **will be furnished by the surviving or resulting domestic limited partnership** or other business entity, **on request and without cost, to any partner** of any domestic limited partnership or any person holding an interest in any other business entity which is to merge or consolidate; and

(8) If the surviving or resulting entity is not a domestic limited partnership (including a limited liability limited partnership), or a corporation, limited liability company, partnership (including a limited liability partnership) or statutory trust organized under the laws of the State of Delaware, a statement that such surviving or resulting other business entity agrees that it may be served with process in the State of Delaware in any action, suit or proceeding for the enforcement of any obligation of any domestic limited partnership which is to merge or consolidate, irrevocably appointing the Secretary of State as its agent to accept service of process in any such action, suit or proceeding and specifying the address to which a copy of such process shall be mailed to it by the Secretary of State. Process may be served upon the Secretary of State under this subsection by means of electronic transmission but only as prescribed by the Secretary of State. The Secretary of State is authorized to issue such rules and regulations with respect to such service as the Secretary of State deems necessary or appropriate. In the event of service hereunder upon the Secretary of State, the procedures set forth in § 17-911(c) of this title shall be applicable, except that the plaintiff in any such action, suit or proceeding shall furnish the Secretary of State with the address specified in the certificate of merger or consolidation provided for in this section and any other address which the plaintiff may elect to furnish, together with copies of such process as required by the Secretary of State, and the Secretary of State shall notify such surviving or resulting other business entity at all such addresses furnished by the plaintiff in accordance with the procedures set forth in § 17-911(c) of this title.

(d) Any failure to file a certificate of merger or consolidation in connection with a merger or consolidation pursuant to this section which was effective prior to September 1, 1988, shall not affect the validity or effectiveness of any such merger or consolidation.

(e) Unless a future effective date or time is provided in a certificate of merger or consolidation, or in the case of a merger under subsection (l) of this section in a certificate of ownership and merger, in which event a merger or consolidation shall be effective at any such future effective date or time, a merger or consolidation shall be effective upon the filing in the Office of the Secretary of State of a certificate of merger or consolidation or a certificate of ownership and merger.

(f) A certificate of merger or consolidation or a certificate of ownership and merger shall act as a certificate of cancellation for a domestic limited partnership which is not the surviving or resulting entity in the merger or consolidation. A certificate of merger that sets forth any amendment in accordance with paragraph (c)(4) of this section shall be deemed to be an amendment to the certificate of limited partnership (and if applicable to the statement of qualification) of the limited partnership, and the limited partnership shall not be required to take any further action to amend its certificate of limited partnership under § 17-202 of this title (or if applicable its statement of qualification under § 15-105 of this title) with respect to such amendments set forth in the certificate of merger. Whenever this section requires the filing of a certificate of merger or consolidation, such requirement shall be deemed satisfied by the filing of an agreement of merger or consolidation containing the information required by this section to be set forth in the certificate of merger or consolidation.

(g) An agreement of merger or consolidation or a plan of merger approved in accordance with subsection (b) of this section may (1) effect any amendment to the partnership agreement or (2) effect the adoption of a new partnership agreement for a limited partnership if it is the surviving or resulting limited partnership in the merger or consolidation. Any amendment to a partnership agreement or adoption of a new partnership agreement made pursuant to the foregoing sentence shall be effective at the effective time or date of the merger or consolidation and shall be effective notwithstanding any provision of the partnership agreement relating to amendment or adoption of a new partnership agreement, other than a provision that by its terms applies to an amendment to the partnership agreement or the adoption of a new partnership agreement, in either case, in connection with a merger or consolidation. The provisions of this subsection 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 a partnership agreement or other agreement or as otherwise permitted by law, including that the partnership agreement of any constituent limited partnership to the merger or consolidation (including a limited partnership formed for the purpose of consummating a merger or consolidation) shall be the partnership agreement of the surviving or resulting limited partnership. Unless otherwise provided in a partnership agreement, a limited partnership whose original certificate of limited partnership was filed with the Secretary of State and effective on or prior to July 31, 2005, shall continue to be governed by this subsection as in effect on July 31, 2005.

(h) When any merger or consolidation shall have become effective under this section, for all purposes of the laws of the State of Delaware, all of the rights, privileges and powers of each of the domestic limited partnerships and other business entities that have merged or consolidated, and all property, real, personal and mixed, and all debts due to any of said domestic limited partnerships and other business entities, as well as all other things and causes of action belonging to each of such domestic limited partnerships and other business entities, shall be vested in the surviving or resulting domestic limited partnership or other business entity, and shall thereafter be the property of the surviving or resulting domestic limited partnership or other business entity as they were of each of the domestic limited partnerships 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 State of Delaware, in any of such domestic limited partnerships and other business entities, shall not revert or be in any way impaired by reason of this chapter; but all rights of creditors and all liens upon any property of any of said domestic limited partnerships and other business entities shall be preserved unimpaired, and all debts, liabilities and duties of each of the said domestic limited partnerships and other business entities that have merged or consolidated shall thenceforth attach to the surviving or resulting domestic limited partnership or other business entity, and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it. Unless otherwise agreed, a merger or consolidation of a domestic limited partnership, including a domestic limited partnership which is not the surviving or resulting entity in the merger or consolidation, shall not require such domestic limited partnership to wind up its affairs under § 17-803 of this title or pay its liabilities and distribute its assets under § 17-804 of this title, and the merger or consolidation shall not constitute a dissolution of such limited partnership.

(i) Except as provided by agreement with a person to whom a general partner of a limited partnership is obligated, a merger or consolidation of a limited partnership that has become effective shall not affect any obligation or liability existing at the time of such merger or consolidation of a general partner of a limited partnership which is merging or consolidating.

(j) If a limited partnership is a constituent party to a merger or consolidation that shall have become effective, but the limited partnership is not the surviving or resulting entity of the merger or consolidation, then a judgment creditor of a general partner of such limited partnership may not levy execution against the assets of the general partner to satisfy a judgment based on a claim against the surviving or resulting entity of the merger or consolidation unless:

(1) A judgment based on the same claim has been obtained against the surviving or resulting entity of the merger or consolidation and a writ of execution on the judgment has been returned unsatisfied in whole or in part;

(2) The surviving or resulting entity of the merger or consolidation is a debtor in bankruptcy;

(3) The general partner has agreed that the creditor need not exhaust the assets of the limited partnership that was not the surviving or resulting entity of the merger or consolidation;

(4) The general partner has agreed that the creditor need not exhaust the assets of the surviving or resulting entity of the merger or consolidation;

(5) A court grants permission to the judgment creditor to levy execution against the assets of the general partner based on a finding that the assets of the surviving or resulting entity of the merger or consolidation that are subject to execution are clearly insufficient to satisfy the judgment, that exhaustion of the assets of the surviving or resulting entity of the merger or consolidation is excessively burdensome, or that the grant of permission is an appropriate exercise of the court's equitable powers; or

(6) Liability is imposed on the general partner by law or contract independent of the existence of the surviving or resulting entity of the merger or consolidation.

(k) A partnership agreement may provide that a domestic limited partnership shall not have the power to merge or consolidate as set forth in this section.

(l) In any case in which (i) at least 90% of the outstanding shares of each class of the stock of a corporation or corporations (other than a corporation which has in its certificate of incorporation the provision required by § 251(g)(7)(i) of Title 8), of which class there are outstanding shares that, absent § 267(a) of Title 8, would be entitled to vote on such merger, is owned by a domestic limited partnership, (ii) 1 or more of such corporations is a corporation of the State of Delaware, and (iii) any corporation that is not a corporation of the State of Delaware is a corporation of any other state or the District of Columbia or another jurisdiction, the laws of which do not forbid such merger, the domestic limited partnership having such stock ownership may either merge the corporation or corporations into itself and assume all of its or their obligations, or merge itself, or itself and 1 or more of such corporations, into 1 of the other corporations, pursuant to a plan of merger. If a domestic limited partnership is causing a merger under this subsection, the domestic limited partnership shall file a certificate of ownership and merger executed by at least 1 general partner on behalf of the domestic limited partnership in the office of the Secretary of State. The certificate of ownership and merger shall certify that such merger was authorized in accordance with the domestic limited partnership's partnership agreement and this chapter, and if the domestic limited partnership shall not own all the outstanding stock of all the corporations that are parties to the merger, shall state the terms and conditions of the merger, including the securities, cash, property, or rights to be issued, paid, delivered or granted by the surviving domestic limited partnership or corporation upon surrender of each share of the corporation or corporations not owned by the domestic limited partnership, or the cancellation of some or all of such shares. The terms and conditions of the merger may not result in a holder of stock in a corporation becoming a general partner in a surviving domestic limited partnership (other than a limited liability limited partnership). If a corporation surviving a merger under this subsection is not a corporation organized under the laws of the State of Delaware, then the terms and conditions of the merger shall obligate such corporation to agree that it may be served with process in the State of Delaware in any proceeding for enforcement of any obligation of the domestic limited partnership or any obligation of any constituent corporation of the State of Delaware, as well as for enforcement of any obligation of the surviving corporation, including any suit or other proceeding to enforce the right of any stockholders as determined in appraisal proceedings pursuant to § 262 of Title 8, and to irrevocably appoint the Secretary of State as its agent to accept service of process in any such suit or other proceedings, and to specify the address to which a copy of such process shall be mailed by the Secretary of State. Process may be served upon the Secretary of State under this subsection by means of electronic transmission but only as prescribed by the Secretary of State. The Secretary of State is authorized to issue such rules and regulations with respect to such service as the Secretary of State deems necessary or appropriate. In the event of such service upon the Secretary of State in accordance with this subsection, the Secretary of State shall forthwith notify such surviving corporation thereof by letter, directed to such surviving corporation at its address so specified, unless such surviving corporation shall have designated in writing to the Secretary of State a different address for such purpose, in which case it shall be mailed to the last address so designated. Such letter shall be sent by a mail or courier service that includes a record of mailing or deposit with the courier and a record of delivery evidenced by the signature of the recipient. Such letter shall enclose a copy of the process and any other papers served on the Secretary of State pursuant to this subsection. It shall be the duty of the plaintiff in the event of such service to serve process and any other papers in duplicate, to notify the Secretary of State that service is being effected pursuant to this subsection and to pay the Secretary of State the sum of $50 for the use of the State of Delaware, which sum shall be taxed as part of the costs in the proceeding, if the plaintiff shall prevail therein. The Secretary of State shall maintain an alphabetical record of any such service setting forth the name of the plaintiff and the defendant, the title, docket number and nature of the proceeding in which process has been served, the fact that service has been effected pursuant to this subsection, the return date thereof, and the day and hour service was made. The Secretary of State shall not be required to retain such information longer than 5 years from receipt of the service of process.